



## SELECT COMMITTEE ON THE EQUALITY ACT 2010 AND DISABILITY

### Oral and Written Evidence

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## Access Association – Written Evidence (EQD0106)

This response to the House of Lords Call for Evidence has been submitted on behalf of the Access Association, an organisation for access professionals and experts from a variety of backgrounds, including the private sector and local authorities. The Association's current membership breakdown stands at:

- Public Sector: 44.7%
- Private Sector: 44.1%
- Voluntary Sector: 8.7%
- Local Authority: 29.8%

We are a national network of individuals who are passionate about access and inclusive design. The Access Association's aim is to improve access and facilities for disabled people, and consequently for all people who would benefit from an accessible and inclusive environment. The Association is about providing peer support, sharing knowledge and having an influential voice.

*QUESTION: Has the Equality Act 2010 (EA) been a success for disabled people ?*

The Equality Act 2010 (EA) and its predecessor, the Disability Discrimination Acts 1995 and 2005 (DDA), have made a difference to the lives of disabled people, and have acted to raise awareness of many of the barriers disabled people can face in society. However, there are still areas relating to both the built environment and transport systems which need to be tackled, and which need to work much better, if disabled people are to have the same access to goods, facilities and services, and the same opportunities to contribute to the economic success of the country, as people who are not disabled.

It is essential to legislate in this area. A 'market' or 'litigation' based approach does not work in terms of ensuring an equitable society for all members, including disabled people. (This is evidenced by the fact that disabled people are still facing barriers to access and inclusion). In terms of how that legislation works, it is essential to address certain areas, specifically in terms of the enforcement of the legislation and how service providers and employers provide and/or maintain facilities to enable disabled people to access and use services and places of employment.

The discrimination of disabled people (whether direct or indirect) should remain unlawful; however, it is felt that 'responsible people' should be identified to carry out the task of enforcement. These might be Local Authority Officers, possibly Trading Standards Officers, or Environmental Health Officers when checking food premises' ratings locally. These officers should have the power to, and should be required to, follow up any suspected breaches of the EA in relation to specific and identified areas of the duty to provide or alter a physical feature to enable access for disabled people.

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. One particular example which is often cited by our members 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 EA 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?"

The EA method of enforcement is reminiscent of the now very dated 'medical model' approach to disability. The medical model school of thought placed 'blame' on disabled people, considering that, if they could not access a building, or any of the facilities and services in society that are available to non-disabled people, then it was their 'fault'. In contrast, the approach currently adopted and followed puts 'blame' on the wider society, or the people responsible for an inaccessible building or service for not designing and providing for the diversity of population we have today - including disabled people.

The EA method of enforcement could be said to actually build upon the medical model approach, by stating that, if a disabled person cannot access a facility or service, then they should do something about it and address the issue themselves - as the reason they cannot gain access is because they are disabled. A more 'up to date' and equitable approach would be to accept that providing a suitable environment and services for the entire population of this country, including disabled people, is everyone in society's responsibility – which includes service providers and Local Authority Officers.

Disabled people should be able to live an independent life, without facing barriers to their inclusion and participation, and without the extra burden of having to enforce the removal of any barriers which society places in their way. They should be able to go to work, visit facilities, access services and enjoy leisure, should they wish to do so, and not have to spend their time writing letters to every establishment that denies them equality of access. The fact that the EA expects disabled people to do this could, in itself, be seen as discriminatory, as non-disabled people do not have this expectation placed on them.

If a service provider is identified by a disabled person as not providing, or maintaining, the facilities they require to access the service, then the disabled person should be able to notify the relevant Local Authority and request that they follow up the issue. Another possible solution could be through licensing processes that local authorities undertake. 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. Currently, there is no such requirement, and the fact that many entertainment and alcohol licences are granted to establishments or events which do not provide suitable access and facilities for disabled people is a missed opportunity, and this should be addressed.

Even though some local authorities 'encourage' some applicants to look into access and facilities for disabled people, they currently do not have powers to refuse the granting of a

licence on these grounds. To ensure national consistency, suitable access and facilities for disabled people should be added to the minimum requirements for the granting of, or renewal of, a licence. Again, this would prevent disabled people from having to spend their time complaining to, and possibly taking legal action against, the said service providers.

To conclude, to allow disabled people the same opportunities as non-disabled people, to live an independent life, 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, and enforced through existing legislation.

*4 September 2015*

## **Access Association – Supplementary Written Evidence (EQD0202)**

### **Housing Standards Review and Optional Technical Housing Standards for House of Lords Select Committee: the Equality Act.**

**Submitted by Rachel Smalley**

**President of the Access Association**

#### **The Access Association**

The Access Association is a membership organisation for access professionals and experts from a variety of backgrounds, including the private sector and local authorities. The Association's current membership breakdown stands at:

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It is a national network of individuals who are passionate about access and inclusive design. The Access Association's aim is to improve access and facilities for disabled people, and consequently for all people who would benefit from an accessible and inclusive environment. The Association is about providing peer support, sharing knowledge and having an influential voice. The Access Association website is at:

[www.accessassociation.co.uk](http://www.accessassociation.co.uk)

#### **Accessible Housing Standards**

New homes need to be high quality, accessible and sustainable. To achieve this, the government has created a new approach for the setting of technical standards for new housing. This rationalises the many differing existing standards into a simpler, streamlined system which will reduce burden and help bring forward much needed new homes.

<https://www.gov.uk/government/speeches/planning-update-march-2015>

In 2010 the Government pledged to cut red tape for businesses and individuals.

By 2012 the Harman Review was established through the House Builders Federation, Local Government Association and the National House Building Council.

In Spring 2012 the housing and construction "Red Tape Challenge" was launched, and in October 2012 the Department of Communities and Local Government (DCLG) launched the



Housing Standards Review. The Housing Standards Review set the target of tackling the “untenable forest” of the many differing housing standards which existed in England.

In terms of accessible housing standards, on top of the 2 nationally recognised standards of Lifetime Homes (which had been incorporated into the Code for Sustainable Homes) and Wheelchair Accessible Housing (i.e. the Wheelchair Housing Design Guide), many local authorities and boroughs had composed and introduced their own variations of these standards, applying them via the planning process.

On 27th March 2015 the government announced, via a Written Ministerial Statement, a new national approach to the setting of technical housing standards in England.

This was accompanied by the publication of a new set of streamlined national technical standards, which included 2 optional building regulations standards covering accessible housing, creating a 3 tier system of standards contained within Volume 1 of Part M of the Building Regulations, which is made up of:

M4(1) Category 1- Visitable dwellings (baseline non-optional standard)

M4(2) Category 2- Accessible and adaptable dwellings (optional)

M4(3) Category 3- Wheelchair user dwellings (optional)

Powers to introduce these optional standards (M4(2) and M4(3)) are now included in the Building Act 1984 (as amended by the Deregulation Act 2015). The Statutory Instrument implementing the regulations has also been laid. These changes are explained in the Building Regulations Circular 01/2015 and accompanying circular letter.

### **Building Regulations Part M Vol. 1 Category 1 - Visitable Dwellings M4(1)**

## Requirement M4(1): Category 1 – Visitable dwellings

This section of the approved document deals with the following requirement from Part M of Schedule 1 to the Building Regulations 2010.

Requirement	
<i>Requirement</i>	<i>Limits on application</i>
<b>Category 1 – visitable dwelling</b> <b>Access and use</b> <b>M4(1).</b> Reasonable provision should be made for people to— (a) gain access to; and (b) use, the dwelling and its facilities	Requirement M4(1) does not apply to: (a) an extension to a dwelling; or (b) any part of a building that is used solely to enable the building or any service or fitting in the building to be inspected, repaired or maintained.

### Performance

In the Secretary of State's view, requirement M4(1) will be met when a new dwelling makes reasonable provision for most people, including wheelchair users, to approach and enter the dwelling and to access habitable rooms and sanitary facilities on the entrance storey. Reasonable provision is made if the dwelling complies with all of the following.

- a. Within the curtilage of the dwelling or the building containing the dwelling, it is possible to approach and gain access to the dwelling.
- b. It is possible to gain access to the dwelling, or the building containing the dwelling, from the most likely point of alighting from a car.
- c. A disabled person who is able to walk is able to visit any dwelling in a building containing one or more dwellings.
- d. Visitors can access and use the habitable rooms and a WC within the entrance storey of the dwelling (or the principal storey where the entrance storey does not contain a habitable room).
- e. Where the habitable rooms and the WC are located on the entrance storey, access between them is step free.
- f. Wall-mounted switches and socket outlets in habitable rooms are reasonably accessible to people who have reduced reach.

M4(1) Category 1- Visitable dwellings is not an optional standard, it is a mandatory baseline standard which should be applied to all dwellings where Part M of the Building Regulations applies. This standard has not changed since 2004, and provides a very basic level of access, and homes designed in accordance with this standard may not provide level access into them.

However, some disabled people (depending upon their impairment) may be able to visit someone in an M4(1) home.

M4(1) is applied to all 'new build' housing / all housing which Part M of the Building Regulations applies to (See Statutory Instrument 2015. No. 767 Building and Buildings, England and Wales, The Building Regulations &c. (Amendment) Regulations 2015).

### Building Regulations Part M Vol. 1

#### Category 2 - Accessible and adaptable dwellings

M4(2) is an optional building regulation, which can be applied to a development if 'switched on' by a planning condition.

## Optional requirement M4(2): Category 2 – Accessible and adaptable dwellings

This section of the approved document deals with the following optional requirement from Part M of Schedule 1 to the Building Regulations 2010.

Requirement	
<i>Optional requirement</i>	<i>Limits on application</i>
<b>Part M access to and use of buildings</b>	
<b>Category 2 – accessible and adaptable dwellings</b>	
<b>M4(2) optional requirement</b>	Optional requirement M4(2)–
(1) Reasonable provision must be made for people to—	(a) may apply only in relation to a dwelling that is erected;
(a) gain access to; and	(b) will apply in substitution for requirement M4(1);
(b) use, the dwelling and its facilities.	(c) does not apply where optional requirement M4(3) applies;
(2) The provision made must be sufficient to—	(d) does not apply to any part of a building that is used solely to enable the building or any service or fitting in the building to be inspected, repaired or maintained.
(a) meet the needs of occupants with differing needs, including some older or disabled people; and	
(b) to allow adaptation of the dwelling to meet the changing needs of occupants over time.	

### Performance

In the Secretary of State’s view, optional requirement M4(2) will be met where a new dwelling makes reasonable provision for most people to access the dwelling and incorporates features that make it potentially suitable for a wide range of occupants, including older people, those with reduced mobility and some wheelchair users. Reasonable provision is made if the dwelling complies with all of the following.

- a. Within the curtilage of the dwelling, or of the building containing the dwelling, it is possible to approach and gain step-free access to the dwelling and to any associated parking space and communal facilities intended for the occupants to use.
- b. There is step-free access to the WC and other accommodation within the entrance storey, and to any associated private outdoor space directly connected to the entrance storey.
- c. A wide range of people, including older and disabled people and some wheelchair users, are able to use the accommodation and its sanitary facilities.
- d. Features are provided to enable common adaptations to be carried out in future to increase the accessibility and functionality of the dwelling.
- e. Wall-mounted switches, socket outlets and other controls are reasonably accessible to people who have reduced reach.

As explained in the above performance objectives, the optional technical standard M4(2) provides homes suitable for a diverse population. They are flexible, adaptable, cost-effective to adapt and will accommodate and be sustainable for the majority of the population. Many of the features of an M4(2) home will benefit disabled people, older people, families with young children, people with temporary impairments or injuries or people carrying items or moving objects.

The following table highlights some of the benefits of, and some population groups who could benefit from, an M4(2) home:

### Benefits of M4(2) homes

People	Design feature(s) / benefit
People with an ambulant mobility difficulty	All M4(2) provisions, including level access, the ability of an M4(2) home to easily and therefore cheaply incorporate and accommodate adaptations required, for example, walls strong enough to accommodate grab rails.
People who are blind or partially	Suitable and uniform switch and socket locations and heights. Space and manoeuvring zones, particularly beneficial for someone using a guide

sighted	dog.
Families with young children	Provision of level access - beneficial for people using push chairs or prams. Suitable clear opening width of doors and gates for push chair access. Suitably sized ground floor toilet to allow assisted / accompanied use.
Older people	All M4(2) provision can have a positive impact on the mobility and independence of this group within the home, and may enable people to stay in their homes longer, or return home sooner after a hospital stay. Many common age related adaptations (grab-rails etc.) can be fitted with ease due to the provision of relevant design features (reinforced walls) within M4(2).
Some wheelchair users	M4(2) is not a wheelchair accessible housing standard; however, some wheelchair users will at least be able to visit an M4(2) dwelling. Some wheelchair users who are not 'full time' wheelchair users may be able to live in an M4(2) dwelling, but storage of wheelchairs may be a challenge.
People with temporary impairments or injuries	Someone's mobility can be affected by various events throughout their life. It would be very unusual for someone to not experience a life event which affects their mobility to some extent, for example injuries and post- (or pre-) operation periods. M4(2) features may enable people to return to their home from hospital sooner. People could also potentially 'live' on the entrance storey, on a temporary basis, of an M4(2) home.
People moving large items / moving home	Level access (whether level or in the form of a lift) will benefit people moving home or moving or carrying large items, or even carrying shopping.

M4(2) Accessible and adaptable dwellings replaces the previously widely used and recognised 'Lifetime Homes' standard.

The concept of Lifetime Homes was developed in the early 1990s by a group of housing experts, and has been described as "ordinary homes" designed to incorporate 16 design criteria that can be universally applied to new homes at minimal cost, with each design criterion adding to the comfort and convenience of the home, supporting the changing needs of individuals and families at different stages of life. Lifetime Homes aim to create and encourage better living environments for everyone.

The optional technical housing standard M4(2) has replaced / is widely seen as a replacement for the previous Lifetime Homes standard; many of the arguments 'for' the provision of Lifetime Homes, therefore, also apply to M4(2).

DCLG in their 2007 publication 'The future of the Code for Sustainable Homes' highlighted many of the benefits of providing Lifetime Homes:

Where they are adopted they ensure that homes are better able to adapt to the needs of their occupants at different stages of their life – as they grow and as they age. They also ensure that, when faced with a sudden crisis such as an incapacitating accident, injury or illness, the families living in these homes are able to make short-term adaptations to allow

time to consider future needs, and longer-term adaptations should their wish be to remain the family home.

...

Currently the home building market is not reacting as quickly as necessary to meet these dramatic changes. If we do not act now to make sure that the homes we are building will meet the needs of an ageing population we will face increasing difficulties in meeting our population's needs over the coming decades.

DCLG. 2007. The future of the code for sustainable homes. [www.planningportal.gov.uk/buildingregulations/greenerbuildings/sustainablehomes/consultations](http://www.planningportal.gov.uk/buildingregulations/greenerbuildings/sustainablehomes/consultations)

## **Cost Savings**

The 2007 DCLG publication also highlighted potential cost savings associated with the provision of Lifetime Homes:

The cost of adapting homes which were not built to Lifetime Homes standards, for example for use by disabled people, is substantial. Encouraging greater uptake of the Lifetime Homes standards from the design stage will reduce the cost of adaptations, as and when they are needed, and also reduce care costs.

DCLG. 2007. The future of the code for sustainable homes. [www.planningportal.gov.uk/buildingregulations/greenerbuildings/sustainablehomes/consultations](http://www.planningportal.gov.uk/buildingregulations/greenerbuildings/sustainablehomes/consultations)

The DCLG commissioned report (2012) "Assessing the health benefits of Lifetime Homes", by the Building Research Establishment, highlighted cost savings associated with Lifetime Homes:

The total cost of building-related hazards is calculated to be approximately £2.48bn per annum in direct health costs or £40bn as a potential cost to society.

Homes built to current building regulations offer significant health advantages over the average stock, and may provide direct NHS health cost savings per dwelling in excess of £4,000 during a 60-year

expected lifespan. Building to the Lifetime Homes Standard could provide an extra £194 of savings over 60 years, or £700 if the potential adaptations to bathrooms and access to a bedroom/bathroom were made.

When considering the potential cost to society, the savings are likely to be much higher.

Using the model, it is suggested that a home built to current building regulations could save £83,000 during a 60-year lifespan, compared to the average for the current stock.

Building to the Lifetime Homes Standard could provide a further £1,600 in savings, or £8,600 if the potential adaptations were made.

DCLG 2012. Assessing the health benefits of Lifetime Homes. [www.agenda-efa.org.uk/site/wp-content/uploads/2014/09/Health\\_benefits\\_of\\_Lifetime\\_Home\\_Standards.pdf](http://www.agenda-efa.org.uk/site/wp-content/uploads/2014/09/Health_benefits_of_Lifetime_Home_Standards.pdf)

Leonard Cheshire's 2014 publication "The hidden housing crisis" quantified the costs of adapting a standard home, versus a lifetime home:

Lifetime Homes are ordinary houses and flats which incorporate 16 design criteria that can be universally applied to new homes with an average cost £1,100 or less [29]. These standards actually save money in the long run, by ensuring that things like grab-bars and stair-lifts can be easily and cheaply installed if people's needs change.<sup>30</sup>

Unless all new homes are built so they can be easily adapted to disabled people's needs (i.e. Lifetime Homes standards) the demand for adaptations will only continue to grow. Councils will struggle to meet this demand as they are asked to stretch their budgets further.

Ensuring that as many new homes are built to Lifetime Homes standards as possible will help to reduce both the need for adaptations, and the cost for when they are needed.

The costs of making simple adaptations to a standard home could be more than £20,000 - more than five times the cost of building a home to Lifetime standards and carrying out the same adaptations (estimates below).

	<b>Cost of adaptation in a standard home</b>	<b>Cost of adaptation in a Lifetime Home*</b>
Installing a ramp	£450	£0
Widening entrance door	£2,500	£0
Widening internal doors	Estimating this could be four doors, the total would be £2,000	£0
Installing a stair-lift	£9,600	£2,400
Installing ten grab bars	£2,500	£500
Wet-room conversion of bathroom	£3,500	£0
Initial building costs	£0	£1,100
<b>Total</b>	<b>£20,550</b>	<b>£4,000</b>

\*It is £0 where it is unnecessary as it comes as standard

Investing in Lifetime Homes also saves councils money by reducing unnecessary social care costs. As stated previously, disabled people who can live in their homes independently will need less social care. Moreover, many disabled people who want to live in their own homes are currently prevented from moving out of costly residential services because they cannot find disabled-friendly homes.

Leonard Cheshire. 2014. The Hidden Housing Crisis [www.leonardcheshire.org](http://www.leonardcheshire.org)

There are clear cost savings represented by M4(2) homes as opposed to a standard home, which would now be referred to as an M4(1) visitable dwelling.

**Health and Social Benefits**

The following population projections are provided by Age UK’s 2016 report “Later Life in the UK”:

**Population projections**

- The number of people aged 60 or over is expected to pass the 20 million mark by 2030<sup>10</sup>
- The number of people aged 65+ is projected to rise by over 40 per cent (40.77%) in the next 17 years to over 16 million<sup>11</sup>.
- By 2040, nearly one in four people in the UK (24.2%) will be aged 65 or over<sup>12</sup>
- The percentage of the total population who are over 60 is predicted to rise from 24.2% at present to over 29% in 2035.<sup>13</sup>
- The number of people over 85 in the UK is predicted to more than double in the next 23 years to over 3.4 million.<sup>14</sup>
- The population over 75 is projected to double in the next 30 years<sup>15</sup>

- Nearly one in five people currently in the UK will live to see their 100th birthday (see section on life expectancy below)<sup>16</sup>

Age UK's 2016 "Later Life in the UK": [www.ageuk.org.uk](http://www.ageuk.org.uk)

The link between Lifetime Homes (now M4(2)) and an ageing population is clearly illustrated on the Lifetime Homes website which explains:

Most older people live in mainstream housing. A minority live in specialist housing. As we get older, more of us live alone, especially women. As we get older we spend more time at home. So it is important we can get full use out of it. Yet more than two million older households live in non-decent homes. And although most older people own their home, many are on low weekly incomes. If they want to make adaptations to their home – which can prevent falls and reduce the need for expensive hospital and social care - they won't be able to afford it without funding.

Good housing design – built into all new housing from the start – can free up the housing market, making it easier to move. It can reduce the need for adaptations and reduce the likelihood of falls. Good, accessible housing – Lifetime Homes – radically reduces the costs to health, social care and other public services and allows people what they want: to live in their own homes, comfortably and safely, for as long as possible.

Good housing design is vital in promoting well-being and improving quality of life, both in general housing and in sheltered and supported housing or housing with care. Lifetime Homes design offers a way to improve and extend housing for an adaptable and sustainable future for older people.

[www.lifetimehomes.org.uk/pages/lifetime-homes-and-older-people.html](http://www.lifetimehomes.org.uk/pages/lifetime-homes-and-older-people.html)

DCLG have also highlighted the benefits of the provision of Lifetime Homes in terms of the supply chain of housing, and shortages of family homes:

There is also some evidence that the undersupply of inclusive homes for older people is leading to people being unable to move into more suitable accommodation and that in turn is leading to under-occupation of family homes. This blocks the supply chain, reduces flexibility and movement in the market and drives prices up. Wider uptake of Lifetime Homes standards would allow older people to release large family homes into the market thus increasing the supply of family homes and affordability.



DCLG. 2007. The future of the code for sustainable homes. [www.planningportal.gov.uk/buildingregulations/greenerbuildings/sustainablehomes/consultations](http://www.planningportal.gov.uk/buildingregulations/greenerbuildings/sustainablehomes/consultations)

There are clear health and social benefits to the provision of lifetime homes:

Where they are adopted they ensure that homes are better able to adapt to the needs of their occupants at different stages of their life – as they grow and as they age. They also ensure that, when faced with a sudden crisis such as an incapacitating accident, injury or illness, the families living in these homes are able to make short-term adaptations to allow time to consider future needs, and longer-term adaptations should their wish be to remain the family home.

...

Ultimately, the indirect health benefits associated with the Lifetime Homes Standard focus on improving the quality of life of occupants. The Partial Regulatory Impact Assessment (PRIA) – Lifetime Homes<sup>7</sup> suggests that implementing the Lifetime Homes Standard would have the following impacts on health and costs attributed to health:

- reduce, or delay the need for people to move to residential care
- reduce the demand for temporary residential care
- ensure that people are discharged from hospital into suitable accommodation
- instead of remaining in hospital in much needed acute hospital beds because their
- accommodation is unsuitable
- reduce the need for home care for disabled people.

DCLG. 2007. The future of the code for sustainable homes. [www.planningportal.gov.uk/buildingregulations/greenerbuildings/sustainablehomes/consultations](http://www.planningportal.gov.uk/buildingregulations/greenerbuildings/sustainablehomes/consultations)

The DCLG publication “Assessing the health benefits of Lifetime Homes”, which references [4] Cobbold, C. (1997) Cost-benefit analysis of Lifetime Homes. York: JRF, identifies the impact suitable, accessible housing can have on health and wellbeing, as well as hospitals and demand for temporary residential care:

Many of the design criteria associated with Lifetime Homes seek to maximise the level of independence for occupants within the dwelling and the immediate external area. The health benefits of this will vary depending on the type of occupants. For the elderly, the ability to return home after hospitalisation would help to increase their level of

independence and quality of life. Cobbold notes the difficulties faced by some that are discharged from hospital to dwellings that do not fit their needs.<sup>4</sup> A systematic review and meta-analysis noted the importance of complex interventions including community-based care after hospital discharge for this group, suggesting that some form of intervention can help elderly people to continue living at home as an alternative to admittance into a nursing home. Merely being at home was one factor that promoted independence but other studies reviewed focused on empowerment, autonomy, independent decision making, and improved self-esteem and self-confidence as an outcome of intervention.

...

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- instead of remaining in hospital in much needed acute hospital beds because their
- accommodation is unsuitable
- reduce the need for home care for disabled people.

DCLG 2012. Assessing the health benefits of Lifetime Homes. [www.agenda-efa.org.uk/site/wp-content/uploads/2014/09/Health\\_benefits\\_of\\_Lifetime\\_Home\\_Standards.pdf](http://www.agenda-efa.org.uk/site/wp-content/uploads/2014/09/Health_benefits_of_Lifetime_Home_Standards.pdf)

### **Family Benefits**

As illustrated in Table 1, accessible and adaptable homes also provide a range of benefits for families with small children:

- ensuring that homes are suitable for people using prams or push chairs, through the provision of step free access and sufficient hallway space / storage.
- The requirement for a larger downstairs WC will allow assisted / accompanied use for those with young children.

**Building Regulations Part M Vol. 1 Category 3 - Wheelchair user dwellings**

**Optional requirement M4(3): Category 3 – Wheelchair user dwellings**

This section of the approved document deals with the following optional requirement from Part M of Schedule 1 to the Building Regulations 2010.

Requirement	
Optional requirement	Limits on application
<b>Category 3 – wheelchair user dwellings</b>	
<b>M4(3) optional requirement</b>	Optional requirement M4(3)–
(1) Reasonable provision must be made for people to—	(a) may apply only in relation to a dwelling that is erected;
(a) gain access to, and	(b) will apply in substitution for requirement M4(1);
(b) use, the dwelling and its facilities.	(c) does not apply where optional requirement M4(2) applies;
(2) The provision made must be sufficient to—	(d) does not apply to any part of a building that is used solely to enable the building or any service or fitting in the building to be inspected, repaired or maintained.
(a) allow simple adaptation of the dwelling to meet the needs of occupants who use wheelchairs; or	
(b) meet the needs of occupants who use wheelchairs.	Optional requirement M4(3) (2)(b) applies only where the planning permission under which the building work is carried out specifies that it shall be complied with.

**Performance**

In the Secretary of State's view, optional requirement M4(3) will be met where a new dwelling makes reasonable provision, either at completion or at a point following completion, for a wheelchair user to live in the dwelling and use any associated private outdoor space, parking and communal facilities that may be provided for the use of the occupants. Reasonable provision is made if the dwelling complies with all of the following.

- a. Within the curtilage of the dwelling or of the building containing the dwelling, a wheelchair user can approach and gain step-free access to every private entrance to the dwelling and to every associated private outdoor space, parking space and communal facility for occupants' use.
- b. Access to the WC and other accommodation within the entrance storey is step-free and the dwelling is designed to have the potential for step-free access to all other parts.
- c. There is sufficient internal space to make accommodation within the dwelling suitable for a wheelchair user.
- d. The dwelling is wheelchair adaptable such that key parts of the accommodation, including sanitary facilities and kitchens, could be easily altered to meet the needs of a wheelchair user or, where required by a local planning authority, the dwelling is wheelchair accessible.
- e. Wall-mounted switches, controls and socket outlets are accessible to people who have reduced reach.

As explained in the above requirements, the optional requirement M4(3) requires that reasonable provision must be made for people to gain access to, and use, the dwelling and its facilities, and that this provision must be sufficient to allow simple adaptation of the dwelling to meet the needs of occupants who use a wheelchair.

M4(3) homes are therefore designed to be either:

- wheelchair accessible (M4(3)(2)(b)); or
- wheelchair adaptable (M4(3)(2)(a))

Planning Practice Guidance has been provided on the subject of 'wheelchair accessible' and 'wheelchair adaptable' homes:

Paragraph: 009 Reference ID: 56-009-20150327

## **What issues should local planning authorities consider in determining whether dwellings should be fully wheelchair accessible or adaptable?**

Part M of the Building Regulations sets a distinction between wheelchair accessible (a home readily useable by a wheelchair user at the point of completion) and wheelchair adaptable (a home that can be easily adapted to meet the needs of a household including wheelchair users) dwellings.

**Local Plan** policies for wheelchair accessible homes should be applied only to those dwellings where the local authority is responsible for allocating or nominating a person to live in that dwelling.

 Revision date: 27 03 2015

A local authority should therefore only require wheelchair accessible homes (as opposed to wheelchair adaptable homes), where they are responsible for allocating or nominating the end user of the dwelling. Generally, M4(3) homes are therefore likely to be wheelchair adaptable, as opposed to accessible.

Habinteg and TCPA (via Habinteg’s wheelchair accessible housing toolkit) provide the following summary data on wheelchair accessible housing:

Data on wheelchair accessible housing

Aspire research (2014) found that:

Fewer wheelchair accessible homes were built in 2013 than in 2005

- There are around 24,000 wheelchair users in England waiting for appropriate social or affordable housing.

Habinteg research (2010) found that:

- The majority of homes in England (84%) do not allow someone using a wheelchair to get to and through the front door without difficulty and only 0.5% of homes are reported to be ‘accessible and adaptable’.
- There were around 607,200 wheelchair users in England, living in some 586,700 households (figures updated), spread across all tenures. The estimate of wheelchair user households in England with unmet housing needs is 78,300, which translates to 240 households in an ‘average’ local (housing) authority with a total of 68,064 households

[www.habinteg.org.uk/toolkit-data-on-wheelchair-accessible-housing](http://www.habinteg.org.uk/toolkit-data-on-wheelchair-accessible-housing)

Aspire (a charity supporting people with spinal injury) commissioned research with Loughborough University to examine the impact on spinal cord injured adults and their families of living in adapted and unadapted homes. The research found that people living in unadapted properties were less likely to be employed or see their friends, have poor health and be more likely to suffer from depression and have suicidal thoughts. The report also highlighted:

**Findings**

**Housing needs**

The results of the research revealed that, for all the people with SCI and their families, a main priority upon leaving rehabilitation was to ensure that they had appropriate housing in terms of meeting their new physical needs. It was also important that the transition from rehabilitation into an appropriate house...

**Aspire is calling for:**

- To enable spinal cord injured people to remain in their own homes whenever practicable, by improving the processes to enable them to obtain grants and have adaptations approved much more quickly.
- The lack of suitable housing results in more spinal cord injured patients unnecessarily spending additional weeks in hospital waiting for adaptations to their own home, or for a wheelchair accessible home to be found. It costs the NHS £960 per day for a bed in a Spinal Injury Centre. This avoidable cost is also incurred when spinal cord injured people are readmitted for treatment for bladder infections, pressure sores or falls brought about by living in unadapted housing.
- Providing more adapted housing for disabled people will also benefit the increasing ageing population and is therefore an investment that will significantly help the current and future UK population.

Aspire and Loughborough University 2016

Examining lives in adapted and unadapted homes: The impact of housing spinal injured people in inaccessible housing:

[www.aspire.org.uk/examining-lives-in-adapted-and-unadapted-homes](http://www.aspire.org.uk/examining-lives-in-adapted-and-unadapted-homes)

The following statistics have been provided by DCLG in their March 2015 publication “Guide to available disability data” (www.gov.uk)

## The wider picture

The following tables provide information on the current situation on demographics and housing stock across England. This will provide a general indication of the current situation on disabled housing need. The tables include information on:

- vulnerable and disadvantages groups
- older households
- household projections
- housing stock and visitability features.

<b>Vulnerable and disadvantaged households as percentage of total households</b>					
<b>England</b>	<b>2011</b>	<b>Tenure</b>			<b>All households</b>
		<b>Owner Occupier</b>	<b>Private Rented</b>	<b>Social Rented</b>	
<i>Thousands (Percentage)</i>					
<b>Households with reference person with long term illness or disability<sup>1</sup></b>	3,857 (26.8)	813 (21.9)	1,859 (48.5)	6,528 (29.8)	
<b>Households with one or more wheelchair users<sup>2</sup></b>	-	-	-	726 (3.3)	
<i>Thousands (percentage)</i>					
<b>Total Households</b>	14,368 (100.0)	3,716 (100.0)	3,834 (100.0)	21,918 (100.0)	

Source: English Housing Survey 2011 to 2012, household report, annex table 6.1 & 6.11

<sup>1</sup> Long term illness is anything that has troubled the household reference person over a period of time, or that is likely to affect them over a period of time (English Housing Survey: Questionnaire documentation 2011 to 2012)

<sup>2</sup> Note households with one or more wheelchair users is included as part of Households with long term illness or disability

Please note below is data from a discontinued data source from 2007-2008. This survey has been replaced with the English Housing Survey.

<b>Disabled persons using wheelchair by tenure, 2007-08</b>					
<b>England</b>	<b>2008</b>	<b>Tenure</b>			<b>All households</b>
		<b>Owner Occupied</b>	<b>Private Rented<sup>1</sup></b>	<b>Social Rented</b>	
<i>Thousands (Percentage)</i>					
<b>Disabled persons<sup>2</sup> using wheelchair</b>	332 (2.3)	-	270 (7.1)	603 (2.8)	
<b>Total Households</b>	14,628 (100.0)	2,982 (100.0)	3,797 (100.0)	21,407 (100.0)	

Source: Housing in England 2007-08: a report principally from the 2007-08 Survey of English Housing, table 1.1 and table 1.27

<sup>1</sup> There are too few private renting wheelchair users in the sample to provide estimates for private renters alone.

<sup>2</sup> Persons with a long-standing illness, disability or infirmity.

Habinteg and the TCPA (Town and Country Planning Association) have produced “Towards accessible housing - a toolkit for planning policy”, which provides the following (national) data on unmet wheelchair housing need:

Access Association – Supplementary Written Evidence (EQD0202)

The table below lays out these calculations.

Table setting out calculations of unmet housing need

Steps	Calculations	Results
Step 1	Indoor wheelchair users 26% of 528,000 wheelchair user households	153,000
	Outdoors only wheelchair users 74% of 582,000 wheelchair user households	429,000
<b>Total wheelchair user households in England (2008/2008)</b>		<b>582,000</b>
Step 2	Indoor wheelchair users (adjusted) 153,000 x 1.008 (growth in dwelling in England 08/09 – 0.8%)	154,224
	Outdoors only wheelchair users (adjusted) 429,000 x 1.008 (growth in dwelling in England 08/09 – 0.8%)	432,432
<b>Total wheelchair user households in England (2009/2010)</b>		<b>586,656</b>
Step 3	Unmet housing need for indoor wheelchair users 154,224 x 26% (unsuitable homes and need specially adapted property)	40,100
Step 4	Unmet housing need for outdoors only wheelchair users 432,432 x 18% (unsuitable homes and need specially adapted property) and 79,567 x 48% (design of homes unsuitable for wheelchair use)	38,200
Step 5	Unmet housing need among wheelchair user households in England	78,300

Habinteg and TCPA

Towards accessible housing a toolkit for planning policy

<http://www.habinteg.org.uk/toolkit-about>

**Policy background**

The Written Ministerial Statement (WMS) provides the following guidance to local authorities on the introduction and implementation of new optional technical standards:

The optional new national technical standards should only be required through any new Local Plan policies if they address a clearly evidenced need, and where their impact on viability has been considered, in accordance with the National Planning Policy Framework and Planning Guidance. Neighbourhood Plans should not be used to apply the new technical standards.”

<https://www.gov.uk/government/speeches/planning-update-march-2015>

The National Planning Policy Framework provides the following guidance on the optional technical standards and access and inclusion:



## **Housing- Optional Technical Standards**

### **Introduction**

Paragraph: 001 Reference ID: 56-001-20150327

#### **What are the new optional technical housing standards?**

The Government has created a new approach for the setting of technical standards for new housing. This rationalises the many differing existing standards into a simpler, streamlined system which will reduce burdens and help bring forward much needed new homes. The Government set out its policy on the application of these standards in decision taking and plan making in a [Written Ministerial Statement](#), which also withdraws the Code for Sustainable Homes [aside from legacy cases](#).

Revision date: 27 03 2015

Paragraph: 002 Reference ID: 56-002-20150327

#### **What optional technical housing standards can local planning authorities set?**

Local planning authorities have the option to set additional technical requirements exceeding the minimum standards required by Building Regulations in respect of access and water, and an optional nationally described space standard. Local planning authorities will need to gather evidence to determine whether there is a need for additional standards in their area, and justify setting appropriate policies in their [Local Plans](#).

Revision date: 27 03 2015

Paragraph: 003 Reference ID: 56-003-20150327

#### **How should local planning authorities assess viability concerns for setting optional Building Regulation requirements and the nationally described space standard?**

Local planning authorities should consider the impact of using these standards as part of their Local Plan viability assessment. In considering the costs relating to optional Building Regulation requirements or the nationally described space standard, authorities may wish to take account of the evidence in the most recent [Impact Assessment](#) issued alongside the Housing Standards Review.

Revision date: 27 03 2015

<http://planningguidance.communities.gov.uk>



Paragraph: 012 Reference ID: 26-012-20140306

### **Planning should promote access and inclusion**

An inclusive environment is one that can be accessed and used by everyone. It recognises and accommodates differences in the way people use the built environment.

Good design can help to create buildings and places that are for everyone. Planning can help break down unnecessary physical barriers and exclusions caused by the poor design of buildings and places.

Inclusive design acknowledges diversity and difference and is more likely to be achieved when it is considered at every stage of the development process, from inception to completion. However it is often mistakenly seen as a Building Regulations issue, to be addressed once planning permission has been granted, not at the planning application stage. The most effective way to overcome conflicting policies and to maximise accessibility for everyone is for all parties to consider inclusive design from the outset of the process. This is particularly important when considering historic buildings and conservation, and highways. Thinking at the design stage about how the completed building will be occupied and managed can overcome many barriers experienced by some users. Too often the needs of users, including disabled people, older people and families with small children, are considered too late in the day.

Inclusive design should not only be specific to the building, but also include the setting of the building in the wider built environment, for example, the location of the building on the plot; the gradient of the plot; the relationship of adjoining buildings; and the transport infrastructure.

Issues to consider include:

- proximity and links to public transport;
- parking spaces and setting down points in proximity to entrances;
- the positioning and visual contrast of street furniture and the design of approach routes to meet the needs of wheelchair users and people with visual impairments; and whether entrances to buildings are clearly identified, can be reached by a level or gently sloping approach and are well lit.

Revision date: 06 03 2014

[http://planningguidance.communities.gov.uk/blog/guidance/design/what-planning-objectives-can-good-design-help-achieve/#paragraph\\_012](http://planningguidance.communities.gov.uk/blog/guidance/design/what-planning-objectives-can-good-design-help-achieve/#paragraph_012)

The written Ministerial statement was published March 2015.

The new optional Building Regulations came 'into force' in October 2015.

Very few local planning authorities have introduced policy to require the optional accessible housing standards.

The Greater London Authority led the way in terms of amending existing planning policy (the London Plan), to incorporate the new optional technical standards.

The London Plan Policy 3.8 was amended to read:

### **POLICY 3.8 HOUSING CHOICE**

#### **Strategic**

A. Londoners should have a genuine choice of homes that they can afford and which meet their requirements for different sizes and types of dwellings in the highest quality environments.

#### **LDF preparation and planning decisions**

B. To inform local application of Policy 3.3 on housing supply and taking account of housing requirements identified at regional, sub-regional and local levels, boroughs should work with the Mayor and local communities to identify the range of needs likely to arise within their areas and ensure that:

a. new developments offer a range of housing choices, in terms of the mix of housing sizes and types, taking account of the housing requirements of different groups and the changing roles of different sectors in meeting these

a1. the planning system provides positive and practical support to sustain the contribution of the Private Rented Sector (PRS) in addressing housing needs and increasing housing delivery.

b. provision of affordable family housing is addressed as a strategic priority in LDF policies

**c. ninety percent of new housing is built to 'The Lifetime Homes' standards meets Building Regulation requirement M4 (2) 'accessible and adaptable dwellings'**

**d. ten per cent of new housing meets Building Regulation requirement M4 (3) 'wheelchair user dwellings', is i.e. is designed to**

be wheelchair accessible, or easily adaptable for residents who are wheelchair users

[www.london.gov.uk/what-we-do/planning/london-plan/minor-alterations-london-plan/minor-alterations-london-plan-2015](http://www.london.gov.uk/what-we-do/planning/london-plan/minor-alterations-london-plan/minor-alterations-london-plan-2015)

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.

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).

This document has highlighted the guidance available to local authorities on the optional building regulations in terms of accessible housing.

However, relatively few local authorities outside London are working on introducing planning policy via their local plans or development frameworks.

This could potentially lead to the provision of accessible housing being geographically inconsistent, with need not adequately addressed in some locations.

The optional Building Regulations and the Written Ministerial Statement provide the opportunity for local authorities to introduce planning policy which requires accessible housing to be built in accordance with the new optional building regulation standards M4(2) and M4(3).

The Access Association is 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).

*12 February 2016*

## **Action Disability Swindon – Written Evidence (EQD0036)**

### Para. 1

The following evidence relates to problems encountered, primarily by visually impaired people living within the Borough of Swindon, with the shared crossing installed at the new Regent Circus development in the town. Disabled people in Swindon now discover that there is up to date national guidance that the Council can follow to protect people using and crossing public spaces, and that Lord Holmes' recent report looking into shared surfaces, has roundly condemned the principle of pedestrians having to share space with vehicles. Why then is the local council in this case rooted to its previous decision, and why is it not bound by the Equality Act 2010 (EA) to consider the adverse impact on disabled street users and take urgent steps to remedy the problem? The findings in Lord Holmes of Richmond's report, entitled Accidents by Design, have proved to be most informative and have encouraged us to submit this evidence to the Equality Act 2010 and Disability Committee.

### Para 2

I am producing this report in my capacity as director of Action Disability Swindon (ADS), a not-for-profit company limited by guarantee, registered in England (Reg. No. 07239111). The company was established in 2010, with charitable objects, and its mission statement is to "Facilitate the empowerment of disabled people through promotion of information, choice and control". ADS has been authorised by Swindon Blind Association (SBA) to convey the views and concerns of their members over the safety aspects of the above-mentioned shared crossing. The development includes a new supermarket, multi-screen cinema and numerous eating establishments, thus creating a busy thoroughfare for motorists, cyclists and pedestrians. The cost of the crossing was borne by the developers.

### Para 3

The majority of members of the SBA regard the shared crossing as a "no go" area because crossing the busy road safely can only be achieved by eye contact between the motorist and the pedestrian, an impossible situation for a visually impaired person (VIP). Even some Guide dogs refuse to take their owners across the road, sensing the danger involved. Prior to the creation of the shared crossing the area was served by a traditional pelican crossing which enabled visually impaired people to cross safely.

### Para 4

The crossing has been in existence for approximately 12 months and although Swindon Borough Council (SBC) appeared to go through the "correct procedures" to comply with their duties under the EA it is evident from information available in the public domain, and from experiences of SBA members, that this is not the case.

### Para 5

SBA members were very confused when they attended a public meeting to view the original plans for the development, including the shared crossing, because no action had been taken by SBC to provide the plans in a tactile format suitable for VIPs. They were therefore unable to make an informed decision on how the proposed shared crossing would impact on their safety.

#### Para 6

Although a representative from SBA has been invited by SBC to attend each of the three impact assessments at the various development stages their concerns have not been accepted by the council officers involved. Even one of the local councillors had failed to acknowledge the hazards faced by VIPs and ignored the request by the SBA member to attempt the crossing wearing dark glasses.

#### Para 7

It is evident from information available on the SBC website that SBC has not been following the correct guidelines. They appear to be ignoring the national guidelines introduced in 2011, namely 2011 DU1/11 Department of Transport national guidance, instead relying on their original report produced in 2010, which was based on their own adopted guidance, i.e. before the enactment of the EA. These 2011 guidance notes can be found on the Department for Transport website <https://www.gov.uk/government/publications/shared-space>.

#### Para 8

The supporting documents attached to the Minutes of a meeting of SBC's Equality Advisory Forum (EAF) on 24 September 2014, available via their website <http://ww5.swindon.gov.uk/moderngov/ieListMeetings.aspx?Committeeld=295>, include an email dated 23 April 2010 from a representative of the Swindon branch of the Guide Dogs for the Blind Association (GD), [NAME REDACTED] (AF) expressing a positive attitude at the time about the possibility that there may be some Section 106 funding available to finance training of guide dogs and VIPs, whether or not they use a white cane to traverse the crossings. SBC appears to be presenting this email to the EAF meeting as support for the shared crossing although this email told only part of the story. At that time AF had learned from the regional GD branch in Southampton that the GD had reached an agreement with the Royal Borough of Chelsea & Kensington's Exhibition Road development (which was later not implemented) on a design concept for shared surfaces/spaces which, according to the architects dealing with the Regent Circus re-development, had been taken into account and the agreed design concept was used. AF had sent the Regent Circus plans to GD in Southampton for their views and they agreed that this was the case although they did have issues regarding the removal of the original crossing as a similar design in Southampton had to be re-instated as a pedestrian controlled crossing six months later. AF had therefore suggested verbally to SBC that the original electric crossings should be left in place because the original crossing in Swindon would also have to be re-instated after six months. AF was aware that the meeting between the Royal Borough of Chelsea & Kensington and GD was held as a result of a court case brought by GD about health & safety of the original design

and the judge ruled both parties should sit down and come to an agreement, which they did, agreeing a design concept in June or July 2010. The Section 106 funds for guide dog training were suggested by SBC to the architect/developer after AF had stated that all guide dogs and VIPs would have to be trained to use the re-designed crossing. AF recalls that he received a telephone call from SBC in March 2015 confirming that the S106 funding would be made available.

#### Para 9

SBC have shown no signs of concern for the safety of other vulnerable pedestrians, i.e. the wider disabled community, including wheelchair users, ambulant disabled, and those with hearing difficulties, besides elderly and frail people and young mothers with small children. This is evident from the fact that SBC is proposing a second shared crossing within its plans for a new bus station for the town centre, which will obviously attract a high level of traffic. [NAME REDACTED] (JV), Chairman of SBA has stated that if this second proposal goes ahead local VIPs will be too frightened even to venture into the town centre, the vast majority of whom rely on public transport to travel into the town for shopping, entertainment, etc. This will remove even more of their independence, which is already being eroded by the existing shared crossing. JV has also reported that many VIPs are already having to work out detours around the Regent Circus area to avoid the crossing, an unarguably formidable task for VIPs who have been used to following familiar routes to reach their destination in safety.

#### Para 10

I have offered to submit this evidence to the committee because I am extremely concerned that the EA is certainly not working for the benefit of disabled people in Swindon. I speak with authority on this matter having been an active committee member and Vice-Chair of the Swindon Access Action Group (SAAG) during the 1980's and 1990's, and being a disabled person myself. During that time, even before the introduction of the Disability Discrimination Act, the local authority was keen to try to help SAAG in its stated aim of "making Swindon fully accessible to all disabled people by the year 2000". The introduction of the shared crossings is a most regressive step which is completely contrary to the intentions of the EA and if the proposed Fleming Way scheme also goes ahead SBC will be completely undoing all the sterling work undertaken by SAAG in the past, leaving past members feeling utterly demoralised and despairing. SBC has demonstrated a failure under the EA to elicit all the adverse impacts on disabled and vulnerable people. Just one example of this failure is, according to [NAME REDACTED] (MB), Secretary of SBA, the Council's failure to take advantage of the Swindon Talking Newspaper (STAN) to reach the visually impaired residents of Swindon through STAN's weekly news updates, distributed to approximately 200 homes in and around Swindon, despite the fact that the minutes of the EAF on 24 September 2014 state clearly that "Council Officers were encouraged to make use of STAN to publicise the latest proposals and the impending safety audit".

#### Para 11

At one consultation meeting attended by AF he was the only representative of VIP and other disability organisations present and when he asked [NAME REDACTED] (CC), Service

Manager for Transport Development and Street Works, if other such groups had been invited she confirmed that they had been invited. However, AF reports that since talking to other local group representatives it appears that no other organisation had received an invitation to that meeting. At the same meeting AF was also told by CC that the developers were funding the road changes but the amendments he was suggesting would have to be paid for by SBC and they could not afford to pay for those changes.

#### Para 12

At another meeting AF had been made aware of an email from [NAME REDACTED] (RB), leader of SBC at the time the email was sent, to a VIP representative of the Swindon Equality Coalition (SEC), described on the SBC website as “a network of groups and people who are interested in making equality a reality in Swindon”. The website goes on to describe the SEC as providing “a way for the Council to have an on-going conversation about equality with Swindon people and forms a core part of our regular consultation”. The email in question stated that RB “liked the idea of shared surfaces/spaces and it should also be borne in mind that there were other shared spaces in use in Swindon with no adverse effects”. AF had left that meeting with the view that it was going to happen whatever any person or organisation had said and it was a “fait accompli”. AF stated at the end of the meeting that “the VIPs would not use the area and would turn around and go home”.

#### Para 13

Having listened to the concerns and comments of the VIPs mentioned in this evidence, and having examined minutes of EAF meetings available through the SBC website, SBC’s commitment to its duties as a local authority under the EA would seem to be found wanting. I would therefore ask the committee to give careful consideration to the dilemma caused by the shared crossing schemes and to clarify to local authorities how exactly they should consult with the general public, and especially with the more vulnerable members of our society, to ensure that they comply with the current legislation and that disabled people will not be disadvantaged in the way that they are at present.

*31 August 2015*

## **Action for M.E. – Written Evidence (EQD0117)**

1. This submission is on behalf of Action for M.E.

1.1 Contact: Sonya Chowdhury, Chief Executive, Action for M.E., 42 Temple Street, Bristol BS31 1EH. Tel: 0117 927 9551. Email: [sonya@actionforme.org.uk](mailto:sonya@actionforme.org.uk)

1.2 Action for M.E. is responding to this call for evidence as the UK's leading charity for people affected by Myalgic Encephalomyelitis (M.E.), which affects an estimated 250,000 men, women and children in the UK. Symptoms include post-exertional malaise (a period of intense exhaustion brought on by any mental or physical activity) and chronic pain.

1.3 M.E. affects different people in different ways and symptoms can fluctuate and change over time. 25% of people with M.E. are severely affected. They may be confined to bed or unable to leave the house without the use of a wheelchair.

1.4 Paragraph A5 of the Equality Act 2010's 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' includes M.E./CFS.

1.5 To inform our response to this call for evidence, we used a short questionnaire to consult with 194 people affected by M.E. on the effectiveness of the Equality Act 2010 and Disability.

1.6 We have chosen to focus on three areas:

- Whether people with M.E. have noticed changes in terms of equality for people with disabilities/long-term conditions since 2010.
- Reasonable adjustments in relation to employment and education since 2010.
- Discrimination when receiving or accessing goods, facilities and services, and/or when renting or buying property.

1.7 Several key points have emerged from this consultation. They include:

- Many people with M.E. have not noticed any changes in terms of equality for people with disabilities and/or long-term conditions since 2010.
- People with M.E. feel that M.E. is an invisible illness, which impacts on how it is understood by others, especially in the context of equality and discrimination.
- The majority of people with M.E. have felt discriminated against when receiving or accessing goods, facilities and services.

1.8 The responses received from the consultation highlight recurring key issues and concerns. Through Action for M.E.'s information, support and specialist services, we regularly hear stories from service users reflecting similar feedback. This is further evidenced through our engagement and work with statutory and voluntary sector organisations.

1.9 Furthermore, in [M.E. Time to deliver](#), our large-scale consultation with more than 2,000 people last year, respondents repeatedly identified the lack of reasonable adjustments and discrimination as ongoing issues. With more than 85% of respondents no longer in full or part-time work, education or training, reasonable adjustments and the lack of access to



support remains at a critical point for those people with M.E. who are well enough to engage with the correct support.

**2. General:** 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?

2.1 We asked people affected by M.E. if they are aware of the Equality Act 2010.

- 57% said yes
- 24% said not sure
- 19% said no.

2.2 To understand disability discrimination law in relation to people with M.E., we asked, “What, if anything, have you noticed has changed in terms of equality for people with disabilities and/or long-term conditions since 2010?”

2.3 Of respondents, roughly half felt nothing or not much has changed. One person with M.E. told us: “It has deteriorated, both in terms of employers' rights, disability access, and negative treatment and attitude of the public 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.”

2.4 However, roughly one in five felt the situation has improved. One person with M.E. told us: “I have felt a bit more secure in my job as my employer is now more aware of my rights and is offering more support to me.” Other respondents agreed that employers are now more aware of their responsibilities.

2.5 In addition, throughout the questionnaire respondents told us that in the context of equality for people with disabilities and/or long-term conditions, M.E. is an invisible illness. One person with M.E. said: “Certainly there is greater awareness of visible disabilities and there seems to be some effort to accommodate, but I haven't noticed any change for invisible disabilities.”

**3. Reasonable adjustment:** 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?

3.1 In terms of disability equality at work, we asked people with M.E., “Have you asked your employer for reasonable adjustments since 2010?”

- 54% said not applicable
- 21% said yes and were successful
- 18% said yes but were unsuccessful
- 4% said no because they didn't think there was any point
- 3% said no because they didn't need them.

3.2 One person with M.E. told us: “I asked for more flexible working, which was granted, and remote working from home, which was also granted. So on my bad days I could work when I could manage it and not have to take sick days.”

3.3 Another person with M.E. told us: “My employer refused to permit me to return to work on a reduced hours system. Instead I was sacked.”

3.4 Many people with M.E. said that asking for reasonable adjustments was not applicable in their case. Of respondents who provided more information, roughly one in four stated that they are unable to work because of M.E./CFS.

3.5 We also asked, “What would have helped you apply for reasonable adjustments?”

Many people said that more knowledge and understanding would have helped, for example:

- “More public awareness of CFS/M.E. and the restrictions it brings.”
- “Knowledge of what I could apply for.”
- “If my employer and Occupational Health had better information and awareness about the act and how it applies to M.E.”

3.6 Others said that a clear, simple process would have helped:

- “Process would have needed to be easy to negotiate; I have limited energy and can't spend it on battling an employer.”
- “A standard form from government so work understood easily how much they needed to comply.”
- “A decent list of types of reasonable adjustments.”

3.7 We also asked, “What would help your employer understand that reasonable adjustments were necessary?”

3.8 Many people again said that a greater understanding of M.E. would help. One person with M.E. told us: “An improved understanding of the difficulties that people with M.E. face. It would have been easy if I'd had a broken leg, but as I have an ‘invisible illness’ and looked the same as other employees, it was assumed that I didn't need any adjustments.”

3.9 We then asked, “If you feel you did not receive appropriate support, did you feel able to take legal or any other formal action to challenge inequality in the workplace?”

- 58% said not applicable
- 28% said no
- 14% said yes.

3.10 Of the people who provided more information on this point, roughly one in five mentioned going to a tribunal, and/or support from their union representative, in order to challenge inequality in the workplace.

3.11 However, roughly one in five said they were too ill with M.E. to be able to take any formal action to challenge inequality in the workplace.

3.12 In terms of disability equality in education, we asked, “Have you asked your education provider for reasonable adjustments/disability support since 2010?”

- 75% said not applicable
- 16% said yes and were successful
- 5% said yes but were unsuccessful
- 3% said no because they didn’t need them
- 1% said no because they didn’t think there was any point.

3.13 One person with M.E. told us: “With the Open University, I received numerous extensions on essays, had home exams, large print and coloured papers, as well as extra time.”

3.14 However, another person with M.E. said: “The [unnamed] university were well aware of the disabling condition I live with from the outset. Firstly, I was never advised of the fact that some help was available, and did not access any until the third year of three years of study. I was able to get a digital recorder near to the end of my course. I was never offered to have the lectures recorded in my absence from my being too unwell to attend. No supportive chair in the lecture room was provided even though I repeatedly requested one. There was nowhere quiet or separate to rest between lectures. There were absolutely no concessions made physically to accommodate my disability.”

3.15 We then asked, “What would have helped you apply for reasonable adjustments/disability support?”

3.16 One person with M.E. said: “It would have been helpful if there was some basic information to clarify for course providers how reasonable adjustments aren't about ‘making the course easier for disabled people’ just ‘making it no harder for us than for anyone else.’”

3.17 We also asked, “What would help your education provider understand that reasonable adjustments were necessary?”

3.18 One person with M.E. told us: “More knowledge about my condition.” Another said: “Being forcefully made to accommodate someone with my disability, as opposed to it being invisible and unaccepted.”

3.19 We also asked, “If you feel you did not receive appropriate support, did you feel able to take legal or any other formal action to challenge inequality in accessing education?”

- 85% said not applicable
- 14% said no
- 1% said yes.

3.20 Of the people who provided more information on this point, one said: “The cost and complexity makes it inaccessible to anyone with cognitive difficulties.” Two people with M.E. said the illness meant they were too unwell to challenge inequality in accessing education.

3.21 The next section of our survey looked at discrimination – experienced when buying goods and/or accessing services – because of having M.E. and/or another disability or health condition.

- 97% said they felt discriminated against when receiving or accessing goods, facilities and services
- 13% said they felt discriminated against when renting or buying property.

3.22 One person with M.E. told us: “Access to a lot of shops or buildings can still be difficult. Some stores have fixed 'chip and pin' facilities which cannot be accessed from a wheelchair.”

3.23 Another person with M.E. told us: “I rent my property privately. More and more landlords are stating ‘No Housing Benefit’ and only taking tenants who are in full time work. This to me is discriminatory as people who are unable to work through sickness or disability, and who have a previously unblemished record as a tenant, are being excluded from many properties just because they are in receipt of Housing Benefit.”

3.24 Also, roughly one in four respondents in this section told us that M.E. is an invisible and/or misunderstood condition in relation to these types of disability discrimination.

3.25 We then asked, “If you feel you have been discriminated against when receiving or accessing goods, facilities and services, and/or when renting or buying property, did you feel able to take legal or any other formal action to challenge this inequality?”

- 48% said no
- 42% said not applicable
- 10% said yes.

3.26 One person with M.E. told us: “I assumed they were acting within the law. In addition, legal action would be tiring and could be drawn-out, and I couldn't spare the energy for it.”

3.27 Another said: “I don't have the energy, money or time to fight against every single company that provides inaccessible locations, thoughtless arrangements of stock or clueless staff. I'd like to be able to say ‘if they don't want my business, I won't go there;’ but if I did that, there'd be hardly anywhere I could go! I can't even get into the GP surgery or chemist in my village without having to attract a member of staff's attention for them to unlock and hold open the wider door.”

**4. Reasonable adjustment:** Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

4.1 Many respondents did suggest that it would help if the law was more explicit about what constitutes a reasonable adjustment.

4.2 People with M.E. told us clear guidance would help:

- “Perhaps an advice sheet outlining the different forms of reasonable adjustment that could be available.”
- “Reasonable adjustments are indefinite terms and can be argued against.”
- “Information about what is considered reasonable.”

- “An advice sheet for employers outlining the forms of reasonable adjustment that may be required for M.E. I think they are used to requests for equipment or physical thing such as adjustable/supportive chairs, but maybe not so for the less obvious symptoms of M.E., or the fluctuation of the illness.”

**5. Oversight and enforcement:** 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?

5.1 Employment Tribunals were mentioned by people with M.E. throughout responses to our consultation.

5.2 We asked, “Have you asked your employer for reasonable adjustments since 2010?” People with M.E. told us:

- “Asked to go part time but they refused. Had to go to tribunal and company backed down day before.”
- “Currently awaiting employment tribunal against employer.”
- “Ended in employment tribunal and them paying to ‘get rid of me.’ All I asked for was a little flexible working, which my role allowed.”

5.3 We also asked, “What would help your employer understand that reasonable adjustments were necessary?” People with M.E. told us:

- “Actual consequences from doing next to nothing about making reasonable adjustments. At the moment the employee has to take the employer to an employment tribunal at a prohibitive cost. Thus nothing gets done.”
- “I think the government need to visibly punish employers [and] publicly endorse more flexible and home working opportunities for people with conditions like CFS/M.E. Tribunals almost never happen as they have so many ways of stopping it get that far.”

5.4 We also asked, “If you feel you did not receive appropriate support, did you feel able to take legal or any other formal action to challenge inequality in the workplace?”

5.5 One person with M.E. told us they did not feel able to take legal or any other formal action to challenge inequality in the workplace because of “Recent changes in taking employers to employment tribunals with a cost attached to the complainant, which if you are already on a limited income would deter many people as it did me.”

5.6 Other people with M.E. told us:

- “Awaiting tribunal which has already taken four years.”
- “Took them to employment tribunal.”
- “Supported by Unite to go to tribunal.”

## 6. Conclusion

6.1 Having consulted with 194 people affected by M.E., it appears that raising awareness of the nature of disabling, fluctuating, “invisible” illnesses such as M.E./CFS – amongst employers, education providers, service providers and the general public – would help the Equality Act to be more effective.

6.2 It also appears that people with M.E. appreciate the aims of the Equality Act, and some do feel more protected as a result of it, but overall not enough has changed for the better since 2010.

*4 September 2015*

## **Action on Hearing Loss – Written Evidence (EQD0128)**

### **About us**

Action on Hearing Loss is the charity formerly known as RNID. Our vision is of a world where deafness, hearing loss and tinnitus do not limit or label people and where people value and look after their hearing. We help people confronting deafness, tinnitus and hearing loss to live the life they choose. We enable them to take control of their lives and remove the barriers in their way. We give people support and care, develop technology and treatments and campaign for equality.

Our response will focus on key issues that relate to people with hearing loss. Throughout this response we use the term 'people with hearing loss' to refer to people with all levels of hearing loss, including people who are profoundly deaf. We are happy for the details of this response to be made public.

### **Summary**

The Equality Act is an excellent piece of legislation but we are concerned about the negative messages from the Government about disabled people and the Equality Act more generally. Action on Hearing Loss is calling for stronger monitoring and enforcement of the Equality Act by the government, the Equality and Human Rights Commission (EHRC) and regulators. Our concerns include:

- The exclusion of manufactured goods from the Act, and the confusion around TV access services and online services more generally.
- The need for further regulation for public transport to improve accessibility.
- Lack of awareness of reasonable adjustments, both amongst services, employers and disabled people, and a lack of accessible information.
- Concerns about the implementation of the Public Sector Equality Duty and organisations needing to have 'due regard'.
- The high costs of taking a discrimination case or judicial review.

### **Introduction**

Action on Hearing Loss welcomes the opportunity to provide evidence regarding the impact of the Equality Act 2010 on people with disabilities.

We were involved in the drafting of the original bill and remain hugely supportive of the Equality Act. As well as protecting disabled people against discrimination, the Equality Act 2010, and in particular the public sector equality duty, provides a lever for change in a society where institutional discrimination continues to exist as well as on-going disadvantage for disabled people.

### **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?***

The Equality Act has strengthened the disability discrimination law in comparison with the Disability Discrimination Act (DDA) 1995 in a number of important ways. For example, through providing protection from direct discrimination by services and introducing protection from discrimination by association. Disability also continues to be the only protected characteristic for which reasonable adjustments are required. This provides vital protection and rights for people with hearing loss when accessing services and employment.

We believe the streamlining of all equality issues into one Act was useful however this has led to confusion for some disabled people. For example, many people continue to refer to their rights under the DDA rather than the Equality Act. The DDA provided a clear framework for disabled people in relation to their rights however the Equality Act is more opaque for individuals to understand. The continuance of the Disability Discrimination Act in Northern Ireland, while the rest of the UK falls under the Equality Act, also leads to some confusion. We believe the government and the Equality and Human Rights Commission should play a key role in raising awareness of the Equality Act amongst the general public.

In some respects, disability continues to receive some specialist attention within government, for example through the Office for Disability Issues. However, despite some very relevant and important objectives, there are concerns about the authority that the Office for Disability Issues has over other government departments. As such, huge inequalities remain for disabled people and improvements are not happening at the speed that we would wish.

We were extremely disappointed by the inclusion of the Equality Act in the ‘red tape challenge’. We believe this reduced the Act’s importance in the eyes of employers and organisations. The red tape challenge implied that equality legislation acts as a burden on businesses, rather than recognising its value in terms of protecting people who would otherwise be marginalised or excluded. This, combined with the recent rhetoric in the UK media linking disabled people with terms such as ‘scrounger’ and ‘faker’, has substantially weakened the push to improve access and inclusion for disabled people.

This is in complete contrast with the aims of the Department for Work and Pensions (DWP) to increase the number of disabled people in employment through their Disability Confident campaign. This hugely positive campaign highlights the positives of making reasonable adjustments in terms of securing the best talent and attracting the £212bn ‘purple pound’<sup>1</sup>. These contradictory viewpoints from government are not helpful in reducing discriminatory attitudes and a clear, positive message about disabled people from the whole of government could make a huge difference to improving societal attitudes.

## ***2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?***

Manufactured goods are currently excluded from the Equality Act. We recognise that this might be difficult to tackle at a UK level, however, this gap means that many products are

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<sup>1</sup> <https://www.gov.uk/government/news/first-disability-confident-city-sets-out-bold-employment-ambition>



developed which are not accessible. Resolving these issues later often costs more money than if it had been considered and designed into the original product.

We also believe that the law concerning television is unclear. There is an exemption for television content within the Equality Act. It should be made clear whether access services such as subtitles and signing for television programmes are considered part of TV content, or whether they could be considered a reasonable adjustment to enable people with sensory impairment to watch TV. The 2003 Communications Act helps to fill this gap, requiring access services to be provided on traditional television, however there is no similar regulation requiring subtitles on video on demand services. This clarification would make it easier for individuals with hearing loss and charities representing them to challenge the broadcasters and on-demand services to provide access services.

A report by the on-demand regulator, the Authority for Television on Demand (ATVOD) found:

- Of the 90 providers they regulate, over 80% don't offer any subtitles for on-demand content.
- Just under 15% of providers offer any subtitles at all via their websites
- Over 96% of Sky's on demand content has no subtitles

Our 2015 survey<sup>2</sup> of people with hearing loss found 73% of respondents pay for a TV service that they can't take full advantage of because of their hearing loss and four fifths feel discriminated against due to a lack of subtitles on video on demand.

Further clarification on the extent to which online services more generally are covered by the Equality Act would also be useful, either in the Act or the guidance.

The Equality Act gives government the right to make further regulation with regards to public transport. The government has not implemented any such regulation and therefore people with hearing loss continue to face barriers when accessing transport. For example, most buses in the UK have no visual information to alert passengers to next stops and destination. This can make a bus journey much more stressful for someone with hearing loss, who is then reliant on communicating with other passengers or the driver to establish information. This can create particular difficulties when something goes wrong, for example a diversion or delays, and the individual with hearing loss will often not be aware of any announcement that the driver makes.

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<sup>2</sup> Action on Hearing Loss (forthcoming). Subtitle it! Survey

## 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?***

With regards to people with hearing loss, not all individuals are aware of their rights or of how to find out more information about them. This is particularly an issue for people who develop age related hearing loss later in life. They may not consider themselves disabled; rather they see it as something inevitable that happens with increasing age. They therefore are not always aware that they can request adjustments for themselves.

People who are deaf and use sign language are likely to find it difficult to access information about their rights and reasonable adjustments in their own language. We are a partner in a campaign to raise awareness amongst Deaf British Sign Language (BSL) users about their rights in relation to accessing healthcare. The campaign is called Our Health in Your Hands [www.ohyh.org.uk](http://www.ohyh.org.uk) and 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<sup>3</sup>. Research by SignHealth<sup>4</sup> 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. The OHYH campaign prioritises healthcare as it is vital that Deaf BSL users are able to access accurate information in these settings. However, this group face significant barriers to accessing information about all services, not just healthcare.

With regards to employers, we believe it would be useful for the government to provide information to employers on how to get advice about reasonable adjustments and how to organise a work place assessment for their member of staff. With an ageing population and the retirement age increasing, more and more people will be in work with a disability. For example, over 40% of people aged 50 and over have hearing loss and yet people with hearing loss are less likely to be employed, 65%, compared with people with no long-term health issue or disability, 79% (Labour Force Survey 2015).

Alarmingly, our research found two-fifths of respondents, 41%, who had retired early said that this was related to their hearing loss<sup>5</sup>. Approximately three-quarters of respondents (74%) felt their employment opportunities were more limited because of their hearing loss and 79% felt that the attitude of employers was the main barrier to work for people with hearing loss. This shows that the right support is not being made available to ensure that people who develop hearing loss are able to remain in their role. It also indicates that

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<sup>3</sup> [Our Health in Your Hands, 2012. Survey of BSL users about access to communication support in healthcare.](#)

<sup>4</sup> SignHealth, 2014. *Sick of it; how the health service is failing deaf people*. London: Sign Health

<sup>5</sup> Arrowsmith, L. (2015) Hidden Disadvantage, Action on Hearing Loss.

employers do not understand their responsibilities under the Equality Act to support their employees with hearing loss.

It is therefore important that employers are aware of their responsibilities with regards to this group, who they may not recognise as having a disability. It is also important to raise awareness amongst employers about the government's Access to Work scheme, to reassure companies that they may not have to pay the full costs of adjustments that go beyond the scope of reasonable adjustments under the Equality Act. This is particularly important for people with hearing loss who may need access to regular communication support such as sign language interpreters and speech to text reporters. Many charities, including ourselves, provide this information however a company may not know where to look. Therefore the government could play a role in pulling this information together in a location accessed by businesses.

***4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?***

Traditionally the Equality and Human Rights Committee (EHRC) has produced codes of practice which are laid before Parliament by the Government. However, during the terms of both the Coalition Government and the present Government, this has not happened, which further implies that the government does not see equality as an important issue. We believe the statutory codes are helpful in establishing clear guidance on the Equality Act for organisations and individuals.

We believe there is a lack of understanding about what constitutes a reasonable adjustment and therefore it would be useful to provide further guidance on what this could mean. It would also be useful to provide easily accessible information about case law, to enable people to make use of this when arguing for their own adjustments. A definitive list of reasonable adjustments would however be extremely difficult as this could risk excluding some adjustments. However, examples of adjustments could be useful, and also when would an adjustment not be considered reasonable. For example, people with hearing loss find it difficult to access communication support for events such as public meetings, concerts etc. Communication support is relatively expensive in comparison to other adjustments, and therefore organisations will often refuse to provide this support due to costs.

We believe the public sector should play a leading role in providing reasonable adjustments. In response to the Equality Act and the prospect of legal action being taken against services for not meeting their duties, NHS England has recently published a mandatory Accessible Information Standard which states what all NHS and adult social care services must do to ensure they make reasonable adjustments for people with hearing loss throughout their contact with the service. The standard sets out how services must identify, record and meet the communication and information needs of people with hearing loss, sight loss and learning disabilities from 31 July 2016. It also sets out how to manage the collection of this data, how to ensure staff are alerted to the patient's needs, and how the information about these needs should be passed along with the patient when they are referred. For example, where people need them it should ensure that hearing loop systems are installed and working, staff face any patient who needs to lipread and they make sure they are

understood, and for people who use British Sign Language (BSL), a registered BSL interpreter is provided. However, there is currently a lack of planning for proper enforcement of the standard.

In 2014, the Work and Pensions Select Committee<sup>6</sup> conducted an inquiry into Access to Work. One recommendation included in their final report was that DWP publish case studies on the Access to Work webpages, to illustrate the types of support which are typically considered to be “reasonable adjustments” under the Equality Act, and those which would normally qualify for publicly funded support. This could help to educate employers and about what constitutes reasonable adjustment.

## **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?***

The public sector equality duty is a hugely important part of the Equality Act, however, the reduction of the specific duties has weakened the duty in England and changes to the legal system have made it more difficult to challenge decisions. The specific duties are discussed under question 6.

The EHRC<sup>7</sup> states that public authorities are required to have due regard to the aims of the general equality duty when making decisions and when setting policies. Understanding (or assessing) the impact of policies and practices on people with different protected characteristics is an important part of complying with the general equality duty, however the duty does not set out a particular process for capturing the impact. Equality Impact Assessments (EIA) have the potential to be an important tool in determining the impact of a policy change. However, the value of such a document is dependent on the quality of information included.

The equality analysis for the Future of Access to Work<sup>8</sup> provided limited information about the likely impact of a number of significant key policy changes to the scheme. Instead, the document makes numerous references to “monitoring the impact” of policy changes or not having the evidence to quantify the effects of a proposed change, thus limiting the usefulness of the analysis. The document could be challenged on the basis that further work could have been undertaken to gain more information about how the policy changes might impact on different groups (for example, undertaking a consultation with employers regarding how the introduction of an awards cap would be likely to affect them). However, as there is no requirement to produce such a document, and no stipulations as to what analysis or activity should be included in such an assessment, there is no mechanism to challenge the content or usefulness of the document.

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<sup>6</sup> [Sayce, L. 2011. Getting in, staying in and getting on. DWP.](#)

<sup>7</sup> [Equality and Human Rights Commission \(2014\) Meeting the Equality Duty in Policy and Decision-Making](#)

<sup>8</sup> [Department for Work and Pensions \(2015\) Equality analysis for the future of Access to Work.](#)

In considering the impact of policy changes on an employer's ability to make reasonable adjustments, the document states that the Equality Act could be used as a mechanism to challenge employers in instances where this does not happen: "any disabled employee who feels that their employer has not made reasonable adjustments can legally challenge that decision under the Equality Act 2010" (para 3.1.14). However, this statement ignores the fact that a legal challenge under the Equality Act is not a straightforward process and one that is likely to cost a considerable amount of money.

A recent decision by North Staffordshire CCG to remove hearing aids for most people who need them was made without regard to the evidence, feedback from professionals or the impact that it will have. The CCG has not reviewed the impact on protected groups, in particular older people, and the equality impact assessment (available [here](#)) makes no real effort to examine the major impacts that the policy will have (for example on communication, isolation, health and wellbeing) or to put in place any policies to mitigate these impacts. There needs to be a process for ensuring the quality of equality impact assessments to ensure they fulfil the role they are intended to.

***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?***

In England, the specific duties have been reduced, requiring public bodies to only publish information to demonstrate compliance with the Duty and to publish one or more equality objectives. In comparison, the Welsh PSED lists numerous requirements for public bodies to meet. We believe the different approaches to the specific duties throughout England, Wales and Scotland has led to confusion amongst public bodies as to the requirements they have to meet. A report commissioned by the Equality and Human Rights Commission Wales<sup>9</sup> found "there was thought to be greater clarity within the Welsh PSED than under the English specific duties. This meant that organisations were less likely to under or over comply in relation to the statutory requirements." (p18).

***7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?***

We are concerned that there is no oversight of how government departments are meeting their duties with regards to the Equality Act, rather it is up to individual departments to ensure they are meeting their duties.

***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?***

We have had only very limited engagement with the EHRC in recent years. The EHRC attend the Equality and Diversity Forum, of which we are a member. We are therefore able to keep up to date with their key activities through this group. However, we have not had any

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<sup>9</sup> NatCen (2014) Review of the Public Sector Equality Duty in Wales, EHRC Wales.

individual contact with the EHRC for several years now. Previously, we have worked with the EHRC on a few different issues, such as guidance for banks and another for hotels regarding subtitles. We recognise it is difficult for the EHRC to work with individual charities due to their limited budget and therefore we appreciate their involvement with the wider, umbrella group.

It is often difficult to find information out about prospective or completed disability discrimination cases. If cases are agreed before reaching court, then no public evidence is available. We would therefore find it extremely useful if the EHRC could publish a summary of potential and completed cases relevant to disability, and their potential implications for other situations. This would help to build the framework for organisations and individuals to understand what constitutes a reasonable adjustment.

***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?***

We believe other regulatory bodies could play a much bigger role in helping to implement and enforce the Equality Act. This could be through setting minimum standards for sectors. For example, as described above, the NHS in England has recently developed the NHS Accessible Information Standard with the support of Action on Hearing Loss and other charities, to ensure that people with hearing loss are communicated to in the correct way.

Some regulators undertake inspections and it could make a huge difference if issues around the Equality Act were considered as part of the inspections. This would be particularly important for public bodies, to help to understand the way in which an organisation has paid due regard towards people with protected characteristics. For example, the Care Quality Commission (CQC) should ensure that disability issues, such as whether reasonable adjustments are being put in place for people with hearing loss, are inspected. We are calling on the CQC to introduce a thematic inspection for hearing loss.

***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?***

Taking a discrimination case can be a big burden, particularly in relation to costs due to cuts to legal aid. If an out of court agreement is reached, general improvements to the service or organisation may not be made which means equality may not be imbedded into the system. A judicial review is required to challenge a public authority over its failure to meet the general duty. However, for most individuals and organisations it is not realistic to take a case as they may lack the capacity, expertise or money.

We advise people with hearing loss to contact the Equality Advisory Support Service (EASS) for further information and support. At Action on Hearing Loss we do not have a legal advice team and therefore we are unable to support individuals with their complaints in this way. According to the EASS, disability enquiries form the majority of their correspondence, 62% and 24% of enquiries are about the failure to make reasonable adjustments.

There is also an issue as to whether courts and the legal process are accessible. For example, communication support may not always be provided by the solicitor on the grounds of cost, or other adjustments may not be made by the courts such as working loop systems and deaf aware staff.

***11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?***

We were deeply concerned over the removal of the ability for courts to make wider recommendations. If evidence shows there are systemic problems in an organisation, it is important that the court is able to make wider recommendations to ensure that these problems do not re-occur. The widening of the recommendation powers tribunals have so that recommendations could benefit the wider work force was one of the important ways in which protection against discrimination was strengthened under the Equality Act compared to previous legislation. The latter only allowed for recommendations to be made which concern the individual claimant.

This previous state of affairs was considered inadequate, as in many cases the claimant will have left employment in which case unlawful employment practices could be allowed to fester if it concerns a particularly resistant employer. We disagree that wider recommendations power can be discounted as serving no practical purpose. The use of this power in the case of *Crisp v Iceland Foods* – where the Employment Tribunal upheld a claim of direct disability discrimination and made a recommendation that HR managers should receive training relation specifically to the issue of mental health disability<sup>10</sup> – shows the way in which this power can be applied to tackle systemic discrimination and ensure better employment practices.

**Conclusion**

We strongly support the Equality Act as a hugely important piece of legislation in ensuring that those individuals with a protected characteristic are ‘protected’ from discrimination, harassment and victimisation. However, we do feel that there is much to be done to improve access for people with hearing loss to both services and employment and recommend stronger monitoring and enforcement of the Equality Act is needed to further reduce disability discrimination.

*4 September 2015*

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<sup>10</sup> Equality and Human Rights Commission, examples of power to make wider recommendations by Employment Tribunal, <http://www.equalityhumanrights.com/scotland/legal-news-in-scotland/articles/recent-use-of-power-to-make-wider-recommendations-by-employment-tribunal/>

## **Martin Affleck – Written Evidence (EQD0016)**

### **1 Background**

1.1 I have been a qualified architect since the 1970s. Early in my career, I realised that little was being done to enable easy access for disabled people around towns and buildings. People with varying disabilities and occupational therapists kindly showed me things that could easily be incorporated into designs to improve accessibility. This included demonstrations of items such as ‘banana boards’ being used to transfer between wheelchairs and vehicles or toilet seats, plus horizontal rails on the back of toilet doors making them easier to close. I retired as a City Architect in 1997 and since then have been self employed as a disability access consultant and a short period as access officer in local government.

1.2 The 1995 Disability Discrimination Act (DDA) substantially increased awareness of service and building providers. This, with the clarity of 1999 and 2004 Building Regulations plus the helpful guidance and standards of British Standard (BS) 8300, resulted in a noticeable increase of disabled people on the streets and in the shops, particularly wheelchair users. However, this increase is now reducing and I am hearing more complaints of difficulties in travelling around the country, including suitable hotels, lack of public toilets and difficulties in street environments. We appear to be moving backwards and there are less opportunities for disabled people to take action.

### **2 It Could Be Easy**

2.1 What has become apparent to me over the years is that most of the solutions are easy and of little or no cost. Just following the most basic of current standards and guidance can substantially help disabled people by providing appropriate facilities that can be reliably found. These include widths of doors, heights of toilet seats, visibility of steps and street furniture.

2.2 My current experience in carrying out several hundred access audits is that, although we have passed the 2004 DDA deadline to remove or circumvent obstacles to access, many have not been addressed and, in fact, new ones are being introduced. Some of this is lack of awareness of the clients or providers but is often lack of will or appreciation of the need or of the legislation.

### **3 Examples**

**3.1 Toilet seat heights** are recommended to be 480mm. This is easy for transference from most wheelchairs. If they are this height, other people with mobility impairments will know what to expect. If it is still too low, they will be able to take appropriate action such as having their own raiser piece. If they expect 480mm and the seat is, say, 440mm, they may not be able to access the toilet with all the embarrassment and inconvenience that this can lead to.

**3.2 Door clear open widths** are recommended to be at least 750mm (800mm in new buildings). A narrower opening can totally prohibit entry by most wheelchair users and inconvenience others with mobility impairments. Many double doors are still installed with lead opening leaves of less than 750mm with the claim, ‘well, both leaves can be opened’. A



user of a manual wheelchair can only open one leaf while steering and manoeuvring their wheelchair.

**3.3 Public toilets** accessible to people with RADAR keys are increasingly being closed due to funding or difficulty of maintenance issues. The lack of these considerably reduce the freedom of disabled people to visit town and shopping centres.

#### **4 The Challenge**

4.1 The term DDA is still in use as a defined requirement, rather than reference to the less familiar or promoted Equality Act. The DDA also had the advantage of more publications on service delivery and provision. The Equality Rights Commission had some teeth in pursuing non compliance and at least requiring service providers to mediate with access groups or advisors. There appears to be less action being taken on this front from the Equality Commission, with occasional letters sent from the Equality Advisory Support Services (EASS) to service providers when complaints are received.

4.2 The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) has taken away opportunities for disabled people to insure themselves prior to taking legal action. Large companies, such as bus firms, swamp cases with their legal representatives, so that the costs are likely to be way beyond the finances of many disabled people should they lose.

#### **5 Basic Provisions**

5.1 The standards and guidance of the Part M of the 2004 Building Regulations has been adjusted and reorganised but stay roughly the same today. The 2004 Approved Document to Part M was a slim document. The essence was contained between pages 19 to 71. These included Objectives, Design Considerations and Provisions. Provisions cover the salient points needed by designers and regulators and are covered in about 30 pages worth. If these were being followed, most environments would be accessible to the majority of disabled people.

5.2 Often, the standards and guidance are not being followed.

#### **6 Process**

6.1 A typical design and installation process where standards should be checked and implemented is:

- The client decides what is wanted and, hopefully, says everything should be accessible;
- The architect/designer produces a scheme, hopefully to Building Regulation Part M standards;
- The architect/designer applies for Planning and Building Regulation approvals;
- The building inspector or approved inspector checks for compliance with Part M guidance;
- The project is tendered for or negotiated with a builder who should then follow the design details;

- The builder constructs on site with visits from the architect/designer and the building or approved inspector;
- At completion, the building or approved inspector signs the project off as being in accordance with the regulations;
- The architect/designer signs the project off as being in accordance with the contract.

6.2 At any of these stages, the accessibility could be checked and challenged but, often, this is just not happening.

## **7 Responses**

7.1 My responses to the questions posed in the Select Committee's Call For Evidence are:

1. Disability has lost out by being just one of 9 protected characteristics. Service providers tend to think of wider issues when confronted with the 'Equality Act';
2. My issue is that the standards and guidance for provisions to overcome the discrimination of disabled people, particularly their ability to move between and around different environments are good in this country but are not being followed;
3. Reasonable adjustments can improve situations but can be seen as an opt out or alternative to providing basic accessibility;
4. The law might be more explicit on the need to provide basic standards before reasonable adjustments are considered;
5. From my work within and for local authorities, their expertise and will to achieve have produced successful outcomes, not least the ability to encourage disabled people when consultations have been carried out. However, this can be short lived when the initial flurry is completed and the next innovative exercise is introduced;
6. I don't have any experience of the differences between the different areas of the UK;
7. – 10. My premise is that the provision of the existing basic standards for accessible environments would considerably enable disabled people to freely move around and participate in work and leisure and just fundamental getting on with independent lives.

*3 August 2015*

## **Dr Rachel Aldred – Written Evidence (EQD0107)**

I am writing in response to the call for evidence on the Equality Act in relation to disability. My specialist area of research is cycling and recently I have been focusing on inclusive cycling (for transport). Therefore I have a strong interest in how the Equality Act applies to people who do currently cycle - or might cycle, if cycle provision/routes were more inclusive. My evidence largely relates to the questions about the effectiveness of the Public Sector Equality Duty. In relation to cycling, this has so far had little impact, and therefore I recommend as below, making it clear that this duty does apply to cycling (and indeed to walking). Because of other deadlines my evidence is necessarily brief but I would be happy to provide more information, for example in person at a committee meeting, to share my expertise and research findings further.

### **Disabled people and cycling**

Disabled people can and do cycle and there are many people who cannot easily walk but who could use some form of cycle. However until recently there has often been an assumption that 'cyclists' and 'disabled people' are mutually exclusive categories. For example, the Census (which collects information on commuting modes) refers to commuting by 'bicycle' (implying two wheels) whereas some disabled people (and others) may use cycles with three or even four wheels.

I had to specifically request a bespoke Census table to find out the number of disabled cycle commuters in England and Wales, as the information (unlike commuting by mode by age or gender) is not routinely produced. This demonstrated that many disabled people do cycle. Across England and Wales, disabled people cycle to work at a slightly lower rate than non-disabled people (75%). Rates are heavily correlated with overall cycling rates within each local authority, which highlights that the proportion of disabled people cycling is more a function of broader policy towards active travel (including making it accessible to all users) than of any inherent limitations related to disability. In Cambridge, for example, over one in four disabled commuters ride to work.

### **The Equality Act/PSED and Cycling**

The law should in my view be more explicit on coverage of walking and cycling routes/provision/ facilities within the Equality Act; it should be stated that these should be treated in the same way as other transport provision. I am aware of at least one case related to tactile paving where the walking environment is treated as being covered by the Equality Act. However, given we do not tend to refer to walking and cycling provision as 'services' I think it would be useful to clarify that walking and cycling provision/routes should in principle, like public transport provision, be accessible to all users.

### **Specific examples of where the PSED should apply**

There are some fairly obvious physical barriers to cycling affecting disabled people which have so far not been legally challenged, even though they also often prevent people using wheelchairs and mobility scooters from passing. Off-road cycle routes frequently in the UK have restrictive gates, aimed at stopping motorcycles and mopeds from passing, whose main impact is however to bar legitimate users, with disproportionate impacts on disabled people, whether in wheelchairs, using mobility scooters, or using (standard or specific/adapted) cycles as mobility aids.

Disabled people may use cycles that cannot fit through gates (for example, electric tricycles); while others cannot lift their cycles over an obstruction. Other physical barriers include signs and/or obstacles forcing cyclists to dismount, often used where roadworks are taking place but sometimes permanent fixtures on cycle routes. Yet some disabled cyclists cannot walk

but can cycle, so may find that they are travelling on a route and suddenly cannot continue at all: something that is an annoyance for other cyclists forms for them a complete barrier. For some disabled cyclists, dismounting to pass through a pedestrian area may also be impossible. There may be scope for example for considering whether an analogue of the 'blue badge' scheme could be used to identify someone using a cycle as a mobility aid, who is entitled to carefully and slowly continue riding through pedestrian areas, as are people using mobility scooters.

### **Conclusion**

More broadly, guidance should signal that the needs of disabled people as cyclists or potential cyclists should be considered throughout all road schemes, and particularly cycling schemes. Some disabled people (e.g. those using manual hand cycles) are likely to be slower than other cyclists, and so infrastructure assuming cyclists can keep up with motor traffic may particularly disadvantage them. Others may use cycles that provide a relatively low riding position, with implications for visibility for example in Advanced Stop Lanes. Such considerations are still rarely taken into account yet I believe they are in line with the spirit of the Equality Act and would enable many more disabled people to take advantage of the health, mobility and other benefits of cycling.

*4 September 2015*

## **Alliance for Inclusive Education – Written Evidence (EQD0110)**

### **Background: Alliance for Inclusive Education**

The Alliance for Inclusive Education (ALLFIE) is a national campaigning and information-sharing network led by disabled people. ALLFIE campaigns for all disabled people to have the human and civil right to access to and be supported in mainstream education. ALLFIE believes that the whole education experience should be inclusive of disabled learners, both inside and outside the classroom and lecture rooms. Disabled and non-disabled learners' learning together creates opportunities for the building of relationships and the creation of an inclusive society that welcomes everyone. ALLFIE's response is focused on the education provisions of the Equality Act. Lack of definition of what is meant by equality for and inclusion of disabled students in mainstream education, exclusion and segregation in education is not explicitly made unlawful, unreasonable adjustments and public sector equality duty is inadequate.

### **Inclusive Education - current state of affairs**

The Department for Education own statistics have shown a decline of disabled children and young people attending mainstream schools and related resourced provision. The number of pupils with Special Educational Needs (SEN) in England decreased from around 1.62 million (19.8 per cent of) pupils in 2011/12 to 1.55 million (18.7 per cent) in 2012/13. The number of pupils with statements of special educational need increased slightly from 226,125 pupils in 2011/12 to 229,390 pupils in 2012/13- 3,275. Those disabled children with what can be considered a high level of SEN, can be assessed by their Local Authority for An Education Health & Care Plan (previously known as Statement of SEN) at the request of parents or the school, which is a legally binding document setting out the types and levels of support required to ensure the disabled child with SEN can access education and support services. Numbers in special schools in England since the UNCRPD was adopted which the UK Government played an important part in framing have risen at an accelerating rate: 2006 - 89,390, 2007 - 91,750, 2008 -91,380, 2009 - 92,270, 2010 -93,220, 2011- 94,275 ,2012 - 95,915, 2013 - 98,595. Over the same period the number of special schools reduced by 33, but the number of pupils each school took increased. In addition pupils with a SEN statements/EHCPs also increasingly attend Pupil Referral Units( for excluded students many of whom have behaviour difficulties arising from impairment) and Independent(fee paying schools where the Local Authority pays the fees) . This has risen from 5,458 in 1994, to 11,315 in 2008 to 12,895 in 2013.Where pupils with SEN statements/EHCPs go to school has also changed towards fewer attending mainstream schools. From a high point of 60.1% in 2001 to 56.7% in 2008 down to 53% in 2013. These figures do not reflect the true extent that segregated education prevails within mainstream education settings where disabled pupils and students are enrolled onto segregated courses or spend the majority of their time in SEN units.

### **QUESTION 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?**

The Equality Act 2010 has proved to be a very important piece of legislation that, for the first time ever, has framed disabled people's access to mainstream education within a civil rights context. However, in practice the EA2010 has often been ineffective in achieving the stated aim of promoting equality in mainstream education for all disabled students. This is because the EA2010 fails to provide a strong framework of inclusive principles within the

meaning of equality which can also be used to effectively guide education legislation. Currently there is no legal definition on what constitutes equality for disabled students. Without a clear legal definition, some more innovative education providers have used the development of inclusive practice as a mechanism for increasing levels of equality:

*“Inclusive’ at Blackburn College is simply that we see every person as a student first and then we look at the support that student might require to achieve their goals. This is undertaken without a discrete or segregated curriculum, the focus is on how we provide the diversity of support required by the person.” (Inclusion Now Autumn 2014)*

In contrast, some Colleges, such as, Bromley College of Further and Higher Education have a much more restrictive view on equality for some disabled students with /without SEN. The college provides a separate area and courses for disabled learners with learning difficulties. Whilst all students are welcomed to attend the college, once in, disabled learners are segregated from their non-disabled peers.

*In 2013 we opened the Nido Volans Centre, a specialist area for students with learning difficulties and disabilities. The Centre houses a training kitchen and restaurant, state-of-the-art ICT facilities, a media suite, a studio flat for independent living, a manufacturing workshop, horticultural facilities and a performance space.(Bromley College of FE and HE website)*

The ongoing problem is that achieving equality can be misinterpreted to mean segregation for disabled students both within mainstream education and within the wider education system. ,

*M is a 13 year young disabled person living with his family in Hounslow. M has Special Educational Needs. He and his family want him to be included in a local mainstream secondary school ... Local Authority have registered M, with a local special school “(Parent)*

The reality and the fear of segregation of disabled students has been exacerbated by the Children and Families Act (2014) because the EA2010 provides no clear principles that equality means inclusivity to be realised. Parents seeking a formal ‘disability’ diagnosis (falls under the EA 2010 clause 6 disability definition) for their child is often required to secure a legal entitlement to SEN support. By using the Education, Health & Care assessment and planning route a disabled child loses his/her right to mainstream education (under the ‘presumption of mainstream education’ principle) as the Local Authority (LA) can name a special school placement where it considers a mainstream placement will have a detrimental impact on the nondisabled pupils/students. This is illustrated by the experience of this parent.

*our child with severe learning difficulties and so has a full statement. She had been in a mainstream nursery where we lived before and would have moved into a mainstream primary school if we’d remained in the county. After the move the new LA would only offer a special school placement.*

The problem is that disability-related segregation is not treated as less favourable treatment under the Equality Act 2010. However under Clause 13 s (5) of the EA2010 race related segregation is deemed to be considered as less favourable treatment and is therefore treated as unlawful race related discrimination. Therefore the situation for disabled pupils/students is much more precarious as highlighted by the Joint Committee on Human Rights in their report - Legislative Scrutiny: Children and Families Bill; Energy Bill Third Report of Session 2013–14 |

*The provision being re-enacted in clause 33 of the Bill has been the subject to considerable litigation before the Special Educational Needs and Disability Tribunal, and on appeal to the Upper Tribunal, in which the issue has been whether schools have done enough before refusing a placement to a child with special educational needs on the basis that it would be incompatible with the provision of efficient education for others. The frequency of such litigation about the presumption in favour of mainstream education suggests that the current state of the law and guidance leaves considerable scope for uncertainty in practice about the circumstances in which a child with SEN whose parents wish them to be educated in a mainstream school can be denied such a place and educated instead in a special school. If scope for such uncertainty exists, the UK's obligation under Article 24 UNCRPD, to take steps to increase access to mainstream education for people with disabilities, might require the Government to remove the uncertainty by clarifying the law and/or the relevant guidance...*

The Joint Committee on Human Rights' concerns are borne out by the real life experiences of parents of disabled children. The consequences of the EA 2010's inability to prohibit segregation of disabled students in the EA2010 cannot be underestimated as this parent says:

*Since attending a special school my autistic son has regressed intellectually and has now developed mental health issues.*

This parent's concerns are echoed by Equality & Human Rights Commission "Out in the Open – tackling disability-related harassment" report findings:

*The Government made the point that quality of provision rather than setting is important. However, the Commission believes that setting may also be important and that separating disabled children from their peers at an early stage may have a long-term impact.*

The effectiveness of the Equality Act 2010 diminishes if there is education legislation that clearly places disabled students at a substantial disadvantage when they are seeking a diagnosis and/or appropriate support otherwise they are at risk of being placed into segregated education. If disabled people are going to experience full equality and inclusion within the education system the Equality Act must be amended so that clause 13 section 5 makes it clear that segregating disabled people from their non-disabled peers is also unlawful.

The Equality Act 2010 does not only fall short on protecting disabled students from being segregated, but also from mainstream education exclusions. This may happen when disabled pupils/students are excluded from mainstream education, but have not been placed in segregated education. It is estimated that pupils with a statement of Special Educational Needs (SEN) are almost seven times more likely to receive a permanent exclusion than pupils with no SEN, and were nine times more likely to receive a fixed period exclusion. Pupils are usually excluded because of their behaviour even though it is related to their impairment / health condition. The Independent Parent Special Education Advice (IPSEA) observed that:

*the [EA2010] Act is falling short in affording some children protection when they are deemed to have an 'excluded condition'. An excluded condition is a condition of a prescribed description which regulations provide is to be treated as not amounting to an impairment for the purpose of the Act. By regulation 4(1)(c) of the Equality Act 2010 (Disability) Regulations 2010 (SI 2010 No.2128) "a tendency to physical ... abuse*

*of other persons” is an excluded condition. We have seen an increase on the number of Responsible Bodies relying on Regulation 4 (‘tendency to physical abuse’) to rebut claims of discrimination. Many children with SEN also have associated behaviour problems. It is very common in some conditions such as autism that children will exhibit behaviour which would also present as an excluded condition.*

We share IPSEA’s concerns that the regulation must be amended to exclude disabled students with appropriate diagnosis. We are concerned that education providers wanting to exclude disabled students can easily rely on EA 2010 reg 4 as there is no requirement for an education provider to make reasonable adjustments if its use is to prevent or reduces a disabled child’s exhibiting behaviour such as physical abuse. The EA2010 Regulation 4 allows education providers to sidestep the law when it comes to disability-related discrimination which is hugely damaging for the equality and inclusion of disabled pupils/students.

**QUESTION 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 sportsgrounds?**

Simply not discriminating against disabled students will not promote equality for disabled students. Treating disabled and non-disabled students in the same manner does not mean the same outcome is achieved. So quite rightly, the EA2010 must have provisions in place that requires education providers and policy makers to make alternative arrangements so that disabled students can be treated equally. When education providers make good reasonable adjustments, disabled students are more likely to feel they are being supported within mainstream education settings. .

EA2010’s anticipatory duties require education providers to pre-empt and plan strategically for how they will meet the individual requirements for disabled students. Strategic planning is key to ensuring that providers can meet those requirements.

*By incorporating accessibility standards into the estates project design software, the university hopes to eliminate the need to carry out costly ad hoc alterations. Part of this programme has seen the development of assistive technology rooms in two of the libraries, with the aims of reducing the need for reasonable adjustments and developing areas of disability awareness and expertise among staff (Hertfordshire University)*

Anticipatory duties, if done well and incorporated into a strategic planning process, will have the necessary flexibility so that a range of access requirements can be accommodated. However, if there isn’t the necessary flexibility, an education provider will struggle to provide support for more person centred requirements.

*I initially started by going through my education support office to get my assistance, however I realised that if I took over the responsibility of paying then, by eliminating the admin charges, I would be able to pay for more hours. Once I had taken over the responsibility, the quality of my support improved, as the recruiting and advertising I did was specific to my requirements. (Disabled student)*

What constitutes a ‘reasonable adjustment’ is not legally defined within the Equality Act 2010 even though there is technical guidance published by Equality & Human Rights Commission. What constitutes ‘reasonable’ will also vary between different types of education providers as highlighted by the following student in higher education.. Further the interpretation of what is considered to be ‘substantial disadvantaged’ in comparison



with non-disabled peers in mainstream education may vary between education providers. This disabled student says

*I have been unlawfully discriminated against by a City University after having to spend my entire first year arguing unsuccessfully for the simple but vital reasonable adjustments I had previously been given throughout school and college.*

Some adjustments can be viewed differently by different education providers. Disabled students with the same access requirements can be treated very differently by two educational institutions of a similar nature.

*The new maintained primary school has a wonderful inclusive ethos. Parents are regularly consulted on their child's progress, and offered a wonderful range of support from the staff in school, and those in the local authority who work between several schools. We have benefitted enormously from multi-agency support - all of which we should have been helped with while my children attended the local academy, but nothing was offered. (Parent of a child with SEN)*

As a consequence of the EA2010's failure to address disability-related segregation, the right for disabled students to be included in mainstream education will always be a lottery as there is no duty to make all adjustments, not just those that are considered to be 'reasonable'. With increasing reductions in education-related budgets what would previously have been considered as reasonable adjustments may no longer be the case. We are concerned that with increasing pressures being placed on education providers' budgets, there will be greater pressure to purchase reasonable adjustments in bulk, taking less account of individual's needs and preferences. The EA2010 allows this by allowing education providers and the courts to be required to consider what adjustments are reasonable taking into account the institution's financial and personnel resources. This is a significant weakness in the Equality Act 2010 because it allows cost to be a factor in determining that a disabled pupil/student can expect in terms of having their access requirements met.

**QUESTION 4: Should the law be more explicit on what constitutes a reasonable adjustment? If so in what way?**

Yes, but there should be provision in place to allow for less frequent or unique types of reasonable adjustments required to aid the participation of disabled students in mainstream education.

**QUESTION 2 : Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

Disabled students' access to mainstream education is not only affected by the EA2010. Legislation and regulations related to exclusions, qualifications and Apprenticeships regulate the UK's education and qualification framework. From our experience such provisions take little or no account of equality issues and in particular the impact on disabled students' ability to participate in mainstream education. Apprenticeships regulation is an example of how disabled students' equality has not been incorporated into regulation. The Specification of Apprenticeship Standards for England (SASE) regulation sets out minimum requirements to be included in a recognised English framework. Apprentices are expected to gain a level 1 (equal to GCSE level G) or level 2 (equal to GCSE level C) in Maths, English and ICT examinations in order to achieve a national accredited Apprenticeship award at intermediate and advanced level. As some apprenticeship providers have pointed out, disabled students are particularly disadvantaged by the SASE's requirement because the testing processes are not sufficiently flexible for disabled students.

*Some learners are more than capable of achieving the competence and knowledge based elements of an apprenticeship but, due to their learning difficulty is unable to achieve English and maths at the required standard.” (Melanie Bancroft)*

*The college is reluctant to allow [horticulture] student on the course because of the functional skills aspect. To me, this seems to discriminate against students with LDD, especially one who is working on a level 2 standard in his vocational subject.” (Jayne Cunningham 2014)*

SASE are one of a whole range of education and qualifications regulations that have been enacted that clearly place disabled students at a substantial disadvantage as compared to their non-disabled peers. Also the consistency of reasonable adjustments that disabled students can be frustrated by different legislation governing the regulation and provision of education. A good example is the marking of English Language, English Literature, Geography, History and Religious Studies examination scripts. During 2013 OFQUAL introduced a requirement that 5% of the total marks will be allocated for spelling, punctuation and grammar in GCSE English Language, English Literature, Geography, History and Religious Studies. In contrast, a blanket policy to award all students 5% of spelling, punctuation and grammar in the marking schemes of Geography and History degrees examinations by disabled students. From our experience of working with regulator bodies such as the Department for Education, Joint Apprenticeships Unit and OFQUAL is that equality issues are rarely factored into the drafting and implementation of education-related regulations and law. As education legislation and associated regulation and statutory guidance trumps the EA2010, disabled students have fared badly in both accessing mainstream education and having their educational achievements recognised by the state education and apprenticeship frameworks.

**QUESTION 5: How effective has the public sector equality duty been in practice?**

The Public Sector Equality Duty intention is to promote equality of opportunity for both disabled and non-disabled people. The intention is that PSED will be under a duty to prevent disabled students from being discriminated against or being placed at a disadvantage in comparison to their non-disabled peers. The Equality Act 2010 public sector equality duty requires education providers and strategic education bodies (LAs, OFQUAL) to have regard to promoting equality for disabled students. Usually this requires an Equality Impact Assessment which education providers and public bodies such as OFQUAL can choose to disregard.

ALLFIE believes that the Government has forged ahead with its new SGP policy despite OFQUAL’s Equality Impact Assessment highlighting that disabled candidates may be substantially disadvantaged. As OFQUAL’s EAI highlights the SGP policy is discriminatory for disabled candidates, particularly those who are dyslexic.

What this highlights is a limitation of the PSED and Equality Impact Assessment where Government can ignore its findings. We believe the PSED assessment must have weight in law for addressing disablist policies pushed through by Ministers and Governments.

**QUESTION 10: How do you assess its contribution to the aims of the Equality Act 2010?**

ALLFIE would use our inclusive education principles and our manifesto demands to assess Equality Act’s 2010’s ability to promote inclusive education for all disabled learners - <http://www.allfie.org.uk/docs/ALLFIE%20Manifesto.pdf> .

**QUESTION 11 : Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

- A national implementation plan to build and sustain an education system that promotes inclusive education practice.
- Full and timed implementation of the UN Convention on the Rights of Persons with Disabilities: Article 24 into UK Law and the necessary amendments to the Equality Act 2010
- Inclusive Education principles that define what equality means for disabled students.
- Disability related segregation and exclusion within mainstream education and in the wider education system must be prohibited.
- Disabled pupils/students can expect to have their access requirements accommodated in any type of education or training provision free from budgetary and other constraints imposed by education providers, LAs or Government.
- Disabled students with impairment/health condition related behaviours must be fully protected by law.
- The Public sector equality duty and Equality Impact Assessments should not be process driven - if education policy and/or legislation discriminates or places disabled students at a disadvantage then the education provider or education policy maker will be under a duty to either eliminate or mitigate the impact.

Whilst ALLFIE has highlighted the shortcomings in the Equality Act 2010, it can provide a strong framework to promote the kind of education system we want, one that welcomes and values all pupils/students whatever their background, learning style or ability. The Equality Act should be the bench mark for promoting inclusion and equality in all areas of our lives including in mainstream education. ALLFIE believes that if the Equality 2010 Act outlawed segregation and exclusion, the right for disabled students to be included in mainstream education would strengthen their access to equal opportunities alongside their nondisabled peers.

Inevitably ALLFIE's focus for this submission has been to highlight the weaknesses in the EA2010 in protecting the right of disabled pupils/students to be educated in the mainstream, ALLFE shares the same concerns as many other Disabled People's Organisations about the wider failings in the EA 2010 to support the right for disabled peoples to independent living, which if applying the DPO definition includes inclusive education and training.

We would like the opportunity alongside Inclusion London to provide oral evidence to the House of Lords Inquiry into Equality Act.

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NIACE is working with Government, employers and providers to support disabled

Apprentices <http://www.niace.org.uk/our-thinking/blog/niace-working-government->

employers-and-providers-support-disabled-apprentices <http://www.niace.org.uk/our-thinking/blog/niace-working-government-employers-and-providers-support-disabled-apprentices>

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<http://www.farrer.co.uk/Global/Briefings/14.%20School%20Briefing/Disability%20discrimination%20-%20recent%20cases%20.pdf>

X v Governing Body of a School upper tribunal decision

<http://www.education11kbw.com/wp-content/uploads/2015/01/X-v-GB-of-a-school.pdf>  
2015

*4 September 2015*

## Arfon Access Group – Written Evidence (EQD0142)

### Response to House of Lords Select Committee on the Equality Act and Disability Call for Evidence

#### 1. Preamble

- a) It was with great disappointment that this call for evidence was found to be presented in Medical Model language, undermining much of the work that disability equality campaigners have done over decades. Since its framing by disabled people in 1974 the Social Model has been adopted widely, [notably by the Welsh Assembly Government in 2002], and given the force of law within the Statutory Code of Practice to the Disability Discrimination Act 2005. It was even more discouraging given that some of the Committee members are themselves disabled people.
- b) Disability Equality campaigners were very conscious in 1995 that the Disability Discrimination Act was written to be an empty shell and we would have to work hard to convince service providers and public bodies that the Act had any teeth. Those who already wanted to contribute to equality in society complied but those whose only motive was profit or protecting budgets ignored the Act with impunity and many continue to do so with regard to the current Act.
- c) When the Disability Rights Commission started to find its feet we were greatly encouraged and started to see a body of case law strengthening our position, so many of us complained bitterly when this work was subsumed into the Equality & Human Rights Commission because we could see [and were right] that disability equality would lose ground when mixed into 8 other characteristics and the Commission no longer spearheaded by disabled people.
- d) The fundamental failure of all of the equality legislation since 1995 is that no-one is enforcing it and the 'victim' is expected to act as the monitoring and enforcement body. Isn't there an argument to say that this is in itself discriminatory? Health & safety law and heritage remains law carry criminal sanctions but equality law is routinely and ubiquitously ignored.

#### 2. Reasonable adjustments

- a) This concept is not well understood by the general public, service providers or public bodies. Architects and developers are under the impression that in new build projects they only have to provide what they consider reasonable and can build at a poorer specification than required if they feel short of funds. When reminded that, in order to meet their duties in new build projects, it may be necessary to go further than the minimum standards in Approved Document M in order to ensure an inclusive non-discriminatory environment architects are surprised.
- b) In Gwynedd we are currently challenging the introduction of new charges for disabled people to park in Blue Badge parking spaces. One element of our challenge is that the Blue Badge has been recognised as a reasonable adjustment and, by extension, it follows logically that the parking space itself, in relation to its proximity to an entrance or facility and its marking to prevent use by non Blue Badge Holders, is also a reasonable adjustment and therefore may not be charged for under the Equality Act. We are in dialogue on this with Welsh Government Ministers and the Equality & Human Rights Commission and early indications are promising.

### 3. Public Sector Equality Duty

- a) Logically, disabled people should have been able to use the Equality Act to protect themselves from attacks by the Westminster government [although of course in a civilized world a government would not attack its most defenceless citizens] but in practice it has been found that the Public Sector Equality Duty has little or no force or effect, as demonstrated by the fact that government Ministers were able to admit that changes to policy [specifically the closure of the Independent Living Fund] would indeed harm disabled people but go ahead and do it anyway, leaving disabled people damaged, humiliated and degraded and a number suicidal.
- b) Locally, a number of campaigners have been able to convince hesitant public bodies that, even if they could get away with flouting the Equality Act, it would be embarrassing for them to do so. We have done this via long-running media campaigns and with the aid of unofficial gentle reminders to the bodies from the Equality & Human Rights Commission and the Public Services Ombudsman. What was worrying was an admission by the Equality & Human Rights Commission that it would only attempt to take a case through the courts if it was guaranteed to win; this is surely the opposite of improving legislation via setting case law precedent and it has meant a vanishingly small number of cases, many of which have been settled out of court, which in itself prevents progress by failing to set legal precedent or even raise the Act's media profile. While we are conscious that "politics is the slow boring of hard boards" the impact on disabled people and Carers of fighting years-long campaigns just to achieve what was theirs by right can be devastating on people whose health and mobility may be uncertain in the first place, as in the case of Bangor High Street in Gwynedd  
<http://tinyurl.com/ptm6vze> .

### 4. The Social Model of Disability

- a) We have found over the years that, where we have persuaded individuals, organisations or public bodies to undergo genuine Disability Equality Training<sup>11</sup>, it enables us to have completely different conversations with them because their attitudes will have shifted and they begin to understand their own responsibilities to remove discrimination and exclusion and they become much more receptive when we point out situations of primary or secondary discrimination that they had simply not noticed.
- b) We find also that when we encounter Medical Model language in use by people it is usually a good indicator that the individual or the body they represent is ignorant of their legal duties.

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<sup>11</sup> Disability Equality Training is defined by practitioners as training offered by trained and qualified disabled people and set exclusively within the Social Model of Disability. It is distinct from Disability Awareness Training which starts from a Medical Model perspective and uses approaches such as simulation exercises, where non-disabled people don eye masks, various obscured spectacles or sit in wheelchairs in the hope that they will better understand the lived experience of a disabled person. It has been shown repeatedly that such exercises are seen by participants as positive but have very short-lived effect, whereas genuine Disability Equality Training frequently challenges and alters participants' underlying attitude towards disabled people, which is the key to removing discrimination.

- c) In all the years I have been practicing as an Inclusive Design Consultant and campaigning for equity I have very rarely come across deliberate or malicious discrimination; it always arises from ignorance about what it means to be a disabled person and a lack of imagination about the ways in which the current levels of institutionalised disability discrimination prevent people from simply living their lives.
- d) It is not simply semantics to steer people away from Medical Model language such 'people with disabilities', 'learning disabilities', 'suffering from mental illness', 'the blind', 'the deaf' etc. and towards inclusive, respectful Social Model language such as 'disabled person', 'learning difficulty', 'person with mental health issues', 'blind and visually impaired people', 'Deaf people' etc. because Medical Model terms carry the implication that it is the individual's impairment that is to 'blame' for their exclusion, whereas Social Model language defines 'disability' as a social situation that is experienced over and above the natural limitations of any particular impairment and locates the responsibility to remove disabling barriers squarely on society.

*7 September 2015*

## **Aspire – Written Evidence (EQD0025)**

Every eight hours, someone in the UK is paralysed by Spinal Cord Injury (SCI). Paralysis is permanent and there is currently no cure. Aspire is a national disability charity that provides practical help to people with SCI to enable them to live independently.

Aspire provides several services to people with SCI: temporary accessible housing, grants to help purchase specialist equipment, welfare benefits advice, help with assistive technology, and independent living advice. We also carry out research around issues affecting people with SCI as part of our campaigning work. Consequently, we have a wealth of experience regarding the many inequalities that people face when they become disabled.

Aspire welcomes this opportunity to offer our expertise through this response to the Equality Act 2010 and Disability call for evidence.

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### **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

**2.1.** Where a disabled person lives plays a major role in the opportunities and the quality of services that they receive. In every area, local institutions have their own policies when providing key services that people with spinal cord injury (SCI) access, such as housing, wheelchair provision and care. There is nothing in the current legislation which attempts to ensure equity in entitlement and provision for disabled people in different parts of the country. There have been some recent attempts to unify provision; for instance, national eligibility criteria for social care have now been established. However, there is still disparity in service provision depending on assessment methods and how strictly eligibility criteria are applied. Equality of opportunity for disabled people is still, in the main, a real postcode lottery.

**2.2.** This is most strikingly demonstrated by NHS wheelchair services. As the APPG for Spinal Cord Injury's recent report noted, one SCI Centre might deal with up to sixty different wheelchair services at any one time, each with its own different procedures.<sup>12</sup> All have differing eligibility criteria and levels of provision. Many of the bodies who gave oral evidence to the APPG acknowledged that this resulted in significantly irregular provision for people with SCI; some centres have on occasion discharged patients without any wheelchair at all. This can hardly be described as 'taking steps to meet the needs of people with certain protected characteristics.'

**2.3.** There are also variances in provision even when the clinical needs of patients are similar. For example, people with prosthetic limbs are provided with back-up wheelchairs, whereas people with SCI who predominantly use a walking aid but might sometimes need a wheelchair are not provided with one.

**2.4.** The current system, according to the report, is working to 'nobody's satisfaction.' The APPG has recommended national guidelines for the assessment, prescription and provision of manual wheelchairs. Aspire's experience is also that that the current system is

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<sup>12</sup>Rose, L. "A Paralysed System?" (APPG for Spinal Cord Injury, 2015)  
<http://www.spinal.co.uk/userfiles/images/uploaded/pdf/382-783205.pdf>



inadequate. 60% of grants given via Aspire Grants for the last financial year went towards the purchase of wheelchairs or wheelchair accessories, indicating that NHS wheelchair services are not meeting people's true needs. We would, therefore, welcome the implementation of a new, obligatory, nationwide set of assessment criteria and provision guidelines for wheelchair services. We would also recommend that disability organisations and charities are given the chance to submit their suggestions for what the national guidelines should look like.

**2.5.** There is also inequality of provision from Clinical Commissioning Groups (CCGs). The APPG found that where Continuing Healthcare (CHC) assessments are carried out by CCGs, there are huge variances in how disabled people's needs are assessed across the country. It is common for people with identical needs to be provided with completely different equipment and care packages. Aspire recommends that NHS England adopt a stronger approach in enforcing national guidelines for CCGs, which should be ensuring consistency in the assessment process.

### **3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?**

**3.1.** Research suggests that whilst employers might have a strong theoretical knowledge of the reasonable adjustment duties, that knowledge does not necessarily translate into effective action. A report found that two sectors which claimed to have a high understanding of their legal obligations towards disabled people – the public and voluntary sectors – were also the groups where the most complaints about a failure to introduce adjustments had been made.<sup>13</sup> Aspire has no formal data which can explain this discrepancy, but from our experience, we would suggest three possible explanations:

- a) Knowledge of reasonable adjustment duties is not enough. The employer's attitude - which will affect their interpretation of whether an adjustment is "reasonable" or not – is a strong determinant of the effectiveness of the support provided.
- b) Some employers may implement physical adjustments and think their duty is fulfilled, but an attitudinal problem may remain. For instance, there may be a lack of understanding around a fluctuating condition and the necessity to make extra adjustments (i.e. more flexible hours) at certain times.
- c) Whilst high level and HR managers may be knowledgeable regarding reasonable adjustments, this may not be true for staff throughout an organisation. Recent research by the Business Disability Forum shows that 65% of public sector employers

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<sup>13</sup> Gibbons, J. "Employers' Attitude: the Disability?" (Black, White and Grey, 2014) Available at: <http://bwglaw.co.uk/sites/default/files/bwglaw-research-report-employers-attitude-disability.pdf>

identify a lack of skilled and confident line managers as one of three key barriers to retaining and developing disabled employees.<sup>14</sup>

**3.2.** Certainly, the importance of employer attitude is recognised by Aspire. Throughout our history, Aspire has been fortunate to work with many employers who have been empathetic and accommodating in their approach to employees who sustain a spinal cord injury. We supported an academic, for instance, whose university worked quickly and thoroughly to put adjustments in place that would enable him to return to work. However, Aspire also often carries out casework for individuals with SCI where the term “reasonable adjustments” has seemingly not been understood, despite clear national guidelines. In one instance, a client employed by the NHS approached Aspire after her employer refused to make reasonable adjustments – in this case, to contribute towards the purchase of a suitable wheelchair. Access to Work had agreed to provide over £10,000, and the employer was asked to make the standard contribution - the first £1000 plus 20% of the overall cost. However, the employer refused. It took months for the employer to agree to funding the equipment and by that point, the employee was so frustrated with the lack of understanding their employer had shown that they felt they could not work for them anymore.

**3.3.** Aspire recommends a more proactive approach to supporting employers who might choose to retain newly disabled employees. Instead of expecting employers (particularly SMEs) to source and interpret legislation or guidance themselves, employers should be contacted by a relevant organisation when an employee develops a long term condition or injury. For instance, at selected SCI Centres throughout the UK, a DWP advisor visits patients with SCI whilst they are still in hospital. They work with patients to begin the process of obtaining DWP related support before they are even discharged. This is a crucial service that ensures people receive appropriate advice and guidance to have support in place for when they are discharged. However there is more that can be done to support people back into work. Aspire would like to see this service expanded to include direct contact with the newly disabled person’s employer.

## **5. How effective has the public sector equality duty been in practise? How do you assess its contribution to the aims of the Equality Act 2010?**

**5.1.** Aspire has found that that the public sector equality duty has been ineffective in ensuring that disabled people have access to suitable housing. This has been for two main reasons: a failure to prioritise the needs of disabled people, and a failure to collect data. In 2014, Aspire asked every local authority how many wheelchair users were waiting for accessible housing in their area. Nineteen local authorities responded that their outsourcing arrangements with housing associations and ALMOs meant they did not hold this data. Such an absence of centrally held data has two negative impacts:

**a) Resources which could be utilised to advance equality of opportunity are underused.** One local authority in London reported to Aspire that it was struggling to

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<sup>14</sup>Selvanera, G. “State of the Nation: Retaining and developing employees with disabilities” (Business Disability Forum. 2015.) <http://businessdisabilityforum.org.uk/about-us/news/state-of-the-nation-report-retaining-and-developing-employees-with-disabilities/>

fill tenancies in accessible properties. However, Aspire had provided temporary accessible accommodation in the area and found that demand hugely outstretched supply. A failure to collect data meant that the local authority was not matching its resources to the community's needs.

**b) Local authorities do not implement effective policies or long-term plans to advance equality of opportunity for disabled people.** The lack of data collection is particularly concerning as more and more responsibility for service provision is transferred to local authorities. Aspire has found that nationally, there are around 24,000 wheelchair users waiting for accessible social accommodation,<sup>15</sup> suggesting a nationwide lack of suitable housing. However, national Government has been loathe to introduce legislation to mandate a percentage of new builds to be accessible, stating that local authorities should be able to design planning regulations according to the needs of their area. How can a local authority design planning regulations which meet the needs of disabled people if it does not hold information on those needs?

**5.2.** The 24,000 people waiting for accessible social housing, however, are not all located within the purview of the nineteen local authorities who fail to collect data. This suggests that it is not a priority for local authorities to resolve this severe lack of opportunity that disabled people face.

**5.3.** This failure to prioritise is also suggested by the fact that resources which could be utilised to advance equality of opportunity are often misallocated by local authorities. Research by Habinteg in 2011 showed that a fifth of accessible homes are not allocated to wheelchair users.<sup>16</sup> For this reason, Aspire has recommended that a national accessible housing register, along similar lines to The London Wheelchair Accessible Housing Register, should be introduced. This would ensure that accessible housing is allocated only to those who truly need it.

**5.4.** “Due regard” is a weak term, the non-specificity of which occasionally allows some public bodies to apparently flout the spirit of the public sector equality duty. Recently, Mid-Essex CCG consulted on proposals to reduce its Continuing Healthcare Budget; its preferred solution was to provide CHC to new applicants for care in their own home **only** where the cost of doing so was no more than 10% of the cost of providing care in a nursing home. This preferred solution had no regard for the total lack of opportunities for employment, leisure and accessing the community experienced by people in nursing homes.<sup>17</sup> Placing disabled people into nursing homes is also likely to decrease their participation in public life and other activities where participation is already disproportionately low. Finally, segregating disabled people from non-disabled people by placing them in nursing homes will decrease

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<sup>15</sup> Hirani, K. “Wheelchair Accessible Housing: Waiting for appropriate housing in England” (Aspire, 2014) <https://www.aspire.org.uk/news/aspire-research-finds-massive-shortfall-in-accessible-housing-in-the-uk>

<sup>16</sup> “Space to Move: Making efficient use of homes for wheelchair users” (Habinteg, 2011) <http://www.habinteg.org.uk/main.cfm?type=SPACETOMOVE>

<sup>17</sup> Smith, B. and Caddick, C. “Understanding the health and wellbeing of spinal cord injured adults in a nursing home.” (Loughborough, 2014) <https://www.aspire.org.uk/care-home-research>

awareness of disability as people will naturally be blocked from participating in society because of their living environment. Yet there is ultimately no mechanism to prevent this from happening, aside from an individual challenging the decision through several lengthy and expensive court cases.

## **7. Does the division of responsibilities between Ministers and government departments inhibit the effective implementation of the EA?**

**7.1.** A key problem, from Aspire’s perspective, is that although the “Minister for Disabled People” is described as a “cross-government role”, it seems to be extremely DWP-focused. It appears that the predominant task of the Minister is to lead on disability-related DWP policy. However, the concerns of disabled people are much wider than work-related and benefit issues. There is a real need for a Ministerial champion that spans all departments.

**7.2.** We have learned from the oral evidence sessions this Committee has held that the Minister for Disabled People has had a number of bilateral meetings on issues affecting disabled people. We also understand that the Minister intends to continue to head up the Inter-Departmental Ministerial Group on Disability. However, we are *only* aware of this activity due to these evidence sessions. Aspire calls for greater public involvement in the Inter-Departmental Group. We would also highlight that, despite the fact these discussions are taking place, we would still struggle to point to *any* current Government policy or programme which aims to resolve a non-work-related concern affecting disabled people’s lives.

**7.3.** We understand that cross-departmental work is coordinated by the Office for Disability Issues. However, again, this process is not publicised or transparent. This was not always the case. Aspire still possesses literature from the Office’s historic “Roadmap 2025” campaign, which set out a number of ambitious targets that the Office was working with several government departments to fulfil. For instance, the Office set a target that it would work with DCLG to create “good practise guidance” around disability to be sent to all social housing providers. Aspire also has transcripts of meetings which show the input of disability organisations into the development of these targets. But the Office no longer seems to be communicating or engaging with disability organisations or the public at large, and so it is very hard to judge to what extent the Government is implementing the public sector equality duty or any other aspect of the Equality Act. As previously highlighted, outside of work and benefit related issues, it is difficult to find evidence of cross departmental work that focuses on the wider needs of disabled people.

**7.4.** For instance, housing supply is a key area in which disabled people face inequality of opportunity. As previously mentioned, our research last year found there were around 24,000 wheelchair users waiting for accessible social accommodation. This figure does not include people struggling to buy or rent in the private market or those struggling to get on to housing lists.<sup>18</sup> An ageing population means this figure is likely to get larger and larger unless urgent action is taken. However, there is no Minister whose job it is to particularly

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<sup>18</sup> Ibid.

champion this cause, and as such little Government leadership is visible. There seems to be serious reluctance on the part of national Government to take ownership of this issue. Instead, the Department for Communities and Local Government focuses on policies that resolve more everyday issues, such as the general lack of affordable housing in the UK. Ironically, access to suitable housing is often a crucial factor in disabled people obtaining and maintaining employment, as our research shows.<sup>19</sup>

**7.5.** Health is another department in which disabled people could benefit from a specific champion. The report published by the APPG on Spinal Cord Injury (SCI) revealed many of the health inequalities faced by people with SCI. Perhaps the most shocking was that the maximum waiting time for a person with SCI to be assessed for a powered wheelchair was five years.<sup>20</sup> As the report states, this length of waiting time would not be accepted elsewhere in the NHS. Again, however, disabled people lack a specific Ministerial champion who can advocate for them on health issues.

**7.6.** Aspire recommends that either the Minister for Disabled People's brief is widened, or there is more engagement regarding the non-DWP work that the Minister is taking part in.

**7.7.** It may be that cross-departmental work was envisioned to be predominantly the brief of the Women and Equalities Minister. However, as this role covers all the protected groups, and is given to a Minister to perform alongside other Secretary of State duties, in Aspire's view it is unlikely that disabled people's concerns will be given the attention they need cross departmentally.

**10. Are the current enforcement mechanisms available to private individuals accessible and effective for people with disabilities, employers and providers of goods, facilities and services?**

**10.1.** Often not. Aspire's research has proven that in the fitness industry, employers routinely discriminate against disabled people at the application stage. A wheelchair user is nearly three times more likely to receive an outright rejection (no offer of an interview, or to keep the CV on file) for a role as a fitness instructor than a non-wheelchair user. There is no reason that wheelchair users cannot be employed as fitness instructors – in Aspire's own leisure centre in Stanmore, wheelchair-users provide instruction to disabled and non-disabled customers alike. Other research suggests that this problem may be widespread across several professions and sectors. The Black, White and Grey study referred to earlier concluded that whilst many employers may be willing to employ a disabled person in theory, in practise they do not. However, the current enforcement system requires an individual to prove a particular employer has discriminated specifically against them due to their disability; this is difficult. Furthermore, even if this could be proved, the legal costs of taking the case to trial mean that many would drop their complaint at this point. Current enforcement mechanisms, therefore, have a limited effectiveness.

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<sup>19</sup> Caddick, N. and Smith, B. "The health and well-being of spinal cord injured adults in the family: Examining Lives in adapted and unadapted homes" (Loughborough, 2015)

<sup>20</sup> Rose, L. (2015)

**10.2.** This difficulty with enforcement extends to the provision of goods and services. During the recent parliamentary debate regarding the Accessible Sports Grounds Bill, for instance, we heard how individual football fans were unlikely to sue their club for discrimination.<sup>21</sup> Whilst the onus for enforcement relies on individual action only, little progress towards equality is likely to be made.

**10.3.** Aspire recommends, therefore, that other kinds of enforcement need to be introduced which relieve costs and pressure from an individual. 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. This would allow action to be taken in instances where the reluctance to make an individual complaint is emotional, as in the case of football clubs.

*18 August 2015*

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<sup>21</sup> <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/150717-0001.htm#15071758000277>

## **Assistance Dogs UK – Written Evidence (EQD0081)**

Assistance Dogs UK (ADUK) is a voluntary coalition of seven assistance dog charities, all of which provide dogs to individuals living with disabilities or long-term health issues. The members of Assistance Dogs UK are: Canine Partners, Dog A.I.D, Dogs for the Disabled, Hearing Dogs for Deaf People, Guide Dogs, Medical Detection Dogs, and Support Dogs. They have been accredited by Assistance Dogs International (ADI) or International Guide Dog Federation (IGDF), with over 200 years' experience between them.

ADUK is a charity itself. It exists to encourage disabled people and people with life-threatening medical conditions to obtain highly trained Assistance Dogs that will be supported and checked through their working life. It also helps genuinely disabled people and those with genuine medical conditions, who use or would benefit from an assistance dog, with queries regarding rights of access and the standards of training assistance dogs need to have to perform their duties and be granted access.

It attempts to handle all issues regarding assistance dogs, but it is being overrun with enquires and demands. Complaints about commercial dog trainers selling badly-trained assistance dogs for significant sums of money to disabled individuals have increased by a great extent. ADUK charities are now being asked to rectify the poor training of these dogs, which places an extra burden on the already stretched resources of these charities.

ADUK is currently open to any not-for-profit organisations that have been accredited by ADI or the IGDF. The prospect of permitting commercial organisations to join ADUK is currently under discussion.

### **Executive Summary**

The intention of the Equality Act 2010 (the "Act") was to give freedom of access to public places and transport for disabled people who use assistance dogs. As a result of shortcomings in the Act, the rights of genuinely disabled people who use assistance dogs are being threatened.

The particular problems we have identified, and the actions that we believe are necessary to rectify these are, in outline, as follows:

1. The wording of the definition of assistance dogs in the Act and its position in section 173 (Chapter 12, Part 1) of the Act is jeopardising the rights of people with genuine disabilities or medical conditions who use assistance dogs.
2. The current definition of an assistance dog fails to specify a standard to which the dog must be trained.
3. Some companies selling assistance dogs to disabled people are exploiting these shortcomings. These dogs are often not fit for purpose. Individuals are also claiming their pet dogs are "assistance dogs" to obtain privileges to which they are not entitled.
4. Furthermore, the lack of standards has led to a loss of confidence among employees of industries (such as retail, leisure, and public services) in the legitimacy of assistance dogs, thereby causing genuine assistance dog users to face discrimination.

5. The definition is in a section of the Act that refers only to the carriage of assistance dogs in taxis. There is no definition of assistance dogs that applies to the entire Act, and this omission causes significant confusion when disabled people try to interpret the legislation.
6. By amending the current legislation to better define assistance dogs and to include a common standard for training, we can ensure genuine assistance dog users are able to exercise their rights, and prevent suppliers of fake branding or substandard dogs from abusing current legal requirements.

### The Issues

#### Issue 1: Legal definition of “assistance dog”

When disabled people with an assistance dog refer to the Act the first problem they are confronted with is that there is no definition of “assistance dog” that applies to the entire Act. The definition of “assistance dog” is limited to the part that refers to the carriage of assistance dogs in taxis.

#### **1.2 Evidence:**

***The definition of “assistance dog” is found in section 173 of the Act (Part 12, chapter 1):***

***“(1) In this Chapter –***

***“accessibility requirements” has the meaning given in section 167(5)***

***“assistance dog” means -***

***(a) a dog that has been trained to guide a blind person; and***

***(b) a dog which has been trained to assist a deaf person***

***(c) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person’s mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects;***

***(d) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind;***

***“taxi” – (a) means a vehicle which is licensed under section 37 of the Town Police Clauses Act 1847 or section 6 of the Metropolitan Public Carriage Act 1869, and***

***(b) in sections 162 and 165 to 167, also includes a taxi licensed under section 10 of the Civic Government (Scotland) Act 1982, but does not include a vehicle drawn by a horse or other animal;***

***“taxi accessibility regulations” has the meaning given by section 160 (1).***



*(2) A power to make regulations under paragraph (c) or (d) of the definition of assistance dog” in subsection (1) is exercisable by the Secretary of State.”*

## 1.2 Solution:

A new definition of “assistance dog” is needed and that should apply to the whole Act, and not be limited to a part of the Act. We submit that the new definition should be something along the following lines:

"An assistance dog is a dog trained to the required standard which supports an individual's legitimate disability or medical condition by means of defined tasks. For the user of an assistance dog to obtain access to all public places and services, the following criteria must apply:

- i. The assistance dog and its user will have been trained to the required standard and supported through the dog’s working life by an assistance dog organisation that has been accredited by Assistance Dogs International (ADI) or the International Guide Dog Federation (IGDF), or another accrediting organisation nominated by the Secretary of State.
- ii. The assistance dog and its user will have passed an assessment carried out by a registered assistance dog assessor accredited by ADUK or another body nominated by the Secretary of State to carry out such assessments.
- iii. The maintenance of the required standards of training and welfare, health and hygiene of the assistance dog will be reassessed every 12 months by an organisation accredited as in (i).
- iv. The user’s disability or medical condition will have been verified as part of (i) above as a genuine disability, or a medical condition, where an assistance dog can assist the user through the consistent delivery of trained, defined tasks.

The “required standard” means the standard set by ADI or the IGDF or another accrediting organisation nominated by the Secretary of State for the purposes.”

## 2. Issue 2: No definition of “prescribed charity”

A number of established high-standard assistance dog charities are not included in the legislation, whereas some others are, leading to increased confusion.

### 2.2 Evidence:

The definition in s.173 of the Act refers to dogs trained by a “prescribed charity”. There is no definition of a prescribed charity in the Act, but if one refers to the previous legislation, the Disability Discrimination Act 1995, which is no longer in force outside Northern Ireland, just three charities are listed as a “prescribed charity” – Dogs for the Disabled, Support Dogs and Canine Partners. Guide Dogs for the Blind and Hearing Dogs for Deaf People are therefore not prescribed charities, and although dogs trained by these charities would be covered by

s.173 (1)(a) and (b), the absence of specific reference to them when others are named does add to the confusion. Neither Medical Detection Dogs nor Dog A.I.D are mentioned. Furthermore, it refers to “a dog of a prescribed category” and to a disability of a “prescribed kind” without defining what these terms mean.

### 2.3 Solution:

This confusion reinforces a new definition of assistance dogs and who can train and assess them. The legislation should require all training programmes to meet a required standard, but it should not name specific training organisations. To do so could limit the availability of organisations from where disabled people could seek help, and that would replace one flaw in the Act with another. Genuinely disabled individuals sometimes seek to train their own dog, and want the standards they train their dog to be recognised in law via an independent qualification badge that would be tested on a regular basis, in order to provide legitimacy to their access rights. It should therefore also not exclude individuals with their own dogs, or commercial organisations, from training those dogs to the required standard.

### 3. Issue 3: Rogue operators

Commercial dog trainers who have identified the shortcomings with the Act are selling “assistance dogs” to disabled people and people with life-threatening medical conditions for many thousands of pounds. These dogs are sold without any independent qualification of the standards of training, or any follow-up care or refresher training. They are sold on the basis they have full access rights afforded by the Act. This is a particular issue where the disability that the dog is meant to be assisting is an “invisible” disability, such as deafness, autism, epilepsy or diabetes.

This practice creates a life-threatening risk to vulnerable people who spend thousands on these dogs in the expectation that they can rely on them. If a diabetic person, for example, relies on such a dog to alert them to an imminent hypoglycaemic episode, and that dog is not fit for purpose, the outcome could well be death.

### 3.2 Evidence:

Irish broadcaster RTE ran several radio phone-in programmes during the week of 17<sup>th</sup> August 2015, during which a significant number of people reported paying £6,000 - £8,000 to a commercial dog training company, [NAME REDACTED]. This company has given false hope to disabled people by supplying dogs that are not fit for purpose, causing them financial loss and severe distress.

We have also received reports of such experiences from a great many people. The following is a recent example:

*“I have a situation I would like to draw your attention to. I have a beautiful [dog] that I got trained from [NAME REDACTED] as a mobility dog for my disabled little boy.*

*By no means is the dog up to a service dog standard. Sadly she is not fit for purpose. It would be dangerous to let this dog act as a guide for my boy. She is unpredictable, she can take off if she sees another dog and barks at strangers. I've brought this to the attention of [NAME REDACTED], the owner of [NAME REDACTED], but he is unwilling to help. I've paid this man €6500 for this service dog. [NAME REDACTED] are stating on their website that they train their dogs to the standard of Assistance Dogs International. This is NOT true*

*and misleading for parents of disabled children. I just want to make you aware that [NAME REDACTED] is using your name to make money and mislead people.*

*Thank you”*

This problem is escalating. There is now evidence that many such dogs have been sold to vulnerable people in the UK. [NAME REDACTED] repeatedly claims that the Act confers the same rights of access to users with dogs provided by [NAME REDACTED] as those supplied via ADUK charities. According to the radio broadcast, [NAME REDACTED] has supplied 386 assistance dogs since they started less than two years ago, many of these to disabled people in the UK.

### 3.3 Solution

This problem would be greatly diminished by the introduction of a legally recognised high-quality standard for the qualification and re-testing of assistance dogs. These dogs and their users should be registered on a secure database. ID booklets, which already exist for ADUK-provided assistance dogs (see annex), could be adopted for all qualified assistance dogs and relevant technological advancements introduced over time (such as an app to read information from the assistance dog’s jacket or ID booklet). This standard would be mandatory for all assistance dogs programmes, whether delivered by a charity, a commercial dog trainer, or trained by the disabled user personally.

## 4. Issue 4: Standards of Training.

The Act makes no reference to the minimum standards of training, behaviour, health or supervision required for the assistance dog to fall within the definition of the Act. It suggests an assistance dog is any dog trained by anyone to guide a blind person, or any dog trained by anyone to assist a deaf person. As a consequence many people are claiming that their untrained pet dogs are “assistance dogs” with adverse consequences for legitimate users of genuine assistance dogs.

### 4.2 Evidence.

The flaws in the legislation were highlighted in a number of articles in 2014 by Daily Mail journalist, Liz Jones. In those articles she described how she passed-off her four badly-behaved pet collies as hearing dogs. This was to enable her pets to accompany her to restaurants, pubs, and leisure facilities. Because of the important issues these articles exposed, and on behalf of the several hundred disabled people who had voiced their concern on social media Hearing Dogs for Deaf People formally referred the matter to IPSO. The Daily Mail’s response referred to the Act and explained that Ms Jones could call her pet dogs hearing dogs if she wanted to because the Act allows her to. The paper pointed out that she could call them guide dogs too, if she wished.

### 4.3 Solution:

The member charities of ADUK all conform to the established standards of training, behaviour and health laid down by Assistance Dogs International (ADI), or in the case of Guide Dogs, to the standards laid down by the International Guide Dogs Federation (IGDF). These standards are highly respected and involve regular independent assessments and physical visits to witness every assistance dog-training programme run by members of ADUK. The ADI and IGDF programmes in the UK also have to demonstrate how they verify that the user has been taught to supervise the dog in a responsible way and that they are genuinely

disabled or have a genuine medical condition which requires the use of an assistance dog. We submit that this would be the logical standard to set down in legislation to ensure that users of assistance dogs are properly protected and receive the benefits provided under the Act.

#### 5. Issue 5: Difficulties experienced by assistance dog users

The lack of a recognisable standard has led to a loss of confidence among service providers (such as restaurants, retail shops, leisure outlets and hotels) in the legitimacy of assistance dogs, thereby causing genuine assistance dog users to face real discrimination. Access is being frequently denied because a previous poor experience, similar to that highlighted above, has resulted in a “no dogs” policy being adopted, irrespective of the Act. This policy may not be published, but is exercised. The intention of the Act was to enable genuine assistance dog users to access buildings and services, but there is evidence that this is not being respected in practice.

Dogs not accredited by ADUK may not meet the high standards of hygiene which those dogs which are and could therefore pose a public health risk which is not present with ADUK accredited assistance dogs which are maintained to a standard recognised by the UK Chartered Institute of Environmental Health.

#### 5.2 Evidence:

Individuals claiming their pet dogs are assistance dogs to gain access where a dog would not normally be permitted are causing significant confusion for staff of casual dining outlets, hotels and pubs. Staff are fearful of challenging people who claim to be disabled, and they do not recognise a genuine assistance dog jacket from a “fake” jacket. As a result of such dogs behaving badly, there are many reports of service providers becoming unwelcoming to all assistance dog users, resulting in a limiting or denial of access for disabled people and exercising the discrimination that the Act was intended to eradicate.

#### 5.3 Solution.

ADUK already provides every user of an ADUK-provided assistance dog with a passport-sized ID booklet to enable staff in restaurants and pubs to be reassured of the legitimacy of their claims to access. If ADUK was recognised as the official body for monitoring all assistance dogs in the UK, whether programme or owner-trained, all assistance dogs would have to be trained to ADI or IGDF standards, and all users would be required to carry such an ID booklet.

Education of the standards genuine assistance dogs are trained to would be embarked upon, ensuring that service providers recognised the ADUK roundel which can be placed on all assistance dog jackets as a “kite mark”. Security against fraud could be provided through QR codes or holograms, placed on the dog’s jacket and/or within the users ID booklet.

Furthermore, the education activity would also include the reassurance from the UK Chartered Institute of Environmental Health that assistance dogs from ADUK charities do not present any risk to hygiene, as a result of their extremely high standards of welfare, hygiene and training.

Individuals who attempt to sell poorly-trained assistance dogs, or who try to gain privileges to which they are not entitled by using an unqualified assistance dog or a “fake” assistance dog jacket would need to be penalised, potentially in a similar way to using a “fake” disabled parking badge.

## 6. Implementation

The key infrastructure exists through ADUK already, so it is unlikely that an additional organisation would need to be created unless demand was beyond the capacity and charitable objectives of the ADUK members. This plan is therefore a low cost method of supporting and improving the access rights of disabled people with assistance dogs.

As far as we know, ADI and IGDF are the only recognised international standards and qualification bodies for assistance dogs. A number of key individuals and organisations are qualified to be independent assessors and to ensure the ADI / IGDF standards are adhered to across the world.

Improvements and developments in the training programmes are adopted as required. The creation and expansion of a network of assessors for the UK could be undertaken and managed by ADUK, in conjunction with ADI and with support from the relevant member charities, to assess and qualify commercially-trained dogs and owner-trained dogs so they can wear the ADUK logo.

The ADUK logo would become the recognised “badge” for access rights under the Act.

Each assessment would be charged to the commercial dog trainer. With owner-trained dogs, the charge would be made to the individual and paid for from their private funds or their personal independence payment (PIP). At a minimum, re-assessments would take place every 12 months.

## 7. Conclusion

Genuinely disabled people and those with medical conditions who use assistance dogs need to be reassured a new system will protect their access rights. The solutions proposed in this paper would remove the shortcomings of the existing legislation and will drive greater respect of all assistance dogs and their users. The qualification standards could be adopted for all assistance dogs, where a network of respected assessors would qualify dogs from recognised charities, recognised commercial dog trainers (who agree to comply with the qualification standards), and from disabled individuals who train their own dogs.

As a consequence the public will trust that an assistance dog they see in a public place is a genuine assistance dog, trained to the highest standards of hygiene and behaviours, and that it is extremely unlikely to behave in an inappropriate way.

*3 September 2015*

## **The Association of Colleges – Written Evidence (EQD0073)**

### **About the AoC**

The Association of Colleges (AoC) represents and promotes the 335 colleges in England including 242 further education colleges (FE) and 93 sixth form colleges incorporated under the Further and Higher Education Act 1992.

Further education (FE) colleges provide high-quality technical and professional education and training for young people, adults and employers. They provide over three million students with valuable employability skills, helping to develop their career opportunities and strengthen the local, regional and national economy.

Please find below our response on behalf of colleges looking at the questions from both a workforce and student perspective.

### **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?**

There is a greater understanding of what disability discrimination is and colleges generally have a sophisticated understanding of the Equality Act 2010. Colleges are aware of, and utilise, the guidance produced by the Equality and Human Rights Commission (EHRC) to support the implementation of the Act.

The Act has provided clarification for colleges with regards to disability discrimination. Of particular value is the clear distinction that the Act draws between direct and indirect discrimination. The introduction of the Provision, Criterion or Practice (PCP) test for discrimination has also made it much easier for colleges to assess whether their actions and decisions could potentially have a direct or indirect discriminatory effect on an individual with a protected characteristic.

We are concerned however, that whilst the Act is widely recognised by those employers subject to the public sector equality duty (which includes colleges), employers in the private sector are not as aware of their duties and responsibilities under the Act. This presents a potential training and education issue for colleges working with business and engaging with staff unfamiliar with the Act.

Example - students on work placements or apprenticeships may be at a disadvantage where an employer is not fully versed on their obligations and responsibilities under the Act. This could potentially lead to direct or indirect discrimination in the workplace and have an impact on student retention on the correct programme of study.

Whilst the Act has taken steps to harmonise disability discrimination law and colleges have adapted well to the Act, there is still work to be done to support employers to fully understand their duties and obligations.

#### **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

Particular consideration might be given to further clarity in the Act and supplementary guidance with regards to mental health and disability. Without a clear definition of “long term”, colleges are often unsure whether a mental health condition falls within the scope of the definition of disability.

Example - if an employee suffers from a mental health condition which only affects them for short periods of time with long periods of time in between where they are unaffected – is this a disability?

The Act and supporting guidance should be clearer that it is not only physical conditions which are covered but also psychological conditions. Given that the Act was drafted over five years ago and we now have a much better understanding of mental health and the workplace, consideration should be given to amend and expand the definition of disability to make it clearer for colleges and other employers. Lessons from case law are useful, however these do not replace the value and comprehensive support that well drafted guidance offers. The Children and Families Act 2014 strengthens the duties on colleges to support students with learning difficulties and disabilities (LLDD) who are in receipt of an Education Health Care (EHC) Plan and this is to be welcomed. However, it is important to note that only a minority of students LLDD will be in receipt of such a plan. Approximately 18% of further education students have LLDD but only 2% -3% will be in receipt of a Learning Difficulty Assessment/EHC plan. For the much wider group of students who have LLDD but do not have an EHC plan, the duties under the Equality Act to provide reasonable adjustments are more specific than those spelt out in the Children and Families Act. Therefore, it is important that the current focus by DfE and colleges on meeting the new duties of the Children and Families Act do not detract colleges and other education providers from recognising and adhering to their duties under the Equality Act.

#### **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?**

Colleges are aware of their legal duties and do make reasonable adjustments as per the Act. However, colleges would welcome clearer guidance on how far the concept of 'reasonable' stretches, especially when the issue of cost is considered. For example, how much is 'reasonable' for a college to spend on adjustments? Is there a cost threshold for what is deemed 'reasonable'? A list of examples where clarification would be welcome is as follows:

#### **Example 1 – College A**

College A makes an employment offer to applicant P. As part of the college's pre-employment checks, P attends an appointment with occupational health (OH) where P discloses a mental health condition. The college then receives the report from OH which states that a condition has been declared but up-to-date information is not available from P's GP and as such they advocate an assessment with their psychiatrist which will cost £750. The cost of the assessment is not covered by Access to Work. Is it therefore reasonable to ask a small college already faced with huge financial restraints to pay £750 for a medical examination of somebody that they potentially may not be able to employ?

It would also be helpful to have more information regarding reasonable adjustments for employees suffering from mental health conditions as again employers can often find this a difficult area to address in terms of what is 'reasonable'. College's often find it much easier to judge the reasonableness of adjustments for an employee with a physical disability as they are often tangible and have a direct one-off cost e.g. purchasing an adapted chair or piece of equipment. Managers find it harder to judge the reasonableness of intangible adjustments such as adjustments to working patterns or hours of work. Whilst these adjustments may appear straight forward in isolation, what happens when they have an impact on others in the workplace? At what point does the impact on others make the adjustment unreasonable? How should a college deal with conflicting reasonable adjustments?

### **Example 2 – College B**

College B has two employees working in the same team that require different reasonable adjustments. Employee C has a disability which means they perform better first thing in the morning and get tired later on throughout the day so have requested adjusted working hours to commence work at 07:00 and finish at 15:00. Employee D is also suffering from a disability and has requested that they work four compressed days (08:15 – 18:00) to allow them to have a day off in the middle of the week (Wednesday) to rest and recuperate. The employee's both work on the main reception desk which operates between the hours of 08:00 – 18:00. If the college agrees to both sets of reasonable adjustments there will be no cover on the reception desk between 15:00 – 18:00 every Wednesday afternoon.

Does the college have to agree to both sets of reasonable adjustments? In situations like this, it is often very difficult for the college to prioritise and assess reasonable adjustments whilst ensuring that business needs are also met. To address these issues, managers need extra training to enable this and additional guidance would therefore be useful.

One other area where difficulties can arise is when colleges have to prioritise between their duties under the Equality Act and their Safeguarding responsibilities. AoC has on occasions been asked to advise on difficult decisions as to whether the reasonable adjustments put in place for a particular student are sufficient to ensure that the student's own safety and the safety of other students is not put at risk. Of course these are complex decisions which need to be addressed on an individual basis; however, it is an area where additional guidance would be welcomed.

The Equality Act places a duty on colleges not only to put in place individual reasonable adjustments but also to provide 'anticipatory reasonable adjustments'. Often the provision of effective anticipatory adjustments can result in a more inclusive environment and reduce the need for individual reasonable adjustments. It is important that any additional guidance should provide positive examples of employers which have developed good practice in putting in place effective anticipatory reasonable adjustments.

There is also a lack of knowledge and awareness of the Government's Access to Work service. Information relating to this service needs to be more prevalent and readily available for employers so that there is a better understanding of the practical and financial support they can get with regards to implementing reasonable adjustments.

#### **4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

There isn't a requirement for this to be more explicit in legislation, so the supporting guidance should be clearer. Whilst the EHRC guidance on workplace adjustments is useful to refer to when considering the implementation of the Act, it could go further to define what is reasonable especially with regards to what is financially 'reasonable' when considering an adjustment, particularly in relation to the financial resources available to an organisation.

The issue of reason depends on so many different individual factors including the size, type and income of a college, and as such more prescriptive guidance may not be possible. A robust set of case studies demonstrating how different types and sizes of organisations have implemented and reviewed reasonable adjustments would therefore be helpful.

In addition, up to date information and continually refreshed case studies demonstrating new opportunities available through ever changing technology should also be made available. This would enable colleges to be more creative with solutions and to 'think outside of the box' when considering reasonable adjustments.

#### **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?**

Since the publication of the Government Equalities Office Review of the Public Sector Equality Duty: Report of the Independent Steering Group was published in September 2013, we have seen no further evidence or intelligence of how effective the public sector equality duty (PSED) has been in practice. We would need more evidence and information to be able to comment on this question.

The abolition of compulsory equality impact assessments (EIAs) may have been interpreted to lessen the importance of the PSED. Whilst we are not advocating the re-introduction of EIAs, we would like to know how the quality of equality is currently being measured.

**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?**

AoC is unable to answer this question as we do not represent colleges in Scotland or Wales.

**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?**

There are many different sources of information for both the public and employers in relation to disability discrimination and the Act. Currently, there is confusion between the role of the EHRC and the Equality Advisory Support Service (EASS). It is therefore important that the message about the responsibilities and implementation of the Act is unified and there is a risk for the opposite to occur with so many different sources of information. It would be helpful for there to be one body responsible for the implementation of the Act that could provide clarity from one central point.

One area of conflict which has been raised on several occasions with AoC is between colleges' duties under the Equality Act and the requirement that all 16 to 18-year-old students who have not achieved A\*- C in their English and maths GCSEs must resit GCSE or follow a stepping stone English or maths qualification. In a small but significant number of cases, teaching staff and college principals have felt that this requirement mitigates against their duties to provide appropriate reasonable adjustments for these students.

For example – a 17-year-old student with a recognised mental health condition has enrolled on a music course at college. After having had considerable difficulties at school he is very much enjoying the college course. His attendance is good and he is making good progress. The college is providing him with additional support to address his specific mental health difficulties but college staff, the student and his parents are concerned that the additional pressure of having to follow English and maths GCSE and take an examination at the end of the course is putting excessive pressure on him. As a result, there is a real concern that this pressure will lead to another mental health episode. The college would want a reasonable adjustment to be considered so the student does not have to follow the GCSE course.

Currently if a college withdraws a student such as this from a course they lose their funding.

**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?**

AoC are not aware of any examples of EHRC exercising its regulation and enforcement powers.

The introduction of the Deregulation Act 2015 which removed the power of employment tribunal's to make wider recommendations to organisations in discrimination claims also limits the importance of effectively tackling disability discrimination.

**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?**

Currently, Ofsted only reports in a very cursory way on the extent to which they feel a college is implementing its duties under the Equality Act. However, this may change with the new Common Inspection Framework. While it is likely to be burdensome for colleges and Ofsted to carry out a thorough inspection of the extent to which colleges are fulfilling their duties towards students with disabilities under the Equality Act, it is important that there is a way of ensuring that colleges are implementing the Act to enhance the situation of disabled students. One possible way forward might be a system of peer review between colleges to allow sharing of work and effective practice within a framework overseen by a regulating body such as Ofsted.

**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?**

Under the Children and Families Act, students with an EHC plan can now bring cases under the Special Educational Needs Tribunals. It is too early as yet to comment on how effective this is. However, Tribunals are only available to those young people with an EHC plan and the only source of redress for other disabled students is via County Courts. This is a rather formal and intimidating route and one which is being made less easy with reductions in Legal Aid.

The first step in any complaint is of course an internal college one. It is therefore important that all students are made aware both of their rights under the Equality Act and of internal college procedures for complaint. This information must also be accessible to students who, because of their disability or learning difficulty, might have difficulty with understanding written information.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

As previously outlined, clearer guidance for employers on reasonable adjustments including a robust set of case studies, and further information about the use of technology and reasonable adjustments would improve implementation.

Encouraging additional opportunities for the disclosure of disability would also improve the implementation of the Act and increase opportunities to discuss and make reasonable adjustments as necessary.

*3 September 2015*

**Association of Convenience Stores, Barclays Bank, Business Disability Forum, Trades Union Congress – Oral Evidence (QQ 72-78)**

Members present

Baroness Deech (Chairman)  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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**Examination of Witnesses**

**George Selvanera**, Business Disability Forum, **Mark McLane**, Global Head of Inclusion and Diversity from BDF Partner Barclays Bank, **James Lowman**, Association of Convenience Stores and **Dr Peter Purton**, Policy Officer, Disability and LGBT Rights, Trades Union Congress

**Q72** The Chairman: Welcome to the four of you, Mr Selvanera, Mr McLane, Mr Lowman and Dr Purton. We are very pleased that you have come to talk about issues of employment and deaf and disability issues. We have interpreters here in case they are needed.

A webcast of this session will go out live via the parliamentary website, which will show members, witnesses and the signers. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy and it would be helpful if you could advise us of any corrections as soon as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence or you have any additional points to make, you are welcome to submit supplementary evidence to us in writing. We are very grateful to all of you for the evidence you have already submitted, which has helped us to get a grip on the functions that the four of you carry out in this particular area.

The members sitting round the table will advise you, when they first put a question, if they have any relevant interests, but, for the sake of speed and because she has so many, I will now recite the many interests of Baroness Campbell on my right. She is a patron of Just Fair; a patron of Disability Archive UK; a founder and member of Not Dead Yet UK; and a recipient of a social care personal budget, disability living allowance and Access to Work. She was Disability Rights Commissioner throughout the life of the Disability Rights Commission and was a Commissioner of the Equality and Human Rights Commission for three years.

It is possible that a bell will go or that there will be a sign on the screens, because there is a possibility of two votes this afternoon. If that happens, we here round the table will be absent for about 10 minutes while we go downstairs to vote and then come back up again. We will have to adjourn the Committee for the time it takes for us to go and vote and come

back. We are hoping that it will not happen, but the timing may be such that it does happen while you are here with us, so you will have to bear with us. Thank you. The first question is coming from Lord Foster.

**Lord Foster of Bishop Auckland:** I have no relevant interests to declare. You will recall the Government abolished the questionnaire procedure for discrimination claims as a result of the red tape challenge. Some witnesses have suggested that the procedure helped to deter unfounded claims and to encourage early settlement. Would you support the reintroduction of the questionnaire procedure?

**Dr Purton:** Perhaps I could begin with the TUC's view on this. Yes, we would very much welcome the reintroduction of the questionnaire procedure. We published evidence at the time of the red tape challenge to point out how useful and productive it had been in avoiding taking disputes further down the legal road. If I could just draw your attention to one particular example we quoted in our evidence, the intervention of the questionnaire procedure meant the employer took legal advice and was advised to settle the case. We know of far too many cases where employers have refused to follow that route and have pressed on in supporting the manager who has taken the allegedly discriminatory act, and it has gone all the way down to a tribunal, which is very expensive and very stressful for all parties and eminently avoidable.

By establishing at a very early stage in the process whether or not there is a case to answer, the questionnaire procedure is one way in which the individual can know what their rights are and the employer can be advised, "Look, accidentally or otherwise, you have trespassed over the law and you would be advised to reach a settlement in this case".

**Mark McLane:** If I might address this from a slightly different point of view, we believe the early conciliation process does address some of these concerns. We would be in support, of course, of any legislation that is drawn, but there are more avenues today for employees to make certain that their voices are heard.

It is incumbent on employers like ourselves at Barclays to make certain that there is not one pathway in but that there are a multitude of pathways for an employee to come forward for early reconciliation of their issues or concerns, not necessarily only through an HR or ER department, or externally, but also through colleague support. 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.

**James Lowman:** My contribution would be more on behalf of smaller businesses that do not have a HR or an ER department or where it is the individual small-businessperson who provides that role. We do not take a view on the questionnaire itself, I have to say, but what is now in place through ACAS seems to meet many of the requirements of that questionnaire.

Ultimately, as Dr Purton says, the objective should be trying to keep cases out of court, where possible, and trying to seek resolution before it gets to that stage. There is always a balance here between businesses wanting clarity, which a formal questionnaire procedure might give, but also flexibility to deal with issues as they come up in the most appropriate way. Our members, especially smaller businesses without that head office HR function, can struggle and be intimidated by a questionnaire process that can take time and can be seen as immediately making the issue bureaucratic. We are pleased the ACAS guidance is in place to replace that. 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.

**George Selvanera:** From the perspective of the Business Disability Forum, the point Mark from Barclays has made is something that makes perfect sense from our perspective, which is that good employers are always committed to a best-practice approach, which recognises the challenges that claimants who have a disability—and, indeed, some of the other protected characteristics—face. 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, and can help clarify, through a process of questions and answers, both for the employer and for the employee, the nature of what has gone on. It helps with that discovery process and, in and of itself, can support conciliation between those parties. There is value to having those sorts of processes in place.

**The Chairman:** We are very well aware of how the costs of going to court have gone up. We have had many, many submissions on that. We are on top of that and we understand the difficulties that face both employers and employees.

**Q73 Baroness Campbell of Surbiton:** Many witnesses have cited problems faced by those with hidden disabilities. When accessing their rights, they are told, “You are not disabled enough. How disabled are you?”. Those with mental-health conditions say the reasonable adjustments for their mental health are simply not understood, that they are either frightening or people just do not understand. I would like to know from all of you how businesses and service providers are responding to that challenge. How effective is the sort of support available to businesses, large and small, from Government and the Equality and Human Rights Commission? I would like to learn more about how you feel about the whole issue of hidden disability. Do you recognise it as a big issue? Where are you getting that information and support from, both from the Government and the Equality and Human Rights Commission? Go ahead; jump in where you want.

**Mark McLane:** If I might address the Baroness’s question of hidden disabilities, we take seriously all forms of disability and it is very difficult, as I am sure the Committee understands, to define clearly the need around disability in each workplace or in society.

As a workplace of 130,000—versus James talking about a smaller employer—we have taken multiple steps. The first is what we call a disability listening group. Regionally, around the world, because this is not only a UK-based issue we are facing as an international organisation, we are listening to our colleagues who have disabilities about what the needs within the organisation are and then sitting with colleagues and force ranking how we can start to improve the need around disability, whether it be a hidden disability or what we would consider a visible disability. That is helping us define how we get to the work.

One great example that is now in its second year is what is called our “This is Me” campaign. It began in the UK and it has now expanded to Africa, the Americas and soon to Asia. It is colleagues talking about mental health and wellness in the workplace, telling their story about how they are utilising the assets that are available today to be successful at Barclays in the workplace. That has started to take away some of the barriers this Committee was talking about earlier, by removing fear of what we are unsure about talking about. It is colleagues giving colleagues permission to ask the right questions and have what we would think of as being the right dialogue, in a sensitive way, to remove the barriers around hidden disabilities. For us, it has continued to expand our definition of need in the workplace and it enables us to put a plan in place to address those needs.

Through relationships such as with BDF, we are sharing those best practices, because it is not always about monetary investment to bring resources to bear for smaller organisations to be

able to utilise best practice such as “This is Me” or the idea of a listening group to help inform and then move forward.

**James Lowman:** There is a challenge around the perception of hidden disabilities. That is common in our sector. We produced a guide around supporting and welcoming disabled customers. Talking to our members about that, the starting point for all those conversations was about widening aisles for wheelchairs. That is where everything started off. It was about trying to explain to people that—when I say “explain”, I am not an expert on this, but learned through working with the Business Disability Forum and others—there are issues around customers who are hard of hearing or have dementia and all sorts of other issues related to this, and therefore there are training requirements for staff and so on. It is hard to keep getting those messages through, but it is an ongoing learning process for people. The process many of our members go through is exactly the same as Mark is describing but in a smaller environment. It is about trying to get members of staff talking to one another about adjustments and ways of working in a very practical way. In most convenience stores, there will be anywhere between one and five members of staff on a shift at any one time. It is about finding ways to work around and support people with disabilities. There are practical issues around how you do that, so it needs those members of staff to work closely together. This guide deals partly with that and with those issues around supporting customers.

**Q74 Baroness Campbell of Surbiton:** Dr Purton, from a union perspective, in the past there have been a lot of problems with people with hidden impairments saying they are not believed when they come for advocacy support from various unions. Is this still a problem?

**Dr Purton:**<sup>22</sup> We are in a phase where some organisations are doing well. I am sure Barclays is an excellent example and that the members of the BDF are in the vanguard, but they are in the minority, in my view, certainly in terms of the information that disabled trade union members give us through our representative structures. It is a very timely question. I am collecting examples from our members at the moment to publish a TUC guide, which will be entitled, “You do not look disabled, do you?”. That will be out in the next few months, I hope.

That reflects the real truth behind the question: there is a massive popular ignorance, which obviously feeds into all workplaces, about what a disabled person is. We could have our discussions—and I will say what I think in a moment—about what the Government and the EHRC could be doing about that, but that is at the root of it all. We have a very stereotyped view of what disability is. The mental-health angle is the sharp end, if you like. Certainly in terms of numbers, it is probably the biggest invisible disability. We have come across so many examples, particularly in the present stressed economic circumstances, particularly in the public sector, where people are being asked to do several people’s jobs now because of job cuts. The degree of stress in those sectors is enormous, leading to depression, leading to

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<sup>22</sup> Subsequently Dr Purton wrote to say: “I misheard Q73 from Baroness Campbell and thought she was asking about people not being believed by employers, she was in fact asking about unions. I would have said that while there may still be cases, these are increasingly rare and that most unions are now much better at representing disabled members with any kind of impairment. I have gathered case studies of many such examples, where the manager has failed to accept that someone is disabled because it is not visible, and the union has had to intervene to persuade them otherwise, or to secure medical or occupational health evidence to confirm that the worker is covered by the Equality Act.”

mental illness, leading to people losing their jobs and never getting back in again, because of the stigma associated with mental illness.

There is a massive challenge there, which is down to a lot of different factors. It has always been there, of course; it has just got worse at the moment. How we deal with that is a responsibility for employers, which comes down to training, essentially. Here, we have argued countless times—I have been doing this job for 18 years, and I seem to have made the same argument every year—that it is about training. It is about not just the board of the organisation adopting a disability-friendly policy; it is about providing regular training for everybody who has to administer that policy at all management levels, in particular, within the organisation. We have come across so many examples where it is at line-management level that an excellent policy fails to work. In small businesses without that structure, it is down to the awareness, understanding and support available to the business owner and the manager to be able to carry that out.

That is the first question. The second question is about people being able to respond in the workplace—colleagues and managers—to issues like mental health. We have picked up some very good examples where unions have worked with the employer; they have developed a mental-health first-aid scheme; they have jointly trained managers and workers to support each other, identify early symptoms and, obviously in a completely non-judgmental way, point them in the direction of support that will keep them in work through early intervention, rather than causing the cumulative crisis. In mental health, the solutions are there, if employers could be persuaded to take them through. We are working through our structures to try and make that happen.

Finally, in terms of what could be done and Government action, words need to be turned into deeds, frankly. That is the shorthand slogan to deal with that. One of those deeds could be reinforcing the Equality and Human Rights Commission instead of reducing it, because the loss of the previous Disability Rights Commission helpline was a major blow. It was used by large numbers of people. You have heard all about that, yes. The loss of that and its replacement with a non-expert advice service was a major blow in terms of providing an ability for early resolution of these problems. If we all share the same objective of wanting disabled people to get into work and wanting disabled people to stay in work when they get there, support for employers to know what to do and support for the individual to know how to access their rights are equally important.

Unfortunately, we do not have enough trade unionists these days to be everywhere. We try to do that where we can, but it is a challenge for the Government to take that on and put the resources in to make it happen. It can happen, and we have excellent examples where the employer knows how to do it, but so many employers do not.

**Baroness Campbell of Surbiton:** Mr Selvanera, I have some scepticism about the EHRC's, or perhaps the Government's, Disability Confident project, because, when it first came out and I met the Minister, he said it was his first big idea, coming into Government. I remember saying to him, "Is that not the Employers Forum on Disability? Have they not been doing it for 10 years? Perhaps you should go and get a bit of advice". I am not sure he was very pleased with my cheeky response. I would like to know whether you feel it is a good idea, although some people think it is a bit old hat.

**George Selvanera:** What an interesting way to frame your question. I am one of those people who think we need to come at these issues in terms of non-visible disability in a whole raft of different ways. While I agree that training, for instance, is certainly a

component of the solution, it is much bigger than that. We are not just talking about a workplace issue; we are talking about a much bigger social issue. We are talking about how we think about and understand issues of mental health, autism, and dyslexia—a whole spectrum of different sorts of conditions.

One thing that Barclays, again, does really well is it seeks to impact its culture. It is about raising awareness within its own organisation and using its own people as its ambassadors. You have this peer-to-peer sharing of information, which helps to shift the culture. Then, of course, it is supported by training and other sorts of guidance that are provided, whether to line managers or others.

To answer your question more directly, a campaign like Disability Confident is helpful in raising awareness of the importance of recruiting people with disabilities. That has largely been its focus. Certainly, it is not a challenge that we have not raised directly with the relevant Ministers or the Department for Work and Pensions at various points, but 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.

That is part of what makes disability fundamentally different to the other protected characteristics: that there are these technical adjustments and “hard” adjustments that need to be made. To the extent that the Disability Confident campaign can raise awareness of the value of recruiting people with disabilities, that is a good start, but it requires so, so much more. You already know from our written submission that we think the Disability Rights Commission, for instance, made a lasting impact as it relates to the law as it was understood by employers, disabled people, service providers and others. The EHRC has been far less effective in that respect.

**The Chairman:** Is it the view of all of you or some of you that the EHRC is a step backwards? Obviously it is not deliberate, but in effect it is a step backwards from the commission that existed before.

**George Selvanera:** Yes.

**Mark McLane:** We have seen a positive interaction with the commission when we have been brought forward. We have also then taken the recommendations more broadly across the organisation, so I would not see it as a step backward. It is also about, as an employer, how you are utilising the resources today. The question that was raised by the Baroness was one of: “What is the right equation?”. There is no right equation today. As I look at all the assets that are available around disability, I would not narrow it down to saying one asset that is available, such as the Disability Confident campaign, is not the solution, but it can be a part of the solution if you are looking at it more broadly.

Barclays did step up for the Disability Confident campaign, because we saw an opportunity to bring best practice to the community. We then brought that into our own Disability Confident campaign within our branch network and invited non-profit organisations, and colleagues and customers, in to look at the work we are doing around customer and colleague, to give advice and to move Barclays agenda forward. The question is: “What is the right equation for an organisation?”. You have to pick and choose what is going to have the greatest impact. More visibility in the community, such as a campaign like Disability



Confident—or what that may evolve into—also drives greater awareness and greater education, which is what we are talking about, and that is not always sitting in a classroom. It also takes away the fear that is associated, within business or in the community, with the broader conversation of disability. I do not believe that there is one right equation, but I do believe that all the aspects that we are talking about have their point in time if utilised correctly.

**Q75 Baroness Campbell of Surbiton:** What is your direct involvement with the EHRC? You said that you find it to be a useful body. What have they done for you? What have the Romans ever done for us, so what has the EHRC done for you and your work?

**Mark McLane:** Baroness, I would have to come back to you, because I do not personally have direct involvement with the commission. It is not part of my remit, but I am happy to come back.

**Baroness Campbell of Surbiton:** That would be very useful.

**Mark McLane:** Yes, I absolutely will.

**The Chairman:** Does anyone else want to say something about their involvement with the EHRC?

**Dr Purton:** At the TUC, we have regular involvement with the Equality and Human Rights Commission, as we did with all the predecessor equality commissions. I just want to say, in case it is misinterpreted, 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, as already referred to, 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 previously. It was always going to be difficult to retain that in a merged body, but, at the beginning, they had some of the resources to do that; now, they are really struggling. They are just not able, therefore, to fulfil the full remit that we think they should be fulfilling in terms of advice to employers and advice to individuals to access their rights. They have to provide both of those roles; they are struggling with their resources to do that.

**Baroness Campbell of Surbiton:** Is it just a resources issue or is it anything else?

**George Selvanera:** It is also about the functions. There is a perceived lack of enforcement capability. The EHRC does not take or support claims. That is about functions; it is not simply about resources. The functions are less than those of the DRC. I have no doubt that you have had person after person come before this Committee to talk about the value of the DRC. It really did make a lasting impact.

**Baroness Browning:** We heard what you have said about the resources and we understand that. Could I just ask you: would you regard the EHRC as a proactive body? In your experience of dealing with them, are they proactive?

**George Selvanera:** No, not particularly.

**Baroness Browning:** Does anybody think they are proactive?

**Dr Purton:** They were, for example, with the splendid work they did on disability harassment a few years ago. That was an example of a proactive intervention, which was most welcome and very useful. The function of the EHRC has to be double-edged, does it not? It is both representing individuals for them to gain their rights and to spread awareness of those rights, but also influencing and intervening in cases, as it still does—and we very much welcome that role—and in terms of education and support. Clearly, it needs to be resourced to do it properly, because it would make a big impact.

**Q76 Lord Harrison:** Gentlemen, I would like the four of you to respond to the proposal that the duty to anticipate reasonable adjustments should be extended to employment. I cannot forbear, with the presence of Mr Jamie Lowman from the Association of Convenience Stores, to illustrate what I am thinking of. Using Dr Purton's forthcoming publication, "You do not look disabled, do you?", I have the instance of a type 1 diabetic, who was therefore taking insulin, working in a very famous convenience store chain, finding great difficulty and finally losing his employment because accommodation was not made for him to enjoy privacy when he was taking his insulin, or indeed when he was having to have timed and regular meals or snacks. I wonder whether you can put that in context in reply.

I have to tell you I am a very strong supporter of small businesses, and convenience stores are sometimes viewed as right at the other end of the small business spectrum in interest from Government and politicians. I have enormous sympathy for the world that you inhabit, but there was an example crystallised for me of where there was discrimination.

**James Lowman:** There seem to be two issues there. In that particular case, or in any case where a member of staff has a disability or an issue that needs specific support in order to deal with it, I would see the law as being pretty clear that you have to make reasonable adjustments to allow that to happen. In that case, provision should have been made to do that, as in a whole range of other cases where there are different disabilities and different issues at play. That is very different from a requirement to anticipate all eventualities in terms of employing people with disabilities.

Some of our members operate in newly built sites, which have been custom-made and would be built with many of those eventualities catered for. There are many more of our members who operate in old buildings, where space is constrained. I am not trying to go back to argue that case; it does seem particularly bad from the way you have described it there. Often, when I go into convenience stores, there is no back office. Often, the office is actually on the shop floor. There is not significant storage space. There might not be, naturally, many areas that would allow privacy.

I am not trying to argue that case, which was pretty bad, but, where we are dealing in old and space-constrained buildings, then particularly, for physical adjustments to support people with disabilities, it is one thing to make adjustments for people who are there and on the payroll, and, as we said, to listen, to adjust and to make those reasonable adjustments. First, it is the law, and, secondly, it is good practice anyway as an employer, and obviously that is transferred across to dealing with customers as well. Trying to anticipate all eventualities, or even a large number of eventualities, for businesses of that nature is incredibly hard. When people are rebuilding or refitting, yes, there can be more done at that stage, but, in those established premises, it can be extremely difficult.

**Lord Harrison:** What you hope for is the mind-set, which is open to the possible need for adjustment for an employee.

**James Lowman:** Absolutely. I talked there about physical constraints, but clearly many of the constraints are not physical. Actually, many of the constraints are about the approach and management, and management training and management understanding. There are people under pressure who may not understand or not take the time to think about the things they could do, which might not cost anything or very much, but are a practical way of helping those people. We would absolutely encourage that.

I would say as well, looking at the convenience sector, there are many people with disabilities employed in the convenience sector for whom allowance and adjustments are

made, and they are supported in doing that. We play a very important role in providing employment opportunities for all sorts of people—whether that is people who have to combine it with care arrangements, childcare, study and all those sorts of things—and included within that are people who have disabilities and who need that support. We have a proud record as well.

**Dr Purton:** When I had notice of this question, I racked my mind, went back over my records, and found that we had made a submission, as the TUC, in 2004, to the Joint Committee scrutinising the then Disability Discrimination Bill that became the revised DDA. We had made exactly this proposal, along with a number of others. It was one of those, unfortunately, that was not taken up. I checked again the thinking that had gone into that request, because I entirely take on board the total impossibility of anybody pre-emptively making adjustments for every conceivable need, because we know everybody's need is different and is unique.

We are talking about the employment situation here. If this exists already, in terms of making provision for customers and service users, there is no reason why it should not be used, in our minds, also from an employment prospect. That is not from the viewpoint of saying, "You must have 40 different facilities in your room just in case somebody applies to work for you who has a particular set of support needs", but in terms—and I think you [Mr Lowman] are absolutely right—of the attitude.

This would require employers to adopt a change of attitude. Instead of reacting to someone coming to them, either declaring an impairment or applying for a job with an impairment, they have it in mind that, "We need to make our workplace as accessible as it possibly can be". That is not just the physical access, which is crucial, of course, and which we hope most employers these days, and certainly large ones, are doing as a matter of course. It is an attitudinal issue, in making sure managers and staff are supported and trained to be able to relate to work colleagues who have particular impairments.

**Mark McLane:** I would agree with what both of my colleagues have said. It is attitudinal and it is the physical aspect of the workplace that needs to change. I absolutely agree with Peter about training. Again, it is not always formalised training. It is the approach of having open, honest dialogue in the workplace. What we are doing is about having colleague-to-colleague dialogue and being very visible. This is not about having a few pamphlets and not making it part of the actual organisational dialogue. It is a culture change that we are looking to effect, because then the anticipation of need becomes part of the employer/employee conversation. 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.

I absolutely agree that it is about education, and I do think there is opportunity between the private sector and the Government to continue to push that education and awareness further, because it also sets an expectation. There is an opportunity across industry and sector—as employers become better, it puts pressure on an industry and competitors to also continue to maintain or catch up. That is the work that the BDF is doing in assessing the workplace, assessing employers and then making it public as to who is getting it right. Even with getting it right, there is still always more to be done.

**Q77 Baroness Browning:** I declare that I am a vice-president of the National Autistic Society and Alzheimer's Society, and I hold several non-exec positions with other autism charities.

You have an even bigger challenge than you think and I would like to see how you are going to handle it. Mr McLane, you have said it needs a culture change, and I think that culture change is more than just recognising people's disabilities. That seems to be what you are indicating. Dr Purton, in your book, I am not quite sure what angle you are coming at it from, but there are quite a lot of people now on whose behalf we, as politicians, would argue, to get services and to get recognition for them because of their disability.

I know that, out there, there are a lot of people whom we in this room might regard as having a disability, who themselves want recognition of their need but do not actually want to be labelled as disabled. I am particularly thinking, for example, of the Asperger community, many of whom have argued with me that they do not have a disability, but at the same time they would need all of your help in getting into and maintaining a job. There are people with mental-health problems, and I am thinking particularly of the work done by BT in the culture change they have introduced to that company in positively going out to recruit people with mental-health problems.

How are you going to deal with this conundrum of the need to recognise disability, if only to get access to the right support for individual people, but at the same time change the culture of British industry and business to the extent that these people who want to work—who want to take their place in society—do not want to be recognised, as such, as disabled?

**George Selvanera:** If you do not mind me answering first, what you are describing comes up in so many different forms. A lot of the discussion that can happen around older employees or older customers is: "Do not call me disabled. Of course, I cannot hear properly. Of course, I cannot see properly. It is just that I happen to be older". "Okay, but you could call that a disability". "No, I am not disabled; I am just old". Of course, lots of people will not recognise, even for themselves, that they have a disability, which is exactly the point that you are making.

In some senses, it does not matter. What matters is exactly what you are describing, which is whether or not organisations themselves not only are resilient and flexible enough to accommodate that kind of difference and diversity, but have the resources, are properly equipped and have the right knowhow to ensure that each of those people, if they are employees, are productive and happy or, if they are customers, are satisfied and can generate the kind of loyalty that comes from providing excellent service.

I am not taking away at all from the challenge. A large part, I guess, of what an organisation like the Business Disability Forum seeks to do is to bring those organisations together to help with exactly the stuff that Mark was describing at Barclays: to share good practice, to lead from the front, to promote excellent practice toolkits that can help smaller organisations, or organisations that perhaps do not have that same history or the same kind of resources to be able to make those sorts of changes.

One thing that, in a broad sense, gives me some level of optimism, at least for the future, is that rapidly changing demographic trends are at work here in the UK, and indeed across large parts of the world. We are rapidly ageing. The workforce is rapidly ageing; the customer base is rapidly ageing. Even if those older people do not necessarily want to be called disabled, that is certainly code for many more people with disabilities being in public life with exactly the same sense of wanting to have those opportunities to participate socially and economically. I am conscious that the good businesses are those that are thinking about that and are making those sorts of adjustments, both in their own thinking

and in terms of the kind of resources, tools and knowledge that they need to have in place within their organisations to be able to make those sorts of changes.

In terms of whether or not there should be a duty to anticipate, in an employment context, those reasonable adjustments, there is a whole question about what is reasonable. One thing the UK does well is to talk at that level of principle. James is right. It would be unreasonable to expect a three-person dry cleaner, a two-person florist or whatever to have to anticipate every type of adjustment that they might need to make because they are going to be coming into contact with, potentially, a whole range of different people.

Good businesses are already anticipating, in their employment context, that they will have employees with a whole range of different kinds of requirements. We see that when people change their buildings, when they make their premises more accessible and when they allow their IT departments to enable personalisation of people's IT systems so they can accommodate their dyslexia, their visual impairment or whatever it might be. There is a level at which the change is starting. I am not sure that it is happening necessarily as fast as we would all like, but I think that change is afoot.

**Dr Purton:** From a TUC perspective, on that question, there has been much agreement on this panel, on this question anyway, I am delighted to say, that the anticipatory duty would assist with dealing with the problem that you have highlighted, which is a very genuine problem. We have known from the very beginning about so many people who would be protected by the law but refuse to accept the label. It also gives me a very convenient hook on which to hang the centrepiece of our submission to you, which is, if the Equality Act were amended to take on board the United Nations Convention definition of disability, and the change to the social model approach to disability, this would go a long way towards driving the culture change and the attitude change that would make this kind of debate superfluous, because it would be about removing barriers, whether or not somebody officially qualified as disabled or recognised themselves as disabled. I would encourage the Committee to think seriously about that suggestion as a more global approach to dealing with so many of these other issues of culture and attitude.

**The Chairman:** We take note of that.

**Q78 Baroness Jenkin of Kennington:** I am pointing at the screen, because we may have to go. I have no relevant interests to declare. This is principally to Mr Lowman, but anybody else may pitch in. This is about your recently published guidance. You mentioned the main feature of it. What prompted you to produce it, and how has it been received by your members? Has it helped service providers to meet their duty to anticipate reasonable adjustments? You particularly talked about wheelchairs, and you have obviously talked about difficulties for small shops.

**James Lowman:** A number of things prompted this. One of them was that we were working with the department for business on a project called Everybody Shops, particularly about older customers. When we came to do that work, I came to recognise that it was something that our sector could possibly do more on. We saw some examples of very good practice. In terms of the last question, the best examples I see are when people are treated just as individuals, are accommodated into a team, work within the team as individuals and are not labelled as anything. I had seen many of those good examples in our sector but wanted to try to bring those together.

We were also very conscious that there was still some confusion. There is always this balance between certainty and flexibility in terms of the law. There was some confusion

about what “reasonable” meant in this context, and the more help we felt we could give would be positive. Ultimately, we saw it as a commercial opportunity for our members to be better at welcoming disabled customers through training their staff but also opening themselves up to be able to employ a broader range of people who could bring their own skills to the business. That is what has prompted us to do it. We worked with the Disability Forum on the content, as they are the experts on that.

The response has been really positive from members. It is a long-term thing to try to change. Some people do not need have attitudes changed; they are already doing absolutely the right things, but to try to broaden those attitudes and that best practice will take time. The response has been very good, and we want to continue to publicise it and push it.

**The Chairman:** Are you really confident about this? Some of the saddest written evidence that we have received was from people who were trying to access small shops and found really very little support. They were almost told, “Go away”. We had a lot of stories about people who were unable to access small shops or were humiliated when trying to do so. Are you really convinced there is a change of attitude? That is not what has come through in our written evidence.

**James Lowman:** In putting this together, we consulted lots of our members who I suppose told us the opposite stories. I would like to think that the stories that were related to you, which obviously sound terrible, were in a minority of small shops. I would need to look at that evidence in more detail and share it with members, so they can see the consequences when this is not right. No, I see lots of good examples of retailers really thinking about this. Partly, they are community businesses. They are physically based in communities. Most people walk to the store; 50% of the customers come from within quarter of a mile of the store. The reputation that business has for looking after its customers is fundamentally all it has to stave off competition and to continue to survive. That is where I wanted to try to position this as an economic and business opportunity, as well as being the right thing to do. It is disappointing to hear that evidence and we would like to address that.

**Baroness Campbell of Surbiton:** As a disabled customer, I would quite like to see more disabled people serving on the shop floor. I was horrified to hear about a policy—and not an unspoken policy—whereby certain fashion shops will not employ disabled people to serve customers. I can name a few of them; I am sure we all know. Basically, the company goes out to look for young, good-looking people, and they think the disabled people either do not look good or might even frighten customers away. Is this something that you have come across? Apart from Asda and the odd Marks & Spencer, I do not see disabled people on the shop floor.

**James Lowman:** I see disabled people, perhaps some with hidden disabilities as well, working in our members’ businesses quite frequently. That particular fashion shop example I have read about myself, but I do not speak for them.

**The Chairman:** I have seen disabled people in supermarkets.

**Baroness Campbell of Surbiton:** I have seen them in supermarkets. I am thinking of fashion here.

**The Chairman:** That is a separate problem. I would like to thank you all very much for giving us insight into employment and being an employee. We take away from it that there could well be more proactive support from the Equality and Human Rights Commission, and that you still feel that it would be impossible, for practical reasons, to take anticipatory action in

relation to every single disability, but you are working on getting a change of attitude in businesses, shops and so on. Of course, the feeling we got from the written evidence is there is a long way to go on that. Is that right? Anyway, I thank you very much and wish you all the best in continuing in your work. If there is anything else you want to tell us or send to us, do please feel free to do so. Thank you very much.

Now that we have come to the end, can I express my gratitude to our signers, who have done a most interesting and clear job for the last couple of hours? Thank you very much.

*27 October 2015*

## Association of National Specialist Colleges – Written Evidence (EQD0123)

Natspec is the membership association for over 70 specialist colleges nationally working with young people with complex learning difficulties or disabilities. They provide residential and/or day provision for young people who have an Education Health and Care Plan.

Because member colleges work with disabled young people, we are well aware of the challenges they face in securing employment and appropriate accommodation. Colleges can prepare students well for living more independently and for work, but other agencies and employers must take responsibility for supporting them beyond college.

Member colleges also understand the value of employing disabled people and of themselves taking on disabled staff.

Our response therefore focuses on these two issues rather than broader aspects of the legislation, although we comment on other questions at the end of our submission.

### The experience of young people

1. Specialist colleges by their very nature are well equipped to make reasonable adjustments and to provide a range of facilities and expertise that support young people effectively in their learning. However, we do know that students who have had mainstream experiences prior to coming to college have often faced discrimination and a lack of reasonable adjustments. One student recently blogged about his school experience:

*In my comprehensive school I felt isolated. I wasn't allowed to go with my friends to hang out in our favourite place because it was muddy. School staff kept putting paper on the floor so that I wouldn't leave tracks.*

*I had this dream of becoming a museum tour guide. I signed up for GCSE history, but it was taught on the first floor and the school lift didn't work. Most of the classes were upstairs and I couldn't get to them. Instead I had to stay downstairs and have one-on-one teaching rather than be with a class.*

*I wouldn't have minded being in a mainstream school if they had just tried to make a few adjustments for me so that I could be included. I felt like an outsider and not human. I was excluded from doing PE with my friends. They promised I could go swimming, but that never happened.*

2. No matter how well equipped students are to go into work when they leave college, many of them face great challenges in securing or sustaining employment. Colleges work hard with employers to ensure that they understand both the benefits of employing disabled people and the support that is available, for example through Access to Work. Students undertake work experience, get involved in inclusive skills competitions and acquire relevant vocational skills, accredited where appropriate. While our survey of employers indicates that they are very positive about offering work experience, we also know that they really value the support that colleges offer



and find it helpful to have a named point of contact should they need it. Many colleges have good rates of students going into work when they leave, well above national averages; sadly in many instances these figures have declined two or three years' later.

3. We would suggest that while employers are increasingly aware of the Act and their responsibilities to make reasonable adjustments and provide support, they themselves often need additional support and guidance to do this effectively. They know what they **should** do, but are often not quite sure **how** to do it, and once support is withdrawn they may feel unsure about how to continue, especially if any concerns or issues arise. While colleges try to ensure that students understand their rights at work and the kind of support they need, once they have left college they may feel less certain about asking for the help they need.
4. It is not always helpful to provide too much written guidance, or to be over explicit about what constitutes a reasonable adjustment, especially as this can go out of date quite quickly. Disabled people quite rightly have increasingly higher expectations, and developments in technology open new opportunities all the time. The important thing is for support, including personnel, technology and other adaptations to working practices to be regularly reviewed by someone with appropriate expertise. Case studies that describe examples of a range of adjustments and how these can be reviewed and amended would perhaps be a more helpful approach. There is some useful information on the EHRC website, but it is quite wordy and may not be accessible to some disabled people.
5. One of the other important outcomes for students is that they are able to live with the maximum level of independence. However, experience suggests that suitable housing for many young people is not readily available. there are two key issues:
  - a) Difficulty for young people in choosing where they wish to live with local authorities insisting that they should live in their parents' home area. This type of restriction is not placed on other young people who have the freedom to choose where and with whom they live
  - b) A lack of age appropriate accommodation, so that young people are often only offered homes with much older disabled people, including in nursing homes. This reduces their options for making friends, having a social life and getting the support they need.
  - c) A general lack of suitable accommodation, so that young people who are keen to live away from their parents' home and make use of the independence skills they have developed at college find themselves back with the family because they have nowhere else to live

### **Disabled staff in colleges**

6. Specialist colleges understand the value of recruiting disabled staff into a wide range of roles, and in a small project undertaken in 2011 it was clear that they were more successful than many other educational establishments in doing this. They recognise the benefits that disabled staff bring to the organisation, and they also note the importance of having positive role models for students. They are also well placed to make reasonable adjustments and to provide appropriate support.
7. The project identified a number of factors that contributed to this success:
  - a) Make a positive commitment to employing disabled people, which requires more than adhering to a checklist of requirements. It is about creating a culture and ethos of inclusion and is a cumulative process.
  - b) Widen recruitment procedures to include notifications of vacancies to local voluntary disability organisations, Disability Employment Advisers and others, including the college's own cohort of disabled students.
  - c) Ensure that all applicants know from the outset that you welcome and support disabled employees, for example by sending out to every applicant an easy to read version of your Disability Employment Charter.
  - d) Recognise that however good your procedures are, for a variety of reasons not everyone will disclose their disability immediately. Have in place a range of procedures, formal and informal, to encourage disclosure at later stages.
  - e) Ensure that any assessment of reasonable adjustments is carried out quickly and always ask the individual member of staff. Make sure any adjustments which are in place are regularly reviewed.
  - f) Identify costs that can be covered by Access to Work funding.
  - g) Aim to create a culture where all employees feel confident that they can be open about any physical or mental difficulties they might have, knowing that appropriate support will be available if and when they require it.
8. Human Resources managers were positive about the Equality Act legislation, even though they felt that they were already doing what it required. It had made them review and amend their policies and procedures, for example stopping pre-employment health screening and changing their referencing policy, and they recognised the value of having to carry out impact assessments. However, there was recognition that legislation could be a double edged sword. An organisation needs

above all to have a real commitment to employing disabled people. When this is present, legislation serves to strengthen this commitment. However, if the commitment is not there, legislation will not automatically make a difference.

### **Oversight and enforcement**

9. It is helpful to have a Minister for Disabled people, though it is perhaps indicative of a low priority accorded to disability that the incumbent changes so frequently. It also creates a risk that other departments will assume responsibility for disability leis with that person, rather than take responsibility for managing it in their own departments. There remains a lack of joined up policy across departments, for example in the on-going difficulties of engaging health in the development of Education Health and Care plans.
10. Colleges are subject to inspection by Ofsted, and CQC if appropriate; both organisations look at equality and diversity through their inspection frameworks, which ensures that there is a helpful focus on these issues. However, there has been a great emphasis recently on the Children and Families Act in colleges; this has been positive for those with higher levels of need, but it is important to ensure that the Equality Act and duties to make reasonable adjustments do not get overlooked for those who have less significant needs.
11. We do not have any evidence about the use of enforcement mechanisms, although they are always only a last resort, and often challenging and intimidating for all but the most confident. There may be issues related to reductions in legal aid, and we would hope that this might be reviewed in due course to ensure that it has not discriminated against disabled people.
12. We do not have any specific suggestions about additional measures to improve implementation of the Equality Act. However, we would note that many disabled people continue to experience discrimination, bullying and harassment, which are not subject to legislation, on a daily basis. Whilst some of these will be reported as hate crimes and perhaps successfully prosecuted (just under 2,000 in 2013/14, an increase which may be due to better reporting though this is not clear), many of them become part of everyday life.
13. We are concerned about some of the mixed messages portrayed about disabled people, who if they are not winning medals at the Paralympics are often tarred with the brush of benefit cheats. We are pleased that Natspec member colleges have recently been involved in a number of television programmes which have shown the ordinary lives of students with learning difficulties or disabilities, but also the challenges they face beyond college to live 'ordinary' lives as young men and women making their way in the world.

Alison Boulton  
Chief executive

*4 September 2015*

## **Association of Train Operating Companies and Confederation of Passenger Transport – Oral Evidence (QQ 91-96)**

Members present

Baroness Deech (Chairman)  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### **Examination of Witnesses**

**David Sindall**, Association of Train Operating Companies, and **Simon Posner**, Chief Executive, Confederation of Passenger Transport

**Q91 The Chairman:** Good afternoon. Welcome to Mr Sindall, who is Head of Disability and Inclusion for the Association of Train Operating Companies, and Mr Posner, who is the Chief Executive of the Confederation of Passenger Transport. You heard what I said at the beginning about the transcripts and so on, so I do not need to tell you that again. We can move on to our questions.

**Q92 Baroness Campbell of Surbiton:** Train operators are required to have a disabled people's protection policy. First, I would quite like to know whether the same applies to bus operators. I would also like to know whether bus drivers and station staff receive adequate disability awareness training. From what we were hearing earlier, it seems that attitude and ability to help disabled passengers is quite low. If you could give us a good feel for the training sector, and this disabled people's protection policy and how it works, that would be good.

**Simon Posner:** The short answer to your first question is no, there is no requirement, but each bus company takes that very seriously and puts in their own requirements to do so. You were talking earlier—I listened to your previous session—about the Certificate of Professional Competence. Notwithstanding what the Government have decided they wish to put through, each bus company is signed up to that and each bus driver has to go through that. Items one and two are disability awareness training and customer awareness training. I was doing some research prior to coming here and found that 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.

You say, "Is that sufficient?". Is it ever sufficient? We will try our best and we will carry on training. We all need to do more and we all need to do better. There is no doubt, however,

that the bus industry is far better trained now than it was 10 years ago and even further back, when I used to be on the secretariat of DPTAC. The training was very poor in those days.

It is a requirement of the industry that we train our drivers and staff. We go over and above that. The drivers themselves require more training. It is not something that most companies do under sufferance. Just as a business decision, the companies do not wish to see their passengers being badly treated by staff, whether they are disabled or not, and many of our drivers want a better experience themselves. They want to know how to help. It is not just a case, as everyone on this Committee knows and I do not have to say, of physical disability and seeing people in wheelchairs. In fact, this week we will be working with a mental health action group—I must get the name right—in producing a DVD training aide to help all bus companies with that. Journey assistance cards are being put out across the industry to help people who have, if you like, non-obvious disabilities. There is a huge amount of training and a huge amount going on. I know I might sound as though I am saying that everything is fine and we are doing it. We are doing our best; we will keep doing our best. It will never be enough, but we will keep trying to do more.

I was surprised, I must say, to hear someone say that Guide Dogs thought that 43% of bus drivers had not been through that. It is not my experience of talking, as I do quite often, to Guide Dogs, the RNIB and other disability groups. Certainly many more than 43% have done so—as I say, the great majority, if not all, of bus drivers have—but it is something we have to continue to work at and do more of. We will talk to disability groups to find out what their experience is and how we can help.

**Baroness Campbell of Surbiton:** Have you been talking to a lot of disability groups? It seems that one of the major barriers to using buses is getting on them and getting into the space that is normally crowded with bicycles or pushchairs. Could you tell me how you are helping your drivers to address this issue in the absence of the law?

**Simon Posner:** I presume it is the wheelchair space you are talking about particularly.

**Baroness Campbell of Surbiton:** It is, yes.

**Simon Posner:** It is a problem. I have to say that it is possibly not as widespread as many people would have us believe. What are we doing to help? Every sign that you will see in a bus around any wheelchair space will say, “This is a space for wheelchairs. Please vacate it if they need them”. Drivers are asked to announce and say that that is the case. Sometimes some bus drivers may be a little reticent to do so. You will find now that we have put a recorded message, which is very forceful, in many buses, so they are able to press a button and say that. What we cannot do, and what certainly the bus drivers and the unions do not want us to do, is say, “You must physically move the person away from the disability space”. We cannot have drivers going out and doing that. It puts people at risk and it makes things slower. What drivers can do is call the police to do so, but we really try not to do so. What we are trying to do is to get them to be able to put the case forward better to people who are in that space. It is really about human behaviour and helping those people in doing so. We give them signs and we allow them to make an announcement as if it is not them, but really it is down to the people who are there. I am afraid it would be unreasonable to ask our drivers to forcibly hoick them out.

**Baroness Campbell of Surbiton:** Mr Sindall. Training and awareness.

**David Sindall:** I have with me, for the Committee’s own use and evidence, a pack that we produced at ATOC for training. 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. The way in which that training is delivered will vary. In some train operating companies you may not receive anything that you or I, Baroness Campbell, would recognise as disability equality training, because it is incorporated into weekly briefing sessions and so on and it is utilised in a particular way. We designed this training pack as a means of cascading best practice training down to train operators on the basis that you could utilise it in a number of ways. You can, if you so wish, use this for a day-long training session. You can, if you so wish, use it for short 20 or 15-minute inputs into training sessions as well. Our biggest challenge, to be perfectly honest, is finding suitably qualified disability equality trainers who understand the requirements of the rail industry and are able to deliver good training. For us, that is the bigger issue. One of the things we have concentrated on is delivering training resources for trainers to utilise—who are sometimes disabled and sometimes not.

**Baroness Campbell of Surbiton:** In situations where the awareness seems to be lacking—in a particular station or a particular operator—what is done to address that?

**David Sindall:** A lot of the evidence as to where additional training is needed might come from customer complaints or from some of the monitoring we do centrally as well. Let me give you an example. We have also just introduced another training resource for staff at call centres who take passenger assistance bookings. That resource is aimed at making sure that they have the relevant information that they need, and that they understood the link between what they were doing on the telephone and what happened after that information was passed to the front line. That came out of research we had done centrally that indicated that the type of information that was going to staff at the front line was sometimes unsuitable, and that we needed to improve the flow and the quality of information and provide better quality training to staff in call centres who were taking those bookings. I am happy to say that we released this training three or four months ago and the feedback we have had from staff is very good. We are hoping to see the improvements in the quality and delivery of the service to passengers in the medium term.

In terms of what can we do generally, 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 where the train operators come together, where we meet periodically, and training is a recurring item on the agenda of that group. We are always looking for ways of improving training and sharing best practice in terms of what happens with training too.

**Q93 Lord Harrison:** Gentlemen, many of our witnesses have told us about the problems with accessibility in railway stations, but even stations that ostensibly are step free are often in practice not accessible. I well remember on one occasion traveling through Crewe, which I do on a weekly basis. I was accompanied by the Deputy Prime Minister's<sup>23</sup> Mum and the lift broke down. We had considerable difficulty getting on to the traditional platform 5. When she arrived in London she gave the Deputy Prime Minister a very fierce word in his ear about how Mum had been let down. What more can we do? Given there is an obligation for railway companies to advertise that they will provide alternative transport when these instances happen, should it not be mandatory for that to be placed on notices, as we have sometimes, very traditionally, seen the lifts out of commission at Crewe station?

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<sup>23</sup> John Prescott MP, now Lord Prescott

**David Sindall:** In terms of station access, it is the case that as you put new facilities in, such as lifts, they occasionally do fail. We have a system in the rail network whereby we can record that centrally and make sure that the National Rail Enquiries website records the fact that lifts are out of service. More importantly, we can tell passengers, particularly those who have booked assistance, when changes are taking place with their journey, or staff at the front line will plan those changes at the time when they know somebody is coming.

We also have a facility on the National Rail Enquiries website called Stations Made Easy, which shows station accessibility for all 2,500-plus stations on the rail network and level-access routes within stations. We are just at the point where, after eight years, we are replacing the current providers of the access auditing for Stations Made Easy. We are refreshing what we have done there and what we will do in the future. We are trying to make the information that we have more reliable and more useful.

As we go forward, we need to get better at utilising the information and intelligence that we have about passengers to make sure that passengers who use particular stations have better information. One of the things that we are particularly keen to explore within the new rendition of Stations Made Easy is the idea of passenger comments against each station page. For example, Baroness Campbell might say about Surbiton station, “I am a wheelchair user. I use this particular entrance”. Another wheelchair user might say, “Well, I use a different approach to get into the station”. We are trying to move the information into a much more democratic flow.

**Lord Harrison:** Do you keep numbers of people for whom you provide alternative services? The problem often is the disabled traveller simply does not know that he or she—

**David Sindall:** Let me come on to that, if I may. In terms of alternative transport services, we have been trying quite hard to promote the availability of assistance. I noted in the previous session Baroness Campbell’s comments about having to pre-book assistance 24 hours ahead. Some 70 million journeys a year are made by people with disabilities, according to Transport Focus. It does an annual survey of passengers who are travelling, and based upon those numbers we know that about 70 million journeys are made by people with disabilities, using the broader definition in the Equality Act. About 1.2 million journeys involve pre-booked assistance. The vast majority of journeys undertaken by people with disabilities on the rail network in GB are journeys made where assistance is not pre-booked. We might be able to explore that later in this hearing. The vast majority of disabled people using rail services do not require pre-booked assistance.

We think a bigger issue here is that people do not know that assistance is available. We have recently started producing things like this credit card, which reminds people of a central contact number they can ring to book their assistance and so on. It is a strange equation; many passengers will want assistance for some journeys but not for all journeys. We have to work with two potential groups of passengers: those who are very confident and feel that they can use rail without any assistance, and those who need a bit more help and support but need to know more about what is available. The way of doing that is by continuous campaigns. We have recently produced three online films, which are available for disabled people, that show how assistance works and so on. It is a continuous process.

**Lord Harrison:** I have very good examples of where you have acted well, where such journeys have been booked for someone who is less steady on their feet, but I did ask you the specific question of whether you keep numbers of those for whom you provide replacement services.



**David Sindall:** Yes, we do. Those numbers are monitored through the train operating companies.

**Lord Harrison:** Could you provide those to the Committee?

**David Sindall:** I will do my best to get you a figure that is as near as I can get to being accurate, yes.

**Baroness Campbell of Surbiton:** Mr Sindall, do you disaggregate the numbers of those who are using without and with? You cannot use many rail systems if you are in an electric wheelchair without a ramp, so you have to book ahead. You have no choice.

**David Sindall:** Not quite, Baroness Campbell. We have recently also developed a London turn-up-and-go network. This is a network of 36 big stations in the Greater London area where passengers do not need to pre-book their assistance. It is a trial at the moment and it is being evaluated. We are trying to demonstrate that for some journeys, it is possible to make those journeys without pre-booking assistance. You rightly point out that if you are a wheelchair user, you require a ramp to get on board a train. If you are visually impaired, you might need guiding around the station, if it is a station you do not know or if you do not have a guide dog, for example. We are trying to find different ways of supporting passengers that fit with the pattern of travel on those services. If you are using commuter trains, more often than not people do not pre-book their seats. Only about a third of trains on the rail network have available pre-booked seating.

What we are really trying to do as we move forward is deliver something that is nearer to what passengers want. The challenge ahead for us is to make sure that we can support, and better support, spontaneous travel for disabled passengers who wish to use our services.

**Q94 Baroness Browning:** I have interests as vice-president of the National Autistic Society and the Alzheimer’s Society, and I am patron of Research Autism. Could we come back to the question that came up in the earlier session, which I think you heard, about the lack of audio-visual information, especially on buses? Is it sufficient for this information to be given by the driver? I personally have some concerns about that. Should a requirement for audio-visual information be included in the Public Service Vehicles Accessibility Regulations? Do you think those regulations are properly enforced?

**Simon Posner:** The Committee will expect me to be candid, and I will be. 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 so they would have that, and to build into new vehicles. It is quite expensive. Mandating it has some difficulties, for a number of reasons. One of them, as Mr Pendlebury mentioned earlier, is that technology is moving forward so quickly. I know that when I mention the word “apps” some people say, “Oh my goodness. It is for the young people and others cannot use them”. We are doing a great deal of work with the RNIB at the moment, who have been saying to us, “We are living our life more and more with our smartphone, we are plugged into it as we move along and we do not particularly like having this system coming up that we sometimes cannot hear because we are plugged into our telephone”.<sup>24</sup> We have worked very hard with them to come up with something. As an industry, we need to do something that is better than the driver just announcing where you are going to be. It works fine when it works, but it is not the way

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<sup>24</sup> See however the subsequent exchange of correspondence between the RNIB and Confederation of Passenger Transport (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/25044.pdf>)

forward. We just cannot see that everyone is going to be able to afford the current technology.

We have just been through six months of a trial in Leeds, whereby you have an app on your telephone that not only tells you once you are on the bus what the next stop is but tells you how long before the bus comes along. We are trying to get it so that it can also alert the driver that somebody is going to be there who needs it. The next stage, which we are now trialling, is that that can be plugged into a monitor. For people who cannot use or do not wish to use their smartphone, the equivalent of the audio-visual system that you see in London will be able to take place. That is a very long-winded way of saying to you that it is not ideal for drivers to be able to announce it, but it does still work. Stagecoach, one of our largest members, has just come into an agreement with the RNIB on a number of things they will do to help blind and partially-sighted people, announcement by drivers being one of them, but we do need to find a more modern and cost-effective way of providing audio-visual than that exists at the moment, because it is not something we can see being run out across the industry.

**Baroness Browning:** What about including it in regulation?

**Simon Posner:** I am very concerned about mandating it, because things move on. If you mandate it, you tend to put a lot of investment into something and then something else comes along that is better. You can sometimes be straitjacketed by that. Yes, we need to look at a regulation that makes it a requirement going forward on new vehicles to have something that will improve audio-visual for people who need it, but you need to be very careful, with things moving so quickly and people having so many different needs, about straitjacketing what you do.

**The Chairman:** In the here and now, people need to know where to get off. If you say they should have apps, you are basically pushing the expense on to the user. These phones are very expensive. You said it is expensive for the bus companies to provide audio-visual, but you cannot just push that expense on to the individual user. I cannot imagine how a visually-impaired person would manage that anyway.

**Baroness Jenkin of Kennington:** Visually-impaired people do use smartphones.

**Simon Posner:** Yes, many do. It is very difficult to generalise on this, but certainly the people we are dealing with in RNIB would tell us the great majority of their members now have smartphones and use them. We do not wish to push the expense on to them. We want to have something that people want to use. Putting this app technology in and finding that it works means that the next stage, which is what we are now doing, is fitting monitors to the buses for people who do not have the phones or are not able to use them. That then helps everybody. It will try to recreate the system in London, which is very expensive at the moment. We are not trying to push it back on to them; we are trying to make it affordable and easier for all. Certainly, the RNIB tell me that the great majority of their members now live their lives on smartphones.

**David Sindall:** Could I just add a comment here that might be helpful for Baroness Browning? By 2020, all trains have to meet rail vehicle access requirements, and that will include having on-board information available for passengers, through passenger information systems. We are at the point where about two-thirds of trains at the moment have this facility available. All trains should have it by 2020. The difficulty we have, and one of the weaknesses of the Equality Act at times, is that it does not look at the integration between transport modes. When a passenger who has been reliant upon that information

on the train gets off and continues their journey, say, by bus, they still need the same support. It is important that we recognise that rail is one part of a whole sequence of travelling; it does not exist in its own right.

**Q95 Lord Foster of Bishop Auckland:** I have no interests to declare. The deadlines for buses to meet the Public Service Vehicles Accessibility Regulations are 1 January 2016 for single-decker vehicles and 1 January 2017 for double-deckers. Will these deadlines be met, and will access be adequate for larger, more modern wheelchairs and mobility scooters?

**Simon Posner:** The very short answer is yes, they will be met. Government Ministers asked us three or four years ago whether we would like an extension on that deadline. It was a very firm answer: no. The industry is very committed towards meeting it, and it will be met. The issue of mobility scooters and larger wheelchairs is a very difficult one. Certainly the spaces will be there. We understand that in many cases wheelchairs are getting larger, and we also understand very much the importance of mobility scooters. I know everyone who comes in here waves this code. The lady was speaking earlier as if we did not want mobility scooters. There is, in fact, a code that has been produced by us at the CPT and by the industry to try to ensure that mobility scooters that are used can get on to all the vehicles. The trouble is that there is no law at the moment for the size that a mobility scooter needs to be. If a company comes up tomorrow with one that is double the size the size of a previous one, no, there will not be the space there on buses for them. It is very difficult; you have to balance the need to take seats out and the amount of weight that the vehicle will have. Going forward, with the regulations as they stand, buses will certainly take what they call class 2 scooters and some class 3. We need to work—and we are working, I hope—very closely with people who have these scooters to see whether they can use them on the buses.

I am sorry if this is going to be a long answer, but it is quite important that we mention this part. It can happen that you can turn up on your scooter and the driver will go, “No, sorry, that is not going on. That is not the right size”. Sometimes drivers will look at them and say, “Yes, I think that is all right”. We need to work with people who use the scooters continually so there is never that confusion when they get there. As part of this code, which is something that we are doing with users of scooters, we will talk to them and speak about how they need to manoeuvre the scooter. We as an industry will look and say, “Yes, that is suitable for the vehicle”, and then a card, a little like a credit card, will be given to the user that says, “This scooter works on your buses”, so there is never any doubt of a driver saying, “That is not getting on here”.

The problem is that as they get larger—once a bus is built it is built, and it has a life of between eight and 12 years, typically—we are not going to be able to keep up with the speed at which new scooters come along. We would really like to see some sort of regulation and/or guidelines so that we know what size can be built. I am sorry if that is a very long answer to your question.

**The Chairman:** Do we not need size regulation in relation to baby buggies, which seem to me to have got larger and larger over the years? We are not discussing the Paulley case, but it has struck me simply as a commuter that baby buggies are about twice the size they were when I used one.

**Simon Posner:** The one I bought eight years ago cost more than my car.

**The Chairman:** Yes. There really is an anti-social problem there.

**Q96 Lord Faulkner of Worcester:** This question is for ATOC and Mr Sindall. I remind him of my interest with Great Western Railway. A lot of effort has been made to raise the level of platforms in order to align part of the platform with the door to allow wheelchairs to get on and off without need for a ramp. Can you give us any indication as to whether that programme is continuing and whether you see a future for that?

**David Sindall:** It is continuing. The Thameslink service will be utilising platform humps, as they are called. They were called Harrington humps—they are now called platform humps, which is easier—because the first station to have them was Harrington station, up in the Lake District. They are being utilised. There is a limit to how you can use them, though, because—again, it is a technical answer, but it is one that is worth understanding—they only work where you have the same rolling stock serving the same platforms all the time. If you have different types of rolling stock serving the same platforms, you need to have a number of different humps along the platform, and that means you create two problems: a tripping hazard on the platform for passengers who are not using the humps; and the problem of passengers not being sure, depending on which train is coming into the platform, where they need to position themselves to get on.

In the long term—I do a lot of work at European level; I am the Community of European Railway spokesman on the committee monitoring European regulation—the answer is automatic boarding ramps. Sadly, automatic boarding ramps are a good 30 or 40 years away for trains, and for them to be utilised in GB would mean raising all the platform heights, dealing with curved platforms and so on. Humps do offer a solution in certain circumstances. The Welsh Government have put a lot of money into funding them. Colleagues in Scotland are also utilising them. They enable stations where there may not be staff to give more autonomous access to rail, and enable people to get on board.

**The Chairman:** Thank you both very much for your evidence. If there is anything else you would like to send us, please do. I hope you will continue doing all you can to help the disabled get the access that they so very much need on the buses and trains that you are dealing with. Thank you very much indeed.

*3 November 2015*

## **Association of Train Operating Companies – Supplementary Written Evidence (EQD0174)**

Further to the evidence session I attended on 3rd November 2015, I thought it would be helpful if I submitted the following information to assist the Committee's enquiry into the working of the Equality Act. Please feel free to seek clarification concerning any of the points that follow should the need arise.

### The legal framework around rail accessibility

Whilst the Disability Discrimination Act 2005 extended the requirements of the Disability Discrimination Act 1995 to rail both the 2005 legislation and the Equality Act failed to appreciate the complex regulatory framework that applies to the sector.

The Railways Act (1993) obligates rail operators and station facilities operators to document their policies and practices in respect of disabled passengers. Operators must have a Disabled Persons Protection Policy (DPPP – and referred to as 'D triple P' in the parlance of the industry) in place as a condition of their licence to operate. The DPPP details policy and practice information around areas such as passenger assistance, staff training and so forth. DPPPs are regulated by the Office for Road and Rail Regulator and Operators must submit DPPPs for review on an annual basis.

The Disability Discrimination Act 2005 established a deadline by which all rolling stock must be accessible. This was set as 1st January 2020. There is no deadline for station accessibility. The initial regulations around rail vehicle accessibility, the Rail Vehicle Access Regulations (RVAR), were produced as part of the regulatory framework in relation to Disability Discrimination Act 2005. Concurrently design standards for station accessibility were initially established by Department for Transport through a Stations Code of Practice.

In 2007 the UK regulations were superseded and replaced by pan European legislation in the form of the Technical Standard on Interoperability for Passengers with Reduced Mobility (commonly referred to as the PRM TSI). Both station design standards and rolling stock standards have incorporated PRM TSI. At a European level the GB 2020 deadline is unique, no other member state has established this arrangement through legislation.

### Rail use by passengers with disabilities.

There are a number of sources of data that can be used to assess the numbers of journeys made by passengers with disabilities.

Passenger Focus undertakes twice yearly surveys amongst rail passengers (the National Passenger Survey) and disabled passengers are asked to self-declare. Estimates from these surveys indicate that there are approximately 70 million journeys per annum journeys made by passengers with disabilities each year.

Data is also available from journeys made by Disabled Persons Railcard (DPRC) holders. DPRC is a restricted product aimed at those disabled passengers who face the greatest difficulty when travelling. In 2005 there were approximately 1.5m journeys made by DPRC holders. Latest data from DPRC indicates that there are now 5.5m journeys per annum made by the same group of passengers. This suggests that more disabled passengers are using rail and that there is growing confidence that the rail network will successfully support passengers to make journeys.

Finally data is also available through the Passenger Assist booking system. This indicates that there are currently approximately 1.2m journeys each year where assistance is pre-booked.

#### Access to rail stations.

There are 2516 stations on the GB rail network. Approximately 50% of stations are accessible. The rail sector defines accessibility as meaning that there is level access between all platforms from at least one principle entrance. This does not mean that there is level access between all platforms. However passengers should be able to navigate barrier free routes at stations even if this route is not the same direct route that a non-disabled passenger would take.

Since 2007 the Department for Transport (DfT) have invested £600 m in improving access to stations via the Railways for All programme. This has resulted in an additional 200 stations being provided with level access. A further 1200 stations have had work undertaken to address smaller minor projects, for example, the provision of accessible toilets. In addition major station refurbishments, such as those undertaken at Birmingham New Street, have seen projects delivered in line with PRM TSI requirements. PRM TSI applies to all works undertaken in passenger facing areas of the station.

Funding for Railways for All is not guaranteed for the future and extends to the end of the current Network Rail funding period in 2018. It is essential that this budget continues.

#### Rolling Stock

As mentioned earlier there is a deadline by which all GB rolling stock has to be accessible. This is 1st January 2020.

Fleet in GB is not owned by Train Operators but leased from rolling stock companies (ROSCOs). The DfT have been working with ROSCOs in the run up to the 2020 deadline. They have adopted a targeted compliance strategy which focuses on the key requirements for existing trains.

New trains have to comply with the rolling stock requirements contained within the PRM TSI. In addition any refurbishment work which takes place on trains also has to comply with PRM TSI. The 2020 deadline established in 2005 worked on a number of key assumptions, including the replacement of existing rolling stock happening at a quicker rate. However in some instances delays have occurred as regard to the procurement of new fleet. For example the replacement of the current HST units operating on the East Coast mainline and

West Country network is several years behind schedule. New units are due to be placed in service in 2018. We estimate that approximately 97% of fleet will meet the Equality Act deadline and will be accessible by 1st January 2020. The remaining non-compliant units will be brought up to accessibility standards as soon after this date as possible.

The point was raised at our hearing regarding audio visual information. Approximately 63% of trains currently have electronic Passenger Information Systems installed and on-board audio announcements. As I mentioned during questioning the challenge remains in relation to other transport modes. There is a danger that on an individual mode level the quality of provision in rail will outstrip that in connecting transport modes. This is a matter of concern as few passengers start their journeys in rail stations but instead are reliant on good access to the pedestrian environment and other transport modes as part of their overall journey.

### Franchising

We are discussing with the DfT how their responsibilities under the Public Sector Equality Duty can be better addressed through the franchising process. Currently accessibility matters are referenced in the franchise bidding process but not scored. Discussions with Franchise bidders have indicated that they are not adverse to Equality Act obligations being referenced in the Franchise bidding process. Problems arise when contracts are let and then retrospectively additional expectations are placed upon Franchise holders concerning the duties that they are expected to perform.

The franchising process determines all aspects of the operational delivery of rail services, including notice periods for Passenger Assistance. We have seen in recent franchises, for example for C2C, the lowering of the advance notification period for assistance, from 24 hours down to 4 hours.

### Assistance

The vast majority of people with disabilities do not pre-book assistance when using rail. The current recommendation for advance booking is based upon pre-agreed franchise conditions and these are subject to the franchise bidding and negotiation process. A number of operators have accepted shorter booking horizons as part of new franchise arrangements. For example C2C now operate on a 4 hour advance booking period whilst London Overground operate their network on a turn up and go basis.

The ability to pre-book assistance fits with Operators obligations to provide auxiliary aids and services in line with the requirements of the Equality Act. On average those who book assistance make their requests 15 days ahead of their journey. Pre-booking is not insisted upon. Pre-booking enables:

- ☐ Notification messages to be sent to station and on-train staff in advance of the journey.
- ☐ Staff to be deployed at unstaffed stations or alternative arrangements to be made.
- ☐ Taxis or other alternative transport to be booked if either the departure or destination station is not accessible or is unstaffed.
- ☐ Journey logic to be checked to ensure that a passenger journey can be completed.

ATOC and our members recognise that there is an increasing demand from passengers who need assistance to be able to travel more spontaneously. For this to happen requires

- ☐ The departure and arrival station, and any intermediate stations where passengers are changing, are staffed and have staff available at the time when a passenger is making their journey (less than 40% of stations meet this requirement at all times).
- ☐ That departure and arrival stations, and intermediate stations are accessible with level access between a station entrance and all platforms (just over 50% of stations meet this requirement).
- ☐ If the passenger is a wheelchair user that the wheelchair space is available for the whole length of their journey.
- ☐ That receiving stations can be advised of the passenger's presence on board the service so that assistance can be delivered (if needed) at the next stage of their journey
- ☐ If on board assistance is required that the train is staffed (a third of trains have no staff available).
- ☐ If the passenger is not able to join a particular train or service that service frequency is such that the wait will not be too long (possibly a subjective judgement).

Further improvements to the technology that supports the Passenger Assistance booking system have enabled some of the above factors to be better addressed. For example we are in the process of rolling out a Staff App that enables station and train staff to check the availability of the wheelchair space for the entire route of a journey. Other aspects though are less easy to address. For example the lack of available accessible taxis, due to the absence of national taxi licensing requirements that all local authorities ensure the availability of accessible taxis, means that alternative passenger transport is not always easy to procure at short notice.

Despite the above we remain committed to exploring ways in which we can support as many disabled passengers as possible to utilise rail as effectively as possible. As mentioned in the hearing we continue to explore ways in which we can deliver better options for disabled passengers, such as the current London Turn Up and Go trial. There is, however, a much bigger challenge of ensuring that passengers understand the assistance that is available and are better able to take advantage of this.

### The European Dimension

Despite the many challenges, not least of which is the fact that our station infrastructure is predominantly Victorian, in 2012 GB rail was assessed as being the most accessible in Europe by the European Commission. A number of factors contributed to this assessment.

- ☐ The Access for All programme is the largest programme of its kind in the EU and is delivered to consistently high standards.
- ☐ The 2020 deadline for rolling stock access is not replicated elsewhere.
- ☐ Passenger Assistance is available at all stations across the GB network (many EU railway undertakings limit assistance to High Speed lines or to larger stations).
- ☐ Innovations, such as Stations Made Easy, provide high quality information to passengers about station access.



This does not mean that we are complacent or not committed to making further improvements. There is a growing expectation amongst disabled passengers and disability advocacy organisations that the positive progress delivered so far will continue in the future.

I trust that the Committee finds the above information helpful and I will be happy to clarify any of the points covered above in more detail if necessary.

Yours sincerely  
David Sindall  
Head of Disability & Inclusion  
Association of Train Operating Companies

*10 November 2015*

## **Association of Train Operating Companies – Supplementary Written Evidence (EQD0179)**

### **Select Committee on the Equality Act 2010 and Disability - additional information taxi bookings**

Further to the points raised by Lord Harrison of Chester I have now been able to make more enquiries with colleagues at Train Operating Companies.

Whilst the Passenger Assist booking system records taxi requests not all such requests are included in respect of the provision of alternative transport provision for disabled passengers. For example, taxi booking information for passengers who do not pre-book is not included.

As might be expected the number of bookings varies between operators and this, in part, reflects the accessibility and staffing levels across a particular operator's franchise. Thus a low number of bookings does not necessarily mean that Operators are not providing alternative transport facilities but rather reflects the accessibility of stations served by their services. In addition it is worth noting that not all stations have access to accessible taxis. This is a matter of particular concern for Operators and is a result of the fact that taxi license regulations have yet to be amended so that all local authorities are obligated to ensure that taxi fleet is accessible. This means that train operators often have to source taxis from some considerable distance away and thus incur additional costs.

I requested information from all Operators. Unfortunately some do not record taxis booked for disabled passengers separately to their general taxi records. However, based upon the response I have received there is clearly considerable variation between the numbers of taxis provided for disabled passengers. Thus a franchise such as the First Great Western network, which covers a large area and includes many inaccessible stations, will book approximately 800 taxis each year for disabled passengers. At the other end of the spectrum is the C2C network whereby taxis are only very rarely booked for disabled passengers. Again this reflects staffing levels and the accessibility of the local station network. However, on average each Operators book 280 taxis per annum for disabled passengers as alternative transport.

I trust that this information is helpful and have copied my response to Lord Harrison of Chester as a matter of course.

Best wishes

David Sindall  
Head of Disability & Inclusion  
Association of Train Operating Companies.

*23 November 2015*

## **Attitude is Everything – Written Evidence (EQD0146)**

Evidence submitted on behalf of Attitude is Everything, written by:

**Jacob Adams** - Research and Campaigns Manager

### **Introduction**

Attitude is Everything improves Deaf and disabled people's access to live music by working in partnership with audiences, artists and the music industry. Having begun as a pilot project in 2000, we are now a fully independent charity and part of Arts Council England's National Portfolio of Organisations. All of our guidance is informed by the feedback provided by hundreds of Deaf and disabled mystery shoppers who attend gigs and festivals across the UK on our behalf on a continuous basis.

We encourage events producers to implement best practice reasonable adjustments in order to provide a fair and equal service to their Deaf and disabled customers using a Charter of Best Practice with Bronze, Silver and Gold awards. The ethos of the Charter is that Deaf and disabled people should be as independent as they want to be at live music events and over 100 venues and festivals have signed up to date. This Charter was originally created in response to the lack of practical guidance on how the music industry should implement the then Disability Discrimination Act 1995. From the outset, our organisation sought to formulate best practice approaches to meeting legal obligations based on the lived experience and opinions of Deaf and disabled people.

We also:

- deliver event industry-specific Disability Equality Training, and have trained over 4500 people.
- provide a consultancy service for large infrastructure projects and commercial festivals.
- recruit Deaf and disabled volunteers for Glastonbury, Latitude, Reading and Leeds festivals.
- produce 'Club Attitude' on a yearly basis to showcase best practice within a music venue.
- work with a variety of industry umbrella bodies to influence venues and festivals across the UK.

- produce a State of Access Report every two years highlighting current trends and issues within the music industry and setting out objectives for positive change.

## **Summary**

We have focussed our answers to address specific issues relating to the live music and outdoor arts sector, to reflect our organisation's expertise. The following points summarise the contents of our submission:

## **Context**

- 88% of disabled people questioned in a ticketing survey felt they had been discriminated against at least once when buying tickets to live music. 47% stated that they had considered legal action.
- However, there is a lack of case law related to accessing live music and disability discrimination.
- Customer complaints rarely reference Equality Act 2010 terminology.
- Music venues and festivals across the UK are improving with regards to disability awareness and implementing reasonable adjustments. However, significant numbers of service providers in this sector are still not meeting their duties under the Equality Act 2010.

## **Issues**

- Many service providers still have a long way to go to fully understand the potential access requirements of Deaf and disabled customers in the first place, before being in a position to comprehensively consider reasonable adjustments.
- Legally, it is difficult to define what might be considered reasonable for music venues and festivals of different capacities to undertake with regards to making reasonable adjustments.
- Potential reasonable adjustments such as viewing platforms for outdoor events are often discounted after their cost is compared to the expected income from disabled people anticipated to use them, rather than being included in overall financial planning.
- Technological gaps and a lack of established best practice hampers the adoption of some forms of reasonable adjustment i.e. captioning and live subtitling in the context of live music gigs.

- When multiple service providers are involved, for example a music promotor putting on a gig in a venue, responsibility for making reasonable adjustments can be confused or ignored.
- There is a lack of explicit instruction linked to the Equality Act, as seen in guidance documents that support the ADA in the US.
- There are significant barriers in place preventing widespread legal action on behalf of private individuals against discriminating service providers.

### **Ideas**

- More could be done to ensure that reasonable adjustment compliance is subject to the same scrutiny and enforcement as health and safety.
- More work needs to be done to ensure that all industry-produced guidance covers accessibility for Deaf and disabled people and the duty to make reasonable adjustments.
- Local authorities could do more to be beacons of best practice when it comes to implementing the duties enshrined in the Equality Act in the context of music venues and outdoor events.
- Attitude is Everything strongly supports the idea of enshrining aspects of access provision in the licensing process.

### **Reasonable Adjustment**

**3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?**

### **Disabled People**

1. In a ticketing survey conducted for Attitude is Everything's State of Access Report 2014, 88% of disabled people questioned felt that they had been discriminated against at least once when buying tickets to live music. 47% of people stated that they had considered legal action. This supports our observation that an increasing number of Deaf and disabled people who attend live music venues and festivals are aware that they have rights enshrined under the Equality Act that give them recourse to the law as an option. However, from our anecdotal observations, we believe that of the 47% of people who had 'considered' legal action, few if any would have pursued this, or indeed even threatened this in communications with organisers.

2. Whilst we have been privy to some customer communications where ‘reasonable adjustments’ have been referenced, in our experience the majority of people do not cite this sort of terminology when making complaints. It could be argued that increased public awareness of this duty and thus increased use of Equality Act 2010 terminology might have an impact upon how seriously feedback and complaints are viewed by service providers, particularly in those cases where no immediate threat of legal action is presented by the customer.

### **Service Providers – Venues and Festivals**

3. Disability awareness and the resulting implementation of reasonable adjustments does appear to be improving across the live music industry, driven by the provision of guidance by organisations such as Attitude is Everything<sup>25</sup>, awareness-raising campaigns<sup>26</sup>, increasing customer demand<sup>27</sup> and industry competition. However, beyond our Charter of Best Practice relationships, the extent to which venue and festival organisers as service providers are legally bound to make reasonable adjustments appears in many cases to be either ignored or simply not understood fully.
4. Accessible parking and toilets have now entered mainstream consciousness as ‘facilities for disabled people’ and constitute two of the most readily offered examples of access facilities when we question participants of our Disability Equality Training. This is closely linked to the overwhelming bias to consider the basic requirements of wheelchair users and people with mobility impairments before other impairment groups, when access is considered at all.
5. The reality is that the live music industry, bar some notable best practice examples, is still at a very early stage in terms of mainstream music venue and festival organisers being fully aware of and responding to the access requirements of specific demographics such as people with hearing impairments, people with learning disabilities, people on the autism spectrum, people who make involuntary noise, and people with mental health conditions, amongst others.
6. In this respect, an understanding of the duty to make reasonable adjustments is inextricably linked to an understanding of the potential access requirements of specific demographics, or lack of. In our experience, industry-specific Disability Awareness Training is one of the best ways of raising awareness and linking this to practical examples that constitute potential reasonable adjustments. Addressing this persistent issue is one of our key priorities over the coming years, as comprehensive understanding and implementation of reasonable adjustments can only come when the industry fully understands its diverse audience.

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<sup>25</sup> <http://www.attitudeiseverything.org.uk/the-charter-of-best-practice>

<sup>26</sup> <http://www.attitudeiseverything.org.uk/about-us/campaigns/musicwithoutbarriers>

<sup>27</sup> <http://www.m-magazine.co.uk/news/disabled-live-music-audience-up-by-70-reveals-new-report/>

7. Even when access requirements are understood, reasonable adjustments can also be hampered by a lack of established best practice and associated technological solutions, for example when it comes to providing live subtitling and captioning in live music settings. Any situation where access facilities interact with the creative process has the potential to pose barriers to adoption, as seen in the gradual adoption of theatre captioning as a default access provision within programming, a process which has demanded significant development and awareness-raising to take into account the concerns of industry practitioners.

#### **Service Providers – Live Music Promoters**

8. Another complication within the live music industry when it comes to implementing reasonable adjustments is determining lines of responsibility when an event involves an external promoter putting on a gig in a venue. We know of many venues that implement personal assistant tickets via their own guest list allocations to cover for the fact that promoters have refused to provide such tickets themselves. We have also seen many cases where a venue offers a fluctuating policy, with personal assistant tickets provided for their own events, but not for those run by external promoters. What this highlights is the common practice of promoters effectively denying their status as service providers and pushing all responsibility on the venue. This is an issue that we as an organisation are continuing to attempt to tackle.

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

#### **Cost vs what is reasonable for venue or festival to incur**

9. There is a lack of explicit guidance for businesses regarding the boundaries between what would be considered ‘reasonable’ or ‘unreasonable’ for them in relation to the costs they might incur by making a ‘reasonable adjustment’. There is also a lack of clarity regarding the point at which a financial evaluation and decision should be made, which in our field of work impacts particularly when it comes to outdoor festivals that occur on a yearly basis.  
Guidance states:

*If an adjustment costs a significant amount, it is more likely to be reasonable for you to make it if you have substantial financial resources. Your organisation's resources must be looked at across your whole organisation, not just for the branch or section that provides the particular service.*<sup>28</sup>

10. For our purposes, it would be useful to have greater clarity about what might be legally deemed to constitute 'a substantial amount', and 'substantial financial resources' in any given context, and how this might interact with a business that has core office costs as well as budgets for the delivery of specific events, for example a yearly festival with budgets for infrastructure, programming, policing etc.

### **Customer demand vs making reasonable adjustments**

11. In our experience businesses of all sizes regularly justify not having reasonable adjustments such as viewing platforms due to cost. In the case of outdoor events, the consideration of the cost often references not only competing budgets for making the event happen in the first place, but the projected income to be gained by the number of disabled people anticipated to attend the event, and whether or not this would 'balance out' this incurred cost. A common school of thought is the cost is 'not worth it' if numbers of customers anticipated to use such facilities are low. As a result, the customers that do attend have an impaired experience unless the festival implements alternative reasonable adjustments such as viewing areas.
12. This approach to decision making is one step removed from explicitly passing on the cost of a reasonable adjustment to the disabled person, but there are obvious comparisons to be made, relying as it does on the projected income to be gained from disabled customers as a homogenous group. This approach, seen both in the festival and venue context, does not take into account the long-term impact of providing generic reasonable adjustments, which leads to an increase in attendees identifying as Deaf or disabled people, an effect we have seen at many venues and festivals we have worked with. As an organisation, we are engaged in supporting service providers to embrace their *anticipatory* duties under the Equality Act, in an attempt to counter the *reactionary* approach so often seen.

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<sup>28</sup> <http://www.equalityhumanrights.com/private-and-public-sector-guidance/organisations-and-businesses/businesses/creating-reasonable-adjustments-disabled-people/what-meant-%E2%80%98reasonable%E2%80%99>



### **Consideration stopping at cost-based decisions**

13. Across the music industry it is most common that no alternative provision will be made once a viewing platform has been deemed unaffordable or impractical. Where we have contact with a venue or festival, we present all available options for any given setting in an attempt to encourage creative approaches to topics that might otherwise be abandoned at the point of making a financial decision. This is an example of the way in which many ‘lay people’ tasked with considering access facilities on behalf of businesses will often focus on high-cost solutions, increasing the likelihood that they will be deemed ‘unreasonable’ for the business to provide. This is why as an organisation we focus on producing training and guidance that shines a light on the many and varied ways to provide reasonable adjustments.

### **Lack of case law**

14. **There is a distinct lack of case law pertaining to accessing live music and other arts venues. This is due to the very low volume of cases being raised, and the frequency with which those that are raised are settled out of court. This has led to some high-profile news pieces that the industry has been aware of, but has fallen short of providing definitive judgements that can ‘cement’ certain reasonable adjustments as default provisions to plan for in the minds of event organisers, particularly those running smaller independent venues or festivals.**

15. **A case in point concerns the provision of free tickets for the use of personal assistants. A high-profile case concerning a theatre ended just before a trial was to begin after the company, a leading entertainment group, agreed that it had discriminated against an individual by not providing a ticket for a personal assistant<sup>29</sup>. Meanwhile, a significant number of music venues and festivals across the UK continue to not advertise any PA ticket schemes. Of these, organisers will have either decided not to advertise a scheme in a misguided bid to prevent abuse of a ticketing policy they have in fact subscribed to, simply never considered this potential requirement, or in some cases taken an active decision to not offer this reasonable adjustment for financial reasons.**

### **The need for explicit instruction**

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<sup>29</sup> <http://www.disabilitynewsservice.com/theatre-discrimination-victory-will-have-wide-reaching-impact/>

16. Currently there are a range of resources that have been produced by organisations in order to make more explicit best practice solutions concerning making reasonable adjustments, such as our Charter of Best Practice, and the Accessible Stadia Guide<sup>30</sup>. We also refer service providers to key documents such as Part M that whilst useful still makes it clear that there are a range of options available:

*Approved documents are intended to provide guidance for some of the more common building situations. However, there may well be alternative ways of achieving compliance with the regulations. Thus there is no obligation to adopt any particular solution...<sup>31</sup>*

17. We believe there is an important role for organisations such as ourselves to play in assisting service providers in understanding and translating their legal obligations, and we recognise that it is not practical to have any single document setting out what does and does not constitute a reasonable adjustment in any given context.

18. However, there is an argument to be made for further industry-specific government/EHRC guidance that spans the bridge between organisations producing best practice guidance documents and the Equality Act itself. In the US there are ADA guidance documents that set out very clear instructions using language such as ‘venues must’, ‘venues are required’ and ‘venues cannot’, such as one specifically related to ticket sales. For example:

*Venues cannot charge higher prices for accessible seats than for non-accessible seats in the same seating section.<sup>32</sup>*

19. Having official and explicit guidance documents setting out minimum standards to meet could greatly assist in encouraging service providers to take their obligations more seriously, and in the general public being able to determine far more easily if a breach in the law is occurring. We feel that bodies of best practice have been built up to constitute a set of potential minimum standards that could feed into this initiative.

## **Public Sector Equality Duty**

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<sup>30</sup> <http://www.safetyatsportsgrounds.org.uk/sites/default/files/publications/accessible-stadia.pdf>

<sup>31</sup> [http://www.planningportal.gov.uk/uploads/br/BR\\_PDF\\_AD\\_M2\\_2015.pdf](http://www.planningportal.gov.uk/uploads/br/BR_PDF_AD_M2_2015.pdf)

<sup>32</sup> [http://www.ada.gov/ticketing\\_2010.htm](http://www.ada.gov/ticketing_2010.htm)

**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?**

20. Attitude is Everything established a Local Authority Charter in April 2014 in order to fulfil the growing demand for advice and guidance on how to integrate access and disability awareness across the scope of events and venues that are run, managed by or permitted by Local Authorities across the UK. We also firmly believe that local authorities should be leading by example in this field. The launch of this Charter and the subsequent engagement with a variety of Local Authorities has revealed an incredibly diverse picture when it comes to both the administration of local cultural events, and adherence to principles and legal duties that underpin the public sector equality duty. For example, in relation to local authority events, publicised access information for prospective attendees appears to be an exception rather than the norm.
21. The inference from this is that in many cases, local authority-run events may be failing to take into account the potential access requirements of Deaf and disabled attendees, hence not advertising access information. In many cases, it appears that a lack of joint-working across departments contributes to this failure, for example officers charged with overseeing local issues relating to disabled people not linked to local authority cultural or events staff.
22. Despite the vast contrasts in funding and staffing across local authorities when it comes to the provision of cultural events and the management of local authority-owned event spaces, Attitude is Everything strongly believes that this is a widely untapped arena in which local authorities could have a substantial impact upon the accessibility and inclusion of local events. There are significant additional impacts to be made regarding wider aims to engage with a sector of society who are more likely to be socially isolated and economically worse off. Indeed, we are keenly aware that a section of the population who might identify as being Deaf or disabled people only access the arts locally, if at all.
23. Finally, we agree with points raised by other contributors regarding the weakening of the Public Sector Equality Duty in terms of the number of equality outcome objectives being demanded.

**Oversight and Enforcement**

**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?**

24. Attitude is Everything believes that the reliance on individuals to bring forward cases severely impacts enforcement of the duties set out in the Equality Act. We are of the opinion that the repeal of the Section 138 discrimination questionnaire in 2014 impacts negatively upon the available options for private individuals to access guidance and a framework with which to process complaints in preparation for a legal challenge.
25. However, we do note the very good guidance provided by Citizens Advice, the Equality Advisory Support Service and several private individuals via personal websites. We would support increased efforts to inform and empower in this regard, including the development of a simple, easy to obtain form with associated guidance. We would also strongly support any movement towards increasing capacity to assist disabled people in pursuing claims.
26. The current state of affairs means that service providers are operating with an extremely low risk of litigation due to failure to make reasonable adjustments, which accounts for the vast number of businesses that are trading whilst in breach of their legal duties.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

27. The complete lack of any official enforcement or oversight regarding the delivery of reasonable adjustments by service providers severely impacts the overall implementation of such provisions. As things stand, the majority of the active monitoring of access policies and facilities at music venues and festivals within the UK is carried out by our staff during site visits and by our volunteer mystery shoppers. Despite our ever-expanding working relationships, this still only equates to a fraction of the live music industry, which is why we continually engage in trying to raise awareness via industry umbrella groups such as Independent Venue Week<sup>33</sup> and the Association of Independent Festivals<sup>34</sup>.

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<sup>33</sup> <http://www.independentvenueweek.com/>

<sup>34</sup> <http://aiforg.com/>

28. Outdoor festivals are subject to having their sites signed-off by Health and Safety and Local Authority personnel before the public are allowed access. In the case of viewing platforms being fit for purpose as reasonable adjustments, it would be massively beneficial if these structures were subject to a rigorous signing-off process that encompassed not only health and safety but the ability for the structure to provide adequate accessible viewing and thus assist the festival organisers in meeting their duties under the Equality Act 2010. On many occasions, Attitude is Everything has witnessed viewing platforms being signed-off by Health and Safety whilst either being too low and thus failing to provide a reasonable adjustment for people requiring seated viewing, or with an overly-steep ramp that is unsafe for independent use. We would strongly support the implementation of a mandatory 'reasonable adjustment check' to sit alongside health and safety checks in this context.
29. In a similar way, we often find venues with facilities such as toilets that do not meet Part M guidance, and again a system to better ensure that these facilities are signed off and checked on a regular basis would be very beneficial. It often is the case that once an accessible toilet has been installed, no further rigorous checking is carried out. Any change to usage or fixtures and fittings can quickly render a toilet inaccessible without anyone in the venue realising. This is particularly an issue at smaller venues where there is unlikely to be a designated access officer or indeed anyone tasks to oversee this aspect of the business.
30. There is more work to be done to ensure that any industry-produced guidance fully accounts for the duties of event organisers under the Equality Act, and if needs be can access sources of funding in order to facilitate this. For example, the Purple Guide to Health, Safety and Welfare and Music and Other Events<sup>35</sup>, an event industry 'bible', currently has no section on accessibility.
31. Finally, Attitude is Everything strongly supports the idea of access information and certain provisions such as personal assistant tickets being a stipulation linked to licensing, a move towards which we have seen in Scotland with the Barred! Campaign<sup>36</sup> that led to an amendment to require a venue Access Statement being enshrined in Part 9 Section 179 of the Criminal Justice and Licensing (Scotland) Act 2010<sup>37</sup>. This is a concept that Attitude is Everything has previously campaigned for in England via a coalition called 'Beyond The Ramps', and was indeed a key recommendation in our 2011 State of Access Report<sup>38</sup>.

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<sup>35</sup> <http://www.thepurpleguide.co.uk/>

<sup>36</sup> <http://www.capability-scotland.org.uk/what-can-i-do-for-capability/policy-campaigns/current-policy-campaign-and-research-work/barred!/>

<sup>37</sup> <http://www.legislation.gov.uk/asp/2010/13/section/179?timeline=true>

<sup>38</sup> <http://www.attitudeiseverything.org.uk/resources/publications/state-of-access-report/>

32. To date no apparent action has been taken by the government to develop this idea. We feel that the Scottish example is still fairly weak in terms of what is demanded of venues, in part because of the challenge of enforcement. We understand that there is some nervousness about the implementation of access as a condition of license, with this topic provoking fears that venues might be forced to close due to an inability to make a performance space physically accessible, for example. However, we are firmly of the opinion that a licensing requirement to have comprehensive access information and accessible ticketing would be a fantastic first step in England.

*9 September 2015*

## Autistic UK – Written Evidence (EQD0170)

### House of Lords Select Committee on the Equality Act 2010 and Disability Call for Evidence - Autistic UK Response September 2015

Autistic UK submits that:

- the Equality Act does not provide autistic people with the protection against discrimination afforded to other minority groups.
- this shortcoming might best be resolved by the introduction of a tenth protected characteristic, one which protects against discrimination on the basis of neurology.
- the fact that autistic people must invoke the disability clauses of the Act in order to seek legal redress for acts of discrimination is unfair, unworkable and in itself discriminatory.
- the introduction of such a tenth protected characteristic would benefit not only autistic people but also several other minority groups which include those people with;
  - other “neurodevelopmental disorders”;
  - neuro-degenerative disorders;
  - acquired neurological differences (such as brain injury, stroke, etc.);
  - various other neurological conditions (such as epilepsy);
  - learning disabilities;
  - mental health conditionsand others which, taken together, represent a very substantial minority group.

The Disability Discrimination Act (DDA) was developed by the Conservative government of the early 1990s and was seemingly drafted with regard to those with a physical disability or with a sensory disability only. No regard was given to those with learning disabilities, mental ill-health or “neurodevelopmental disorders” such as autism. Neither was any such consideration given during the process of amending the DDA nor during the drafting of its replacement, the current Equalities Act. And yet it is the only legislation on which the learning disabled, the mentally-unwell or the neurologically different might depend for a remedy in law should they seek to argue that they have suffered discriminatory treatment. Autistic UK submits that this situation is not only unfair but is also in itself discriminatory.

To quote from our submission to the United Nations High Commission for Human Rights (2009);

*“The Equality Bill as it stands effectively destroys the Disability Equality Duty under the Disability Discrimination Act (2005) which it replaces, reducing the need for involvement to one of taking into due account the views of disabled people. It also, as Disability Awareness in Action points out, is in clear contravention of the UN Treaty by replacing the self-definition of disabled people as disabled people with the relevant designated Government Cabinet minister being able to define who is covered and whom they consult with on any issue. Furthermore, this is to be done through a statutory instrument, an “Order in Council” (sometimes referred to as a “Henry VIII clause”), rather than by having to pass Acts of Parliament. This means that a bare minimum of debate is required over an extremely short time-span and only one vote is required in each House of Parliament. All of which is, of course, a further violation of the Treaty”.*

### IS AUTISM A DISABILITY?

Some autistic people are clearly disabled. Some are disabled without being obviously so. Some deny that they are disabled whilst being obviously so. Whether all autistic people are disabled or not remains a moot point and opinion amongst autistic people is diverse. Some argue that an autism diagnosis ought to be sufficient to meet the definition of disability under the Equality Act and ought to lead automatically to entitlement to reasonable adjustments. However, in practice any diagnosis is in and of itself insufficient to automatically indicate disability, the exceptions being HIV, Multiple Sclerosis and cancer. (The criteria are also vague and open to interpretation creating opportunities for inaction or procrastination.) An individual has to be able to prove that their condition has a "substantial and long-term negative effect on [their] ability to do normal daily activities". This is very much a medical model of disability approach. Some autistic people will be able to show this quite easily while for others it will be a more difficult process. There are very many members of the autistic community who do not wish to be regarded as disabled and do not so self-define whilst others consciously self-identify as disabled in reaction to the way that the current system operates.

**This much at least is clear: all autistic people are neurologically different to non-autistic people.** Affording autistic people protection in law under a tenth protected characteristic, irrespective of the effect that their neurological functioning has on their "normal daily activities" would, in the relation to discrimination, render such debate redundant. An amended Act requiring reasonable adjustment on the grounds of neurological functioning would greatly enhance the opportunities for neuro-divergent people to participate fully in and contribute to society.

Autistic UK submits that the necessity for autistic people to characterise themselves as disabled, (irrespective of the facts of the matter and irrespective of their opinions and feelings) in order to be able to seek legal redress in relation to discriminatory behaviours and practices is absurd and reflects the general lack of understanding of the nature of being autistic on the part of government and society at large.

To ask, "is autism a disability" is to ask the wrong question. Autism is not an entity. Autism is a diagnosis. To ask, "are autistic people disabled" is to miss the point.

The academic and clinical consensus (shared by Autistic UK) has for many years been that all autistic people have a "difference in neurological functioning". It is this difference that makes us what we are. And it is on the basis of neurological difference that we face discrimination.

Autistic UK submits that the vast majority (arguably all) autistic people are disadvantaged in comparison to non-autistic people irrespective of whether they are disabled or not and irrespective of whether they consider themselves to be disabled or not. Very many of us face discrimination, both intentional and unintentional, on a regular (sometimes daily) basis. Some of this is systemic and amounts to what might be termed "institutional neuro-typicalism".

We face this in relation to employment, education, the tax and benefit system, the NHS (particularly the mental health system), the criminal justice system and many other areas. To deny us redress in law is inequitable, denying us the equality offered to others by the Act. The fact that this "sin of omission" has arisen through an entirely innocent lack of



understanding is of no comfort. We urge the Select Committee to give due consideration to recommending amendments to the Act which would acknowledge our existence and give us protection against discrimination in law and to do so by recommending the introduction of a new protected characteristic relating to neurology.

**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.

This wider group (which includes autistic people) is beginning to be referred to as “**neuro-divergent**”. These people stand in an identical position in relation to the Equality Act as autistic people and are disadvantaged by the fact that they too must invoke the disability clauses of the Act in order to seek legal redress for acts of discrimination in exactly the same manner.

Autistic people comprise at least 1% of the population and possibly much more.

The exact number of people who have a “neurodevelopmental disorder” is unknown but it is clear that it is in excess of 10% of the population. Our best guess is that it is somewhere between 12% and 20%, perhaps as high as 25%. That’s a very substantial minority group and a much larger minority group than disabled people. We might well be that largest minority group that there is and yet we remain largely invisible and ignored.

The National Audit Office report, “Supporting adults with autism through adulthood” (June 2009), which was applauded by the Public Accounts Committee for its potential to make substantial savings for the public purse has been largely ignored by successive governments and remains unimplemented. **The potential savings indicated by the NAO report, if applied to the entire “neuro-divergent” population rather than the autistic population only would increase the potential savings by a factor of ten at the very least.**

Autistic UK further submits that an Act drafted seemingly with only or principally those with physical or sensory disabilities in mind must inevitably disadvantage those with a learning disability or mental health condition in exactly the same way as it does autistic and other neuro-divergent people.

To further quote from our submission to the UN High Commission for Human Rights (2009);

*“The Office for Disability Issues, in line with every other part of Government (with the limited exception of the Commission for Architecture and the Built Environment in some areas), has continued to operate a discriminatory “hierarchy of impairments” policy in practice, largely to the detriment of those at the bottom of it who are, by and large, those with fluctuating and less visible or completely invisible impairments. There is, of course, even a hierarchy within invisible impairments, with neurodiverse including autistic people near or right at the bottom of this.*

*This has been reflected in a persistent failure to involve our organisations, or to even use the right language, and then to come up with statements of supposed best practice in which we have had no involvement and which do not reflect our actual access needs, ignoring in*

*particular the need of the vast majority of neurodiverse people to have quiet, non-open plan, low arousal, environments, which avoid loud noises, bright colours and bright lights.*

*This continues to be the case despite repeated requests. See for example the current consultation on “individualised budgets” for disabled people, run by the ODI Right to Control team. The reference group once again excluded anyone from neurodiverse DPOs. It thus ends up with a very poor and unworkable “Case Study 4” on page 29 of its document: “Making Choice and Control a Reality for Disabled People”, which fails to mention any of the access issues practically all autistic people have, e.g. around the sensory environment and metabolic issues around food”.*

The changes we are calling for would not only potentially remove the disadvantages under law experienced by those with a learning disability or mental health condition but would also potentially lead to further savings to the public purse.

The duty to conduct Equality Impact Assessments has gone and such assessments are now non-mandatory. This has had the effect of weakening the duty to involve and engage with disabled people as well as reducing the number of opportunities for disabled people to be involved and to engage in matters which directly affect them. Discussions and arrangements in regard to meeting the Public Sector Equality Duty may now, it seems, be conducted behind closed doors or at least with minimal involvement of the public, disabled or otherwise. This diminution in the level of public involvement weakens the protection afforded by the Act in relation to all of the protected characteristics.

The level of governmental engagement with autistic people has been dismal.

- There has never been an autistic person or a representative of an organisation concerned with neuro-divergent people nor anyone with any particular expertise in autism or other neurodevelopmental conditions appointed by the ODI to serve on the Equality 2025 group, the independent advisory group of disabled people set up in December 2006 to advise Westminster on disability equality issues.
- The DWP funded Disability Action Alliance, convened by Disability Rights UK and supported by the ODI, has a Steering Group which has included no autistic people or representatives of autistic organisations since it was established in 2012.
- The EHRC has never appointed to its Disability Committee an autistic person nor a representative of an organisation concerned with neuro-divergent people nor anyone with any particular expertise in autism or other neurodevelopmental conditions.
- In addition the National Autism Programme Board, co-chaired by the Minister for Social Care and the Director General for Social Care and supported by the Department of Health, has included no autistic-led organisations only carers-led and service-providing organisations such as the National Autistic Society and the Autism Alliance since it was established in April 2010. (Further details are contained in Appendix II.)

Taken together these facts indicate the self-imposed barriers to governmental understanding of autistic people and goes a long way to explaining why successive governments have failed to understand us and the lives we lead (and why the Autism Act has proved to be so ineffectual). Those with learning disabilities and mental health conditions, whilst not entirely excluded, face under representation. We submit that these facts illustrate the “hierarchy of impairments” in action (and any hierarchy is, by definition, inequitable).

They indicate the barriers faced by autistic people and autistic-led organisations in seeking to represent themselves and the challenges faced to government. The situation at a national level also gives an appalling example to local government.

Autistic UK suggests that this might be addressed by attention being given to something which, whilst disability-specific, might well have the effect of strengthening the application of the Act in general terms. This is the United Nations Convention on the Rights of Persons with Disabilities (ratified by the UK on June 8<sup>th</sup>, 2009) and in particular Article 4.3 of that Convention.

Article 4.3 states that **“in....decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities....through their representative organizations”**.

The implications of this clause have been ignored by successive UK governments and little attempt has been made to abide by it. Autistic UK submits that a willingness on the part of government to abide by this clause (as it is, in theory, bound to do) is not only the key to the successful implementation of the UN Convention but also the way forward in relation to government disability policy in general terms including any consideration of the efficacy or otherwise of the Equality Act. It is also the way forward in addressing the problem of the failure of the Autism Act (and the Strategy for Adults with Autism in England) to have any positive affect whatever on the lives of the overwhelming majority of the autistic population of England over the course of five and a half years (see Appendix I).

We also submit that: The requirement for reasonable adjustments (be it in the workplace or elsewhere) has no mandatory time scale and that this opens the possibility of these adjustments being agreed to in principle but being deferred indefinitely in practice. Due to the unintentional discrimination against autistic people and others written into the Act, we have no prospect of the sort of anticipatory duty to make reasonable adjustments that are enjoyed by those with physical or sensory disabilities and that, as a result, the access issues of autistic people (and others), both to the built environment and otherwise, will in all probability remain unaddressed.

The Equality and Human Rights Commission has been unresponsive to our attempts to engage.

The EHRC has never appointed to its Disability Committee an autistic person nor a representative of an organisation representing neuro-divergent people nor anyone with expertise in neurodevelopmental conditions. The Disability Rights Commission in its dying days established a Neurodiversity and Autism Action Group. The EHRC dismissed our repeated suggestions that it preserve this group, that it build on the limited progress made or that it establish a new group with a similar remit. The EHRC was clear that it was entirely disinterested in our agenda (the agenda of autistic people and those with neurological differences) and that any engagement with it must be on the basis of furthering the pre-existing EHRC agenda. This made engagement excruciatingly difficult and progress torturous and ultimately achieved little. We have had no engagement with the EHRC since 2008 despite several attempts to re-engage.

This submission has been written under significant limitations of time and Autistic UK would welcome any opportunity to submit oral evidence or further written evidence or to

otherwise further contribute to the Select Committee’s deliberations.

### **Appendix I – The Autism Act (2009)**

The very existence of the Autism Act (2009) indicates that all is not well for the autistic population.

However, the Autism Act does little to assist autistic people other than guaranteeing an Autism Strategy and accompanying binding guidance.

The Autism Act and the “Strategy for Adults with Autism in England” (2010) have achieved little.

The Act needs to be amended to require a Children’s Strategy;

The Strategy is not the Strategy required by the Act as it does not meet “the needs of adults in England with autistic spectrum conditions by improving the provision of relevant services”;

The Strategy’s claim that it “draws on the findings of the National Audit Office report “Supporting adults with autism through adulthood” (2009) and the recommendations from the Public Accounts Committee’s report of the same title” is unfounded;

The “low-level preventative services” recommended by the NAO and predicted to result in substantial monetary savings have not been established;

The Strategy assumes that most autistic people will qualify for and benefit from local authority social services when the opposite is true;

The Strategy needs to be revised in light of the recommendations of the various NICE guidelines;

Individuals continue to wait years rather than months for a diagnostic assessment;

The Strategy does not require employers to make employment and workplaces more accessible to autistic people;

The UN Convention on the Rights of Persons with Disabilities Article 4.3 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.

The fundamental misunderstanding as to the nature of being autistic which riddle the Strategy are a direct consequence of the Department of Health and the government listening to carer-led and service-providing organisations such as the NAS and the Autism Alliance whilst failing to engage with autistic-led organisations such as Autistic UK.

Autistic UK is calling upon the Health Select Committee to launch an enquiry into these matters.

### **Appendix II - The Autistic Rights Movement UK (ARM UK) response to the consultation on the government disability strategy “Fulfilling Potential” (March 2012)**

[ARM UK, established March 2008, changed its name to Autistic UK in November 2012]

The principal concern of the Autistic Rights Movement UK (ARM UK) regarding the ODI discussion document is that there is no reference whatever to Article 4.3 of the UN Convention on the Rights of Persons with Disabilities. No reference is made to it in the appendix.

There is reference to Article 33 in the appendix and this is an important Article in terms of the implementation of the Convention. However, Article 4.3 is absolutely crucial.

We suggest that not only should Article 4.3 be mentioned in the appendix to the Strategy, it ought to be at the heart of the Strategy itself. It is this Article which is the key to the successful implementation of the entire Convention and, as such, it ought to be the keystone of any viable disability strategy.

It is the Article which guarantees the involvement of disabled people in the development, delivery and evaluation of the policies and services which directly affect them. Furthermore, it guarantees their involvement “through their representative organisations”. This should prevent the involvement of disabled people in a tokenistic manner, something which has been a standard method used by statutory sector agencies for many years to subvert the intention and spirit of various pieces of UK legislation (e.g. the Health and Social Care Act 2008, Section 11; the National Health Service Act 2006, Section 242, etc).

ARM UK has sought and received clarification on the wording of this Article from the Equality and Human Rights Commission (EHRC) legal department and their interpretation is identical to ours.

“State parties” means not only the UK government but also all government Ministries, departments and agencies (including “quangos” such as the CQC) as well as local government and its executive bodies and NHS Trusts and other Health Service bodies such as NICE, the Public Health Observatories, etc.

The meaning of “their representative organisations” is less clear but it seems to ARM UK that this almost certainly can be taken to mean Disabled Peoples Organisations or “user-led” organisations.

That is also the opinion of the EHRC. However, it is apparent that the British government and its agencies have failed to understand the import of this Article.

**To give a concrete example;**

In the drafting and in the implementation of the “Strategy for Adults with Autism in England” the government and the Department of Health have obviously and blatantly failed to abide by this Article.

The Autism Strategy says of itself (at 1.36) that, “it has been developed using the core principles of inclusivity and co-production, with extensive public consultation”.

This was not the case. There was a lengthy consultation period but this “consultation” was in fact a broad survey of opinions’ regarding autism. No proposals were submitted for public consideration.

No draft version of the published Autism Strategy was put out for public consultation.

The first year delivery plan to the Strategy (April 2nd, 2010) stated that “organisations that represent adults with autism have been invited to join the national Adult Autism Strategy Programme Board”.

This was not the case. The only voluntary sector organisation that has been invited to join the Autism Programme Board (APB) is the National Autistic Society (NAS). The NAS is not a DPO nor is it in any sense “user-led”. The NAS cannot be said to “represent adults with autism”. The NAS can only represent its members. Of the 17,400 members of the NAS less than 500 identify themselves as autistic. The overwhelming majority of NAS members are parents of autistic people.

In October 2010 the DH appointed two autistic people and two carers to sit on the APB. These people represent no-one but themselves. The general public has no clear method of contacting them.

This is the sort of tokenistic “representation” that ARM UK and other DPOs oppose and which must be addressed in the disability strategy. Quite clearly, the government and the DH have not only failed to “closely consult with and actively involve” autistic people “through their representative organizations”, they have made no serious attempt to do so.

The title of the Disability Strategy discussion paper is disturbing and reflects an implicit theme that runs through the whole document. The opportunity for disabled people to “fulfil their potential” and to “play a full role in society” sounds perilously close to “making a contribution to” society. If this Strategy is to be rights based and is to use the UN Convention as a “touchstone” then there must be an understanding on the part of government that the rights outlined in the Convention are rights and they are ours by right!

They do not apply to those who play a role in or contribute to society only. They apply to everyone.

They are not civil rights; they are human rights. The concept of respecting and meeting the rights of disabled people in order that disabled people might then be able to “make a contribution” to society (i.e. to be in employment and to pay taxes or to otherwise contribute) is to miss the point.

The irony is that if the rights of disabled people were respected and the legislation required to guarantee those rights was put into place and abided by and enforced then in all probability the end result would be that disabled people WOULD be better able to contribute to society, economically and otherwise.

The general thrust of the discussion document comes dangerously close to introducing the concept of “the deserving and the undeserving disabled person”.

**This leads to another concern;**

We already have the concept of the deserving and the undeserving disabled due to the criteria for qualifying for Disability Living Allowance.

There are those who qualify and these who do not. This creates “two-tiers” of disabled people.

The criteria are arbitrary and out-of-date. They are severely skewed in the direction of physical and sensory impairments. This reflects an outmoded, indeed antiquated, attitude towards and understanding of disability on the part of successive governments. The understanding and the attitude needs to change.

The criteria need to change.

A related concern is the “hierarchy of impairments”, something which is being increasingly recognised within the disabled community and which ought to be reflected in the Strategy. An example of this is the fact that in the “case studies” there are none which deal with autism or other neuro-developmental conditions.

To return to the first point; the ODI has issued a discussion document. We are informed that the disability strategy will be “published in the spring”. There seems to be no intention to put out the strategy in draft form for public consultation. This is inadequate.

It certainly does not constitute the close consultation with and active involvement of disabled people as called for in Article 4.3. It seems that the ODI has also failed to understand the import of Article 4.3.

The essence of 4.3 is the slogan which arose from the Madrid Declaration of March 2002; “Nothing about disabled people without disabled people”.

The values of the Madrid Declaration ought to be reflected in any UK Disability Strategy.

This response has had to be written in some haste in order to meet the deadline for submissions. Much more could have been said. ARM UK was not contacted directly by the ODI regarding the discussion document despite the ODI being aware of the existence of ARM UK. The ARM UK Committee has had little opportunity to canvas the views of members of the wider autistic community. The very existence of the Autism Act 2009 indicates that autistic people are a disadvantaged group. They are even more disadvantaged than other sub-groups of disabled people. We suggest that ARM UK ought to be given further opportunities to input into the drafting of the disability strategy and that similar opportunities ought to be given to autistic people in general. We look forward to being closely consulted with and actively involved in the drafting of the disability strategy. **ARM UK, March 9th, 2012**

*1 October 2015*

## **The Bar Council – Written Evidence (EQD0161)**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the House of Lords select committee on the Equality Act (2010) and disability.
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

### **Overview**

4. The expansion of rights intended to benefit disabled people brought into effect by the Equality Act (2010) has made all the more essential the need for readily accessible means of individual enforcement. Central to the effective assertion of those rights is the availability of specialist legal representation. Access to that representation and to the Courts and Tribunals charged with upholding individual rights is being impeded by fundamental funding obstacles. Those obstacles are serving to defeat the rights which the Act was designed to promote.

### **Introduction**

5. During the examination of witnesses on 7 July 2015, Lord McColl of Dulwich put the question: *"Is reliance on individual litigation an effective means of enforcing compliance with the Equality Act?"*
6. The Committee's enquiries have thus far revealed a significant gulf between the aspirations embodied in the Equality Act (2010) on the one hand and the practical outcomes for disabled people on the other. It seems to the Bar Council that Lord McColl's question serves to pin-point one of the areas where that gulf is most marked. It is an area on which the Bar Council is qualified to offer opinion. The Bar Council therefore proposes to concentrate its submission on the following of the Committee's primary questions (Nos. 1, 10 and 11):

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?

10. Are the current enforcement mechanisms available to private individuals (through Employment Tribunals, County Courts and, in Scotland, Sherriff 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?

**Question 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?**

7. In the Bar Council's view, embedding disability with the other eight protected characteristics has served to mask the differences between disability and those other characteristics. In the particular case of disability, the differences are at least as, if not more, important than the similarities.

8. The aim of strengthening disability discrimination law has not been consistently achieved. 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. We address this below under the headings of enforcement and legislative provision in need of clarification.

**Question 10 - Are the current enforcement mechanisms available to private individuals (through Employment Tribunals, County Courts and, in Scotland, Sherriff Courts) accessible and effective for people with disabilities, employers and providers of goods, facilities and services?**

9. In its chosen mechanisms for enforcement, the regime advanced by the Equality Act (2010) differentiates between the strategic and the personal. Certainly as recounted to your committee by the Chair of the Equality and Human Rights Commission (EHRC), the EHRC regards its enforcement role as limited to the pursuit of *strategic* litigation. Though understandable and probably commendable, by accident or design, the Act therefore leaves to the victim of infringement responsibility for enforcement at an individual level.

10. One of the most topical issues concerning Equality Act practitioners has been the potential impact of the introduction of fees in the Employment Tribunal (ET). In the very recent decision of in *R (on the application of Unison) v Lord Chancellor (ECHR intervening)*<sup>39</sup>, the Court of Appeal examined the question of whether the High Court was right to reject the argument that individuals had been prevented from pursuing claims in respect of EU-derived employment rights despite the statistics showing a dramatic fall in ET claims following the introduction of the Fees Order. Underhill LJ agreed with Elias LJ below that the statistics did not prove that any individual had been prevented from bringing a claim because of the level

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<sup>39</sup> [2015] EWCA Civ 935

of fees although it was accepted that the statistics showed that the introduction of fees had the effect of deterring a very large number of potential claimants (rather than that any individual found it *impossible* to bring a claim)<sup>40</sup>.

11. Statistical evidence of the number of claims brought since the introduction of the new fees regime was usefully summarised in this judgment at para 62 where the Court of Appeal referred to detailed Ministry of Justice (MOJ) statistics<sup>41</sup> which were submitted in evidence. We also ask the Committee to look at the MOJ's "Tribunals and Gender Recognition Certificate Statistics Quarterly January to March 2015"<sup>42</sup> as a useful background to these statistics.

12. We draw the Committee's attention to the fact that by June 2015 the latest quarterly statistics showed no significant increase in the number of claims being lodged in the ET when compared with previous quarters over the past year. Single claims in the quarter to March 2015 averaged 1,400 per month; this figure is just over the comparable figure for the entire year 2014/2015 and compares with an average monthly rate in the year before fees were introduced of just under 4,500<sup>43</sup>.

13. In relation to claims brought other than in the Employment Tribunal, we note that, in the course of its evidence, the Government Equalities Office informed the Committee that education-related disability discrimination claims to First Tier Tribunals have been consistently low, the figure cited being 135 such claims in 2012-13. The EHRC gave evidence that, in 2014, out of a total of forty-one Section 28 and Section 30 cases pursued (presumably by the EHRC as claimant), nineteen were disability-related. In the same period, out of the sixteen cases under Section 28 for which the EHRC awarded full funding, six were disability focused. In a society comprising 12 million disabled people, these figures seem surprisingly low. It is hard to believe that disability focused discrimination is so modest. The more reasonable explanation for the paucity of claims is that claims which could be brought are not being brought. The critical enquiry is to understand the reasons why claims are not being pursued.

14. It seems to the Bar Council that the coincidental impact of other measures has served to impede and will continue to impede the practicalities of enforcement. Without fundamental change in key areas, the notion of individual enforcement is largely an illusory one.

15. In a system reliant on the initiative of the injured party, the effectiveness of enforcement will necessarily depend upon three interrelated concepts:

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<sup>40</sup> As well as deciding that the 2013 Fees Order did not breach the EU principle of effectiveness, the Court of Appeal also confirmed the Fees Order 2013 was not indirectly discriminatory nor did it involve a breach of the public sector equality duty.

<sup>41</sup> The Government website where all the relevant statistics are located is at:

<https://www.gov.uk/government/collections/tribunals-statistics>

<sup>42</sup> At [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf)

<sup>43</sup> See <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-january-to-march-2015> at Annex C.

- i. The quality and aptness of the right/corresponding duty
- ii. The accessibility of the enforcement procedure
- iii. The adequacy of the eventual remedy

16. The adequacy of the remedy does not appear to be an issue. The range of remedies is sufficiently wide and flexible. By contrast, on the relatively limited case law since the Equality Act (2010) came into force, the quality and aptness of the rights and, with them, the corresponding duties created by the Act are far more controversial.

17. The concept of reasonable adjustment is proving complex and difficult to apply in a variety of contexts. At the end of this submission we set out our suggestions for resolving such obstacles. A paradigm example of that difficulty is manifest in the differing outcomes at first instance in *Paulley v First Group Plc*<sup>44</sup> and *Black v Arriva North East Limited*<sup>45</sup> (challenges to a bus driver's refusal to compel other passengers to vacate a wheelchair space if it is required by a wheelchair user). For all practical purposes, the issue in each case was the same. The reasonable adjustment contended for was identical. It might therefore be thought that the outcome would have been broadly similar. Despite these similarities of issue, two different first instance judges reached diametrically opposed conclusions and discordant assessments of the value of the claims. There is of course nothing unusual or necessarily wrong in the fact of different Judges reaching differing outcomes *per se*, but here the stark differences on the comparator question, for example, were troubling. Possible reasons for this difference could be the failure in *Black* to address the issue of the anticipatory nature of the duty towards disabled customers, instead concentrating only on the specific facts concerning the two individual incidents, and a general weaker appreciation of the meaning of discrimination as it affects disabled people (see the analysis in the article from Discrimination Law Association (DLA)).

18. In the Employment Tribunal, one difficulty with seeking to establish a failure to make reasonable adjustments is that the law has become more and more complex as it has built up over time. This means that the requirement to have specialist legal assistance is all the more important. A point to which we will return, there is a real issue as to the sufficiency of adequate legal funding and the urgency of having the best opportunity of enforcing legal rights in discrimination law despite the original intention that the Employment (then Industrial) Tribunal would be a forum for lay people to litigate.

### **Comparators**

19. Even where skilled advisers are in place, the disability provisions of the Equality Act (2010) are not always utilised to maximum benefit. One issue arises with a lack of uniformity in relation to reliance on Statutory Codes of Practice. We ask the Committee to reflect on how the way comparators are approached under the Equality Act (2010) may make it harder to claim reasonable adjustments. Comparators need to be considered in a variety of courses of action; we have focused on claims for a failure to make reasonable adjustments under Section 20 of the Equality Act. Section 20 provides in part:

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<sup>44</sup> [2014] EWCA Civ 1573

<sup>45</sup> [2013] EqLR 555

**“20 Duty to make adjustments...**

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage...”

20. There are various ways in which the duty to make reasonable adjustments arises but in each, there is a requirement for the claimant to show that they have been put “at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled”. The question in many cases is who is the appropriate comparator? What characteristics should the “persons who are not disabled” have?

21. The provision, criterion or practice (PCP) such as a policy or a decision, must place the claimant at a substantial disadvantage, “in comparison with persons who are not disabled”. For a duty to make reasonable adjustments to arise, a non-disabled person must not be at the same disadvantage.

22. In *Griffith v Secretary of State for Work and Pensions*<sup>46</sup> the Employment Appeal Tribunal considered whether the duty to make reasonable adjustments was engaged where an employer took action against a disabled employee under its attendance management policy. The claimant was absent and had been given a written warning under the attendance policy. The claimant relied upon “the operation of the attendance management policy” saying it amounted to “a requirement to attend work at a certain level in order to avoid receiving warnings and a possible dismissal.” The reasonable adjustments she sought were to disregard the disability absence (and therefore have the warning withdrawn); and secondly for the number of days’ absence that triggered the policy to be increased.

23. The Employment Appeal Tribunal in *Griffiths* emphasised that the proper comparator is “a non-disabled person absent for sickness reasons *for the same amount of time* but not for disability-related sickness. If a claimant is treated at least as well as such comparators s/he cannot be at a disadvantage let alone a ‘substantial’ disadvantage” (at paragraph [33]). People who are not disabled would similarly be affected by the attendance management policy if they took a similarly long period of time off work sick. Therefore there was no duty to make reasonable adjustments.

24. This Equality Act was intended to move law on from the status quo in *Malcolm v Lewisham LBC*<sup>47</sup> where the characteristics of the disabled person had to be added to the comparator. It may be that the stance in *Griffiths* halts that advance.

25. The Committee will be interested to see a contrary view in the Equality Act (2010) itself. Section 23(1) provides:

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<sup>46</sup> EAT/0372/13 [2014] Eq. L.R. 545

<sup>47</sup> [2008] 1 A.C. 1399

“On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.”

Section 23 is only expressly applied to direct, dual and indirect discrimination. It does not refer to reasonable adjustments (Section 20). The Committee may be interested to know that in *Foster v Cardiff University*<sup>48</sup> the EAT held that there was no incompatibility between the EU Framework Employment Equality Directive 2000/78 and the requirement in domestic legislation to establish substantial disadvantage in comparison with a person who does not have the relevant disability as a precondition to the duty to make reasonable adjustments arising. Yet the absence of a consideration of whether the comparator needed to have the same material circumstances as the claimant means the EAT could not address (as the County Court did in *Paulley*) whether the approach of the Tribunal distorted the comparative exercise.”

26. The EU Framework Directive suggests an alternative interpretation to that of the appeal tribunal in *Griffiths* (see reference in Article 5 of the Directive to term “appropriate measures”) as does the UN Convention on the Rights of Persons with Disabilities which takes a broad approach on reasonable accommodation under Article 2. The Committee may wish to consider the social model of disability espoused in the Convention and whether this emphasis on accessibility can assist UK law with providing an effecting means of enforcing Convention and Directive rights: see further Article 27 which provides that State Parties must ensure reasonable accommodation is provided to persons with disabilities and that they have the right to work on an equal basis with others. Hence the broader scope of EU and UN Materials are relevant to the development of the Equality Act.

27. The ECHR Statutory Code of Practice at [6.16] states that for section 20 purposes there is “no requirement to identify a comparator whose circumstances are the same or nearly the same as a disabled person”. The Court of Appeal will decide on what approach to take when *Griffiths* reaches it in late September. The Committee might consider whether ETs should be directed to have recourse of these Codes of Practice and wonder whether this, along with further examples, might augment their utility and give them an enhanced status in the interests of justice.

## **Funding**

28. The Bar Council’s greatest concern relates to the accessibility of the procedures for enforcement.

29. While not imposing exclusive jurisdiction, Part 9 of the Equality Act introduces the following scheme for enforcement by judicial process:

- i. Section 114 vests jurisdiction to determine claims relating to contravention of Part 3 (services and public functions), Part 4 (premises), Part 6 (education) and Part 7 (associations) to the County Court or, in Scotland, to the Sheriff.

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<sup>48</sup> [2013] Eq. L.R. 718

- ii. Section 120 vests jurisdiction to determine a complaint relating to a contravention of Part 5 (work) and a contravention of Sections 108, 111 or 112 to the Employment Tribunal.

30. The two primary venues for enforcement at the hands of an individual are thus the already over stretched and under-funded County Court and Employment Tribunal. Different practical difficulties apply to each venue.

31. In the ensuing commentary, we naturally bear in mind that the Lord Chancellor will be examining as part of the current fees review:

- i. Tribunal data on case volumes, case progression and case outcomes, and general trends in case numbers before the fees were introduced
- ii. Qualitative research on the views of court and tribunal users.
- iii. Whether patterns of use have been influenced by other changes to employment laws, (e.g. the introduction of mandatory conciliation through ACAS before a claim can be referred to the tribunals).

We respectfully invite the Committee to consider providing to the Lord Chancellor as part of that fees review, the material evidence which it has received.

32. *Paulley* and *Black* once again provide an example of the problem with enforcement through the County Court. As the Committee appreciates, public funding is not available for Equality Act complaints. It follows that a claimant must either fund the claim privately, find lawyers prepared to take on the claim under a Conditional Fee Agreement, persuade a lawyer to represent them *pro bono*, or represent themselves.

33. In *Paulley*, the monetary compensation awarded at first instance (and overturned on appeal) was £5,500.00; in *Black* the sum the Judge would have awarded had he decided in the claimant's favour was £2,850.00. While, in the former case, an additional remedy was granted (again overturned on appeal), by any standards, the monetary value of each claim was modest. It was very modest in comparison with the significance of the asserted right and the complexity of the applicable law. Indeed, the complexity of the law involved was such that, in both cases, the claimants were represented at trial by Leading and Junior Counsel.

34. In the circumstances, it is not surprising that the legal costs incurred were substantial. Putting a figure on those costs, in *Black*, the Court of Appeal was informed that, by the conclusion of the first instance trial, the claimant's solicitors' fees amounted to £270,000, the fees of Leading and Junior Counsel amounted to £248,000 and disbursements of £30,000 had been incurred. These fees included a 100 per cent success fee. Even removing the 100 percent success fee, the figures in question exceeded £260,000. It can reasonably be assumed that the defendant's costs were comparable, if not higher. Thus, to recover damages of £2,850, base legal costs amounting to more than £400,000 had seemingly been incurred.

35. *Black* was an exceptional case. There is no reason to conclude that every claim will entail comparable expenditure. But even substantially discounting the figures quoted, it is

not realistic to assume that a claimant will be able to fund legal fees of this magnitude. To secure representation, they will therefore require lawyers to take on the claim pursuant to a Conditional Fee Agreement (CFA).

36. Under the present costs regime, while a CFA protects a claimant from liability for their own legal costs should their claim fail, it does not protect them from liability for adverse costs in that event. To address that risk, the claimant would ideally obtain adverse costs insurance or risk enforcement against their assets but the Jackson reforms mean claimants can no longer recover success fees or insurance premiums, unless they can argue that qualified one way cost shifting (QOCS) protection applies (see further the submission on behalf of the Law Centres Network).

37. It seems to the Bar Council inevitable that the need for legal representation combined with the cost of proceedings is serving to deter claimants from enforcing their rights in the County Court. Just because such claims may be worth only £2,500, it surely does not mean that they should not be brought.

38. There is the further complication of Court fees. With effect from 9 March 2015, a claim issued in the County Court with an estimated value of £500 to £1,000 incurs a fee of £70. A claim with a claim value of £3,000 to £5,000 incurs a fee of £205; a claim for £6,000 to £10,000 incurs a fee of £455. For the sake of challenging the provision of a service the cost of which to the disabled claimant may have been significantly less than £100, the claimant must invest more than the value of the disputed service in order to gain access to the County Court. A court fee which may equal or even exceed the monetary value of the claim may well be a real deterrent to bringing such a claim, thus deterring valid claims.

39. These headlines require a degree of qualification. A claim for damages not exceeding £10,000 can be brought in the County Court on the Small Claims Track and, if so, as a general rule, the Court's power to make an award of costs is limited to ordering recovery of very modest fixed costs, fees and expenses. A claimant can therefore avoid liability for anything more than these modest adverse costs (probably running to a few hundred pounds) by proceedings under this track. However, by doing so, the claimant restricts their right to recover their own costs. By so doing, he/she renders it inevitable that he/she will not secure a lawyer to represent him/her on a CFA. Fee remission applies to County Court claims. A claimant in receipt of benefits may therefore not have to pay the issue fee. However, the household's disposable capital and income are relevant to the entitlement. A claimant with gross annual earnings exceeding £6,000 will not be entitled to remission.

40. The position in relation to costs for claims brought in the Employment Tribunal is at least a little simpler. Costs in the Employment Tribunal do not automatically follow the event. An applicant whose claim fails will not be ordered to pay the respondent's costs unless the claim was vexatious, abusive, disruptive, unreasonable or had no reasonable prospect of success.

41. The absence of the opportunity to recover costs in the event of success means that such claimants whose cases are only worth modest amounts are unlikely to get representation under a Conditional Fee Agreement. It would be naïve to argue that the need

for legal representation is in any way reduced in the Employment Tribunal even though the rules of evidence are relaxed and the procedure more informal. In our experience, it is not reasonable to expect a disabled applicant to master, let alone to advocate, the relevant legal principles in order to do justice to their underlying complaint.

42. Fees were introduced into the Employment Tribunal by The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 under powers conferred by the Tribunals, Courts and Enforcement Act 2007. With effect from 9 March 2015, the fees for discrimination claims have been increased.<sup>49</sup> Applicants must now pay a claim fee of £250 and a hearing fee of £950. Thus, to bring such a claim to a trial, a claimant will have to invest £1,200. We suggest it would be apt for this Committee to consider if the remission criteria in themselves have a chilling effect on the bringing of claims in the Employment Tribunal. Could it be the case that the restricted nature of remission criteria mean that many claimants are unable to afford to bring a claim in the tribunals (see further paras 16-26 on the UNISON challenge)?

43. As a generality, the applicant should get the tribunal fees and witnesses expenses back from the losing respondent, if the claim succeeds. Provision for remission of fees also means that an applicant on benefits may not have to pay the fees at all. At para 60 the Court of Appeal 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" 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.

44. It is not for the Bar Council to prove or disprove that the imposition of fees has deterred or will deter claims. However, we invite the Committee to note the utterance in the Court of Appeal by Underhill LJ at [68] that "I have a strong suspicion that so large a decline is unlikely to be accounted for entirely by cases of "won't pay" and that it must also reflect at least some cases of "can't pay"; and I have accordingly been tempted by Ms Monaghan's submission that the figures speak for themselves...". Despite the outcome of that case, we ask the Committee to take the statistics relied upon with the utmost seriousness and even if the Court of Appeal did not have before them evidence of the actual affordability of the fees in the financial circumstances of (typical) individuals there is still a huge concern that the fees payable under the 2013 Order are realistically unaffordable in some cases.

45. On 1 September 2015, the Scottish Government announced that it will abolish Employment Tribunal fees<sup>50</sup> as part of the transfer of Tribunals in Scotland to the Scottish Courts and Tribunals Service under the Scotland Bill. The Committee may wish to consider

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<sup>49</sup> The Bar Council have explained that this sentence is incorrect. Tribunal fees, unlike county court fees (see para 38) were not increased on 9 March 2015; they have been at the higher level since they were introduced in July 2013.

<sup>50</sup> See <http://www.gov.scot/Resource/0048/00484439.pdf> at pages, 3, 6, 20 and 38.



whether two systems operating in parallel, one with fees and one without, could set up a body of evidence as to the deterrent effect of fees in England and Wales.

46. We draw to the Committee's attention 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.

### **Suggestions**

47. For reasons already explained, the use of comparators for the purposes of applying the reasonable adjustment provisions contained in the Equality Act requires major reconsideration. Consideration should be given to augmenting the Codes of Practice to include yet further examples of the correct basis of the comparative test and ways to ensure the Codes were taken into account prior to judicial decision-making.

48. The Bar Council recognises and endorses the advantages to all concerned of alternative dispute resolution. For example, mediation, if appropriately convened and with proper legal representation for the parties involved, is one obvious way of avoiding the need for Court proceedings. However the Bar Council concludes that such alternatives should not operate so as to deter litigants from pursuing valid claims through the Courts.

49. Assuming that public funding is not to be available to disabled claimants bringing claims under the Equality Act, the Bar Council proposes the following suggestions to address the funding obstacles identified:

- i. If a claim under the Equality Act brought in the County Court were to qualify as a personal injury claim, under the new costs regime introduced pursuant to the Jackson Reforms, qualified one way costs shifting (QOCS) would apply. The claimant would then, generally, not be at risk of having to pay the defendant's costs even if the claim failed. The need for adverse costs insurance would therefore largely be removed. The Bar Council suggests that the Rules of Court should be changed to include Equality Act claims brought in the County Court within this principle. This amendment should be made having regard to its potential impact on the costs of appeals.
- ii. In the case of disability focused claims brought in the Employment Tribunal, we encourage the Committee to reflect upon whether or not the fees regime should be revoked. The fees regime was introduced to fulfil three stated objectives: to transfer some of the costs of operating the tribunals from the taxpayer to those that use the service; to encourage the use of alternative dispute resolution services; and to improve the efficiency and effectiveness of the tribunals. We urge the Committee to consider if these objectives have been achieved.

- iii. To enhance the quality and uniformity of outcomes at first instance, increased funding should be committed to additional training on disability discrimination law, particularly for Circuit and District judges. One solution might be to include these judges in training currently provided to Employment Tribunal judges.

**Question 11 - Are there other legislative or non-legislative measures that would improve implementation for the Equality Act 2010 in respect of disability?**

50. Enforcement and implementation of disability rights overlap to a large degree in the way we have focused upon access to justice.

51. A fundamental review of funding arrangements for enforcement claims brought in the civil courts is pressing and essential. Of course, in the case of Employment Tribunals, this is taking place to some extent through the current post-implementation review to consider "... how effective the introduction of fees has been in meeting the original financial and behavioural objectives *while maintaining access to justice*". If the Lord Chancellor, having assessed the decline in the number of claims in the Tribunals following the introduction of the Fees Order and its causes decides there are good grounds for concluding that part of the decline is accounted for by claimants being realistically unable to afford to bring proceedings, then the level of fees and/or the remission criteria will need to be revisited. We contend that a similar review of funding for County Court Equality Act claims is required.

**Suggestions**

52. In a legislative regime which shifts responsibility for enforcement at the individual level to the victim of the wrong, the one immediate measure which would go a long way towards overcoming the obstacles we have identified would be the re-instatement of public funding for disability discrimination claims. The Bar Council acknowledges the complexities and practical difficulties which the re-instatement of public funding would entail. We nevertheless suggest that this does not detract from the significant beneficial impact of such a measure, were it feasible. Given that a high proportion of relevant claimants will be among the most vulnerable members of society and given that the value of the protection contained in the Equality Act is partly predicated upon their ability to enforce their rights, it seems to us that the use of taxation revenues to enable enforcement as originally intended would be a legitimate exception to the current public funding regime.

*4 September 2015*

## **The Bar Council, Discrimination Law Association, Law Centres Network and Law Society – Oral Evidence (QQ 43-51)**

Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Campbell of Surbiton  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Thomas of Winchester

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### **Examination of Witnesses**

**Rachel Crasnow QC**, Bar Council, **Lucy Scott-Moncrieff CBE**, Law Society, **Barbara Cohen**,  
Discrimination Law Association, and **Douglas Johnson**, Law Centres Network

**Q43 The Chairman:** Good afternoon to our witnesses. I am sorry that we have kept you waiting for a brief while. We are very pleased to see you and thank you for taking time out from your busy jobs to come and give us the evidence that we really need from you.

I ought to remind you that this session is open to the public. A webcast of the session goes out live as an audio transmission and is subsequently accessible on the parliamentary website. A verbatim transcript will be taken of the evidence and will also be put on the parliamentary website. A few days after this session you will be sent a copy of the transcript to check it for accuracy. We would be very grateful if you could advise us of any corrections as quickly as possible so that we can get all of that on the website too.

We are rather short of time, so I appeal to you to be as brief and concise as you can. You do not all have to answer every question. When you feel, as you undoubtedly will, that there is something you have not had time to tell us or that you wish to clarify, please do send in supplementary evidence after this session. For the next few weeks we are open to taking anything extra from you that you would like to send in that you do not have time to tell us about now.

Could I ask each of you to introduce yourselves very briefly and we will then move on to the first question?

**Rachel Crasnow:** Hello. I am Rachel Crasnow, speaking this afternoon on behalf of the Bar Council. I have a short opening statement that I would like to make, if that is all right with you.

**The Chairman:** I hope it is very short.

**Rachel Crasnow:** We are delighted to have the opportunity this afternoon to give evidence on this very important issue. The Bar Council represents 15,000 barristers in England and Wales and has a number of key functions, including the promotion of the interests of its members and ensuring a high standard of representation and advisory services. We have long played a key role in serving the public by evaluating the administration of justice and ensuring fair access to legal remedies for all in our legal system. The Bar Council has long engaged with Parliament on legislation and other issues which impact on the administration of justice. In recent years these have included issues from legal aid and vulnerable witnesses, to the future of our relationship with the EU.

Barristers are specialists and independent advocates. They enable the public to uphold their legal rights and duties. We frequently act on behalf of the most vulnerable members of the public. As a pool of professionals from increasingly diverse backgrounds, we do make a significant contribution to the efficient operation of criminal and civil courts.

Our chief concern for your assessment of the Equality Act is that, unless that legislation is fit for purpose, it cannot provide an accessible means of individual enforcement; otherwise, the expansion of rights that we have seen intending to provide those with protected characteristics will have achieved nothing. The rights that have been consolidated and enlarged by the Equality Act make it all the more important that the individuals affected do have access to specialist legal representation.

Today we are concerned that access, both to that representation and to the forum that is intended to uphold disability rights, is impeded chiefly by funding obstacles. We welcome the opportunity to have some input into your report, which we hope will go to addressing these concerns. I will say more later in answer to your questions, but thank you again for the opportunity.

**Lucy Scott-Moncrieff:** Good afternoon. My name is Lucy Scott-Moncrieff and I am here speaking on behalf of the Law Society. The Law Society represents and regulates the solicitors of England and Wales and has a mandate to uphold and promote the rule of law.

Our concerns about the Equality Act do not relate to its intentions or provisions, which generally seem fine although we do have some suggestions and comments to make for improvement, but to the difficulties in enforcing its provisions, which are so well laid out by so many of the submissions that you have received and that we have read.

**Barbara Cohen:** Thank you and good afternoon. My name is Barbara Cohen and I am here representing the Discrimination Law Association, which I will refer to as the “DLA” for succinctness. The DLA is a membership organisation. Like the Disability Discrimination Act, we are celebrating our 20th anniversary this year.

The DLA has some 300 members, which include practising lawyers, academic lawyers, people working in advice centres, trade unionists, equality rights campaigners and others. Our members are concerned with discrimination law from a complainant’s perspective. The DLA was very involved in the development of the Equality Act, preceded by the Discrimination Law Review, which will be familiar to many of you.

We think it is extremely important and valuable that Parliament is now going to scrutinise how well the Equality Act is working. We think that looking at it, particularly through the prism of disability, will expose some particular strengths and weaknesses, but we also believe that your findings are likely to be relevant not only to disability but to many of the other protected characteristics.

**Douglas Johnson:** I am Douglas Johnson, speaking for the Law Centres Network. As its name implies, it is the organisation that links together the various law centres around the country. It is important to know that it is a federated organisation. All the law centres are separate and independent bodies and the Law Centres Network is the body that brings them together. I have worked at Sheffield Law Centre since 2007, mostly doing disability discrimination cases in the field of goods and services rather than employment.

**The Chairman:** Thank you. The members of this panel will be asking you questions. If any of them have a relevant interest to declare, they will tell you so at the outset. The first question is going to come from Lord Foster.

**Q44 Lord Foster of Bishop Auckland:** Thank you, Chairman. I have no relevant interest to declare. I want to ask you about employment tribunals. After the introduction of fees in employment tribunals in July 2013, the number of claims fell by 70% and remains at this low level. What evidence is there that discrimination claims with a good chance of success are not being brought forward simply because claimants cannot afford the fee or cannot risk losing it?

**Rachel Crasnow:** I would like to address that and I thank you very much for having the opportunity to comment on that. As you say, there has been an incredible drop in the number of claims lodged with employment tribunals over the last two years. There have been a number of competing reasons why that might be.

We at the Bar Council are very concerned as to the impact that has had on all individuals who wish to bring claims, and in particular the most vulnerable litigants who are often those with disabilities. Two weeks ago there was a Court of Appeal judgment following a judicial review brought by UNISON, the trade union. The complaint was that the drop in claims brought arose from the difficulty in affording the fee and that the fee had put off people from bringing those claims. That claim failed in the Court of Appeal because their Lordships said they could not be convinced that the fees themselves made it impossible to bring a claim.

When you and your colleagues are considering this key question, we do not think you need to be troubled by the impact of that judgment in itself because you are not answering a legal claim here. The drop in claims has clearly had a significant outcome on people's access to justice. One clear way that we think you can tell whether the fees introduction has had the impact—as was a hope of Government at the beginning—of wiping out vexatious or unmeritorious claims is that, if those had simply been wiped out by the introduction of fees, one would expect a significant increase of success for those claims which are now brought.

When you look at the statistics which the MoJ have published every quarter since then, you do not see the increase in success rates of claims that do make it through to a full hearing. For us, that was very significant. The fees introduction has had a chilling effect on people from the very poorest sections of society to those who might, if they chose to adjust their household budgets, be able to manage the fee but feel far too unsure to risk it, especially when the actual worth of their whole claim may not be hugely more than the fee itself.

We are concerned to remind the Committee that it is not just claims in their tens of thousands or hundreds of thousands which matter to disabled litigants. Sometimes their claims are not worth a huge amount of money. It is clear that if you are being asked to pay a fee which may represent a high proportion of your claim, and no one can promise to you that you will get it back if you lose, it has a significant chilling effect.

**Lord Foster of Bishop Auckland:** Thank you. Would anyone else like to add anything?

**Lucy Scott-Moncrieff:** I agree with the point that you do not need to worry about that particular decision. Anecdotal evidence is still evidence and it is perfectly clear that the drop-off came in following the introduction and level of the fees. In the old saying, if it looks like a duck and it quacks like a duck, it probably is a duck. That is what this is—it is a duck.

**Barbara Cohen:** I would like to contribute. In relation to claims of disability discrimination, the drop between 2012-13 and 2014-15 is 59%. This is not as great as that for claims of every sort in the employment tribunal but it is a very substantial drop. What is significant is that, in relation to discrimination, employers do not now have the same kind of imperative to make sure that they are operating a discrimination-free workplace. The drop in claims has had that effect.

The other thing to think about is that for many claimants—with the lack of legal advice and assistance that we will talk about more fully later—they are looking at a risk of spending up to £1,200 to be a litigant in person without good legal advice.

**Douglas Johnson:** I do not do employment law but I have checked with my colleagues who do. At the front line, they are saying that there is a very big drop in people who bring those claims, which might well be good claims. The nature of discrimination claims is that you cannot always tell until you have issued proceedings.

It is worth remarking that that is particularly the case with the abolition of the statutory questionnaire procedure. That was designed to try to bring some of the information out earlier on so that people could make an informed decision before deciding whether to issue a claim and therefore commit to the fee. That certainly has not helped.

The other thing the Committee might well want to note is what my colleague says about the early conciliation process through ACAS. Claimants are now required to engage in this process, which invites the employer to conciliate if they wish to do that. Far more, there is a shift towards employers saying, “No. Issue your claim and then we will talk”.

**The Chairman:** You are saying that, financially, employers are now very much more tempted to get away with it because they do not have so much to lose, whereas it is having the opposite effect on the claimant. They have so much to lose that they cannot afford to bring that claim basically.

**Douglas Johnson:** Yes.

**Baroness Thomas of Winchester:** Could you just tell us a bit more about the statutory questionnaire?

**Douglas Johnson:** Yes. This has got history to it.

**Barbara Cohen:** Since the 1970s, the equality legislation has provided a mechanism so that a prospective claimant, before they begin their case in the county court or the employment tribunal, can send a questionnaire to the alleged discriminator saying, “I believe that you have discriminated against me for the following reasons”, and then the employer or service provider will respond. Sometimes they come back and explain that what they did is not discrimination; the claimant then decides not to 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.

On the other hand, if they respond unhelpfully, or if they do not respond, the legislation says that the court or tribunal can draw an inference from their failure to respond, including an inference of discrimination. There was a lever. It did not always work and people did not always respond, but there was a kick there that said you should and that helped the prospective claimant. As I said, many cases did not go ahead because the person saw that they did not actually have a case.

**Baroness Thomas of Winchester:** And now it has gone.

**Barbara Cohen:** It was repealed.

**Douglas Johnson:** It was repealed. It is a statutory provision that has since been repealed in 2013.

**Barbara Cohen:** We think it should be restored.

**Douglas Johnson:** That is right. It 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 which are a formal part of court proceedings. It applies to courts and tribunals, but certainly in the county courts we see that where we do not have the questionnaire procedure, it delays that process until later on, at which point all parties tend to have lawyers involved, and things becomes much more costly, much more contested and much more formal. It actually makes the whole process of litigation much more—and unnecessarily—expensive.

**Lord McColl of Dulwich:** Do you have any idea what proportion of cases was not justified before all this started?

**Baroness Jenkin of Kennington:** If I can add to that, can you give us some idea of the numbers we are talking about—not the percentages but the actual numbers?

**Rachel Crasnow:** In the written submission we submitted on behalf of the Bar Council we included details of the numbers of the drops. We had a link there to the Ministry of Justice statistics. You can see very clearly the actual figures which have dropped, so I would refer you to those.

**Barbara Cohen:** I can say that in employment tribunals in 2012-13 there were 7,492 disability discrimination claims, and in 2014-15 there were 3,090. That is a drop of some 4,400.

**Rachel Crasnow:** I would add a quick one-liner to what has been said about the impact on employers of the introduction of fees. That is an important thing to consider as well as the impact on the claimants.

We have heard anecdotally that because employers are facing far fewer claims, as fewer are being brought, they tend to have a more bullish approach to conciliating those claims, partly because their budget for legal expenses is not being used up in the same way and because they feel there is less pressure to settle matters. That has a huge impact on industrial relations as a whole and on how workplace polices are updated and renewed. There are significant impacts on workplaces as well as on individuals who wish to take their claims to court.

**Q45 Baroness Brinton:** What has been the effect of the changes in legal aid for disabled people bringing discrimination claims? Mr Johnson, to what extent have law centres and other similar bodies been able to compensate for these problems?

**Lucy Scott-Moncrieff:** Legal aid is granted on the basis of scope and financial eligibility. As people with disabilities are more heavily represented in the lower levels of income, they were more likely to be eligible for legal aid for getting advice and assistance. That has now gone. Proportionately, they have had a worse deal than the general population in terms of having access to legal aid for their employment rights.

**Douglas Johnson:** From the law centres' point of view, it is important to realise that law centres and the not-for-profit sector generally have been far worse hit than anyone by the cuts to legal aid. The cuts in legal aid for bringing cases of discrimination, and for advising

where there is no case of discrimination, has been really difficult. It has ruled out a lot of advice for people.

The question is to what extent law centres will be able to compensate. Law centres have lost a lot of funding to provide this essential advice. Law centres and other not-for-profits have lost the legal aid work and also the grant funding that certainly we had at Sheffield from the Equality and Human Rights Commission.

There is practically no funding now for advice on discrimination law. People are all at sea with this. It is quite important to realise that, when we are talking about legal aid, one of the most important aspects of it is the basic advice and assistance under legal aid. Legal aid brought in the idea of two hours of advice and assistance. We are not necessarily talking about legal aid for big cases. It is about people getting basic information and advice on whether or not they have a case for discrimination.

The consequence of not having legal aid and that advice not being available is that those people who do have cases for discrimination cannot work out if they have one and cannot get the advice and the assistance on how to take it forward, which might lead on to an application under a legal aid certificate for a fuller case. It also affects those people who are sure they do have a case for discrimination but, when they get proper advice, they are told, “No; you are wrong, you do not have one because of this. This is the legal explanation. Don’t waste the court’s time by bringing your claim.” Of course people are not getting that advice and so the courts are actually filling up with misconceived claims for discrimination, which does not do anyone any good.

**Barbara Cohen:** I do not know whether your Committee is fully familiar with the way the process currently works, but if I were a disabled person and I wanted advice on discrimination, I would need to telephone something called Civil Legal Advice, staffed by a non-lawyer. If I said I am having trouble at work, they might say, “Well, there is no legal aid for employment; sorry, dear”. To diagnose that I have a disability and a discrimination problem is something for which I need legal advice, but I do not get it then.

If somehow or another I get through that telephone line and transferred to a different telephone line, again I have to try and explain that I have a problem that fits with discrimination because employment is not covered. Then I get through. The three firms in the entire country who have the mandate to be able to provide advice on discrimination are not getting the number of cases they were expecting because of all this sifting by others and people not being able to explain adequately by phone that their problem is a disability discrimination problem.

**The Chairman:** So an investment in early advice would be almost more valuable than an investment in more legal aid in the courts; is that right?

**Douglas Johnson:** Yes, that is absolutely right. It is the early advice that is really important.

**Barbara Cohen:** And face to face.

**Douglas Johnson:** One of the real difficulties about discrimination advice is that it has been hived off from other areas where legal aid is still available. It is only available through a mandatory telephone helpline, but it is incredibly inaccessible. You could not really design a worse system if you wanted to think about access, given that people with disability discrimination issues will often have access barriers. It is really difficult.

If you had a cost-neutral proposal, you could say that the telephone gateway is not working. There is now ample research to show that the figures are just not getting through and people are not getting advice. You could have the same number of cases being dealt with by



face-to-face contracts. We say it would be a much better step forward if the Legal Aid Agency would re-tender for those contracts with organisations like the Sheffield Law Centre and others. We could have what they call low-volume contracts where they have just a small number of matter starts. It means that people can go to a place in their own town and see a discrimination specialist to work out whether they get advice or not.

**Rachel Crasnow:** Earlier this year the Public Law Project carried out some research into the legal advice gateway that we have just been talking about and went through in an enormous amount of detail the data that existed already. It is an extremely useful piece of research and I commend it to the Committee for consideration.

**The Chairman:** Could you send us a link?

**Rachel Crasnow:** Of course I will.

**Lucy Scott-Moncrieff:** I also want to point out that early advice does not necessarily mean, “Oh, you’ve got a case to take to court”, or, “Oh, you haven’t”. It might mean, “Oh, if you do this, we might be able to sort it out for you without any need for going to court. Yes, you’ve got a case but it doesn’t need to go to court”. A court or a tribunal has to be the last resort. It is so wasteful to make it so difficult for people to do anything other than go to court.

**Lord McColl of Dulwich:** Do we have any figures on the increase in the number of cases going to court as a result of all this? You say the courts are filling up with cases.

**Douglas Johnson:** I said that. I realised afterwards that that is not the best explanation. The courts are not filling up. What we are seeing is that there are a number of cases that are misconceived and taking up court time. The figures you have seen from Barbara on employment tribunals show that there has been a big drop. Cases in the county courts never were very high, but we do see a number of cases now where people launch cases in the court themselves because they cannot get advice and then later come for advice if they find some other way in. We might look at it one way or another and realise that it is a hopeless case, but by that time they have gone so far down the line and so much of their time and other people’s time has been incurred by that point. It is not so much the number of cases filling up but the amount of court time.

**Lord McColl of Dulwich:** So they are not filling up.

**Douglas Johnson:** Not in numbers, no, but in terms of court time, which is important. Certainly the practice we know of in Sheffield county court is that everyone’s cases are being delayed because the cases that are being brought are taking so much longer. That is because people are not getting the advice to get to the point quickly, which is one of the real benefits. They are also not getting the assistance to settle their cases, as Lucy Scott-Moncrieff said, without going to court. Certainly in my practice only a minority of cases advised on under legal aid would result in a court claim being issued.

**Lucy Scott-Moncrieff:** The point I was making about wastefulness was that, if you are trying to enforce a piece of legislation, then if what you are saying is, “The only way to enforce your rights is to go to court”, that is pretty dumb and wasteful. There have to be layers of trying to resolve disputes before you go to court. Taking away legal advice or advice from someone who knows what they are talking about at the first level means that those opportunities do not arise.

**The Chairman:** I am going to move on to Baroness Campbell’s question, which is the third one. For the sake of convenience I will just mention her interests. She is a patron of Just Fair and of the National Disability Archive. She is a founder and member of Not Dead Yet UK. She is the recipient of a social care personal budget, disability living allowance and Access to

Work. She has been a Disability Rights Commissioner throughout the life of the Disability Rights Commission and a commissioner of the Equality and Human Rights Commission for three years.

**Q46 Baroness Campbell of Surbiton:** I would like to widen this out a little more. I am incredibly interested in access to justice in its wider form. What about non-employment cases? What are the problems with enforcement through the county courts and tribunals? Is reliance on individuals enforcing equality law through courts and tribunals effective? As a rider to all of that, in relation to the Criminal Justice and Courts Bill discussed and enacted last year in terms of interveners, again do you think that will have a bearing on the ability of disabled people to access justice? That is a long question, but you can all have a go at it.

**Douglas Johnson:** I am going to ask my colleagues to help out on the answer in relation to, for instance, what the Equality and Human Rights Commission might do with wider enforcement mechanisms.

Speaking as someone who has worked in law centres, doing basic enforcement of ordinary cases, on the non-employment cases as opposed to employment cases, the whole point about the initial funding by the Disability Rights Commission of a number of law centres up and down the country was simply that, because there were so few cases being brought in goods and services, it was quite clear that the Disability Discrimination Act was simply not being enforced in those areas. There was mention of 53 cases in total in the whole country being brought after the Disability Discrimination Act had been in force for a number of years. The point about this was to marry up enforcement by helping people to bring cases in the courts with that public education and awareness project. 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. In some cases, they end up in court claims in the higher courts; those are very rare. It is still a massive problem to get cases enforced. I describe that in longer detail in the written evidence which you will be able to have a look at. The specific things that we think worked well were that network project because, as I say, it did marry up the public education along with enforcement to make sure that they both worked hand in hand with each other. I thought that was very important. That is something that the Government could arrange again with a relatively small amount of funding. That would be outside the legal aid system. It is a far more effective way than legal aid of tackling discrimination in a systematic but also much more strategic and wide-ranging way. You are trying to change public attitudes and also making the most of any opportunities to explain what the law is and why it is what it is.

As I have said, I am no longer working at the law centre. I have moved to a private firm of solicitors. It is a very unusual firm in that it will actually touch disability discrimination cases. As you will probably be aware, there are precious few firms of solicitors in the country that will go anywhere near a discrimination case. That is why the Act is not being enforced. It is simply not cost effective for most firms of solicitors to take that risk from a business sense. Unity Law—the firm I am working at—does this under a conditional fee agreement. It is no win, no fee, so that, where there are good cases, they can be run. We are just at the tip of the iceberg there. We have put in the written evidence about Qualified One-way Costs Shifting. We think that is a very important thing. It might just be me, but some of us believe

that the QOCS system does cover discrimination cases. It is a question of whether injury to feelings is personal injury. Of course it is, in my view, but of course it is not written down in the court rules. That could be changed very quickly. We would certainly urge the Committee to look at that as a way forward.

The idea of that is that, if it was realistic for commercial firms of solicitors to say, “If we can run a personal injury case, we can run a discrimination case”, that makes the enforcement deterrent so much more effective. It might actually achieve the long-term aim of making the Equality Act a properly enforced Act.

There are always lots of negative connotations around personal injury and no win, no fee arrangements, but actually those are really important. People do suffer physical and mental injuries because of other people’s negligence. Those cases can be brought even if the person is a person without money and they have to tackle a large corporation with a huge amount of resources. It is a way of levelling up the equality of arms on both sides.

The other interesting thing is that with the Jackson reforms that came into the court from 2013 there has been a bit of a change. Good personal injury cases still run. A lot of the more spurious ones just do not run any more.

**Baroness Campbell of Surbiton:** What about individuals? I am extremely worried about some of the developments in the courts and tribunals. Do any of you have anything to say about that? There will be a problem with interveners because they may have to take some of the court costs. It seems that the individual is having to take on more and more responsibility. Do you have anything to add to that?

**Barbara Cohen:** I would like to talk about the problems of enforcement as it applies to individuals and whether it is the best way to enforce the law. Thinking about individuals, for all parties litigation involves delay and uncertainty. That is bad for everybody. For claimants, and particularly disabled claimants, it is a terrible ordeal. Once you get there, you are being challenged on things that are fundamental to your identity and who you are. Are you disabled? Is it true that you cannot do the job without this adjustment? Is this the right adjustment and so on? It goes right to the heart of your identity in that role, and it is very difficult. It is not fun.

For many disabled claimants the tribunal ordeal itself is very difficult. It is a technical process. You have to get it right. There are issues about access—all different kinds of access. There is physical access, access to documents, access to the process, and communication. There is a whole range of things that make it particularly difficult. For claimants, individual litigation is not necessarily the best way to get good protection against discrimination.

The other question is whether it is the best way to enforce the law. Simply because I have been around a long time, I wanted to read very briefly from the 1975 Racial Discrimination White Paper when they were discussing whether they should move on from the 1968 Race Relations Act. I will try to skip a little bit.

It says: “The 1968 Act gives undue emphasis both to motive and to the identification of ... victims. Its enforcement depends excessively upon the making and processing of individual complaints ... complaints are random in their incidence and significance. Most victims do not complain. Many do not know that they have suffered discrimination. Others are reluctant to complain because they do not want to relive the humiliation which they have suffered, or because they have no confidence in the effectiveness of the ... procedure ... Some complaints are trivial; others are misconceived. Although it is necessary for the law to

provide effective remedies for the individual victim, it is also essential that the application of the law should not depend upon the making of an individual complaint”.

This then led to the establishment of the Commission for Racial Equality and the Equal Opportunities Commission, which were given quite substantial enforcement powers. The expectation was that the bulk of the enforcement of those laws would fall onto those bodies rather than onto individual complainants.

**Rachel Crasnow:** I want to come back very briefly to something that Douglas Johnson said a moment ago. He commented about discrimination cases in the county court being far fewer in number than those brought in the employment tribunal. It is relevant for the Committee to consider what the reasons might be for that. Is it because far more alleged legal wrongs are committed in the workplace than, for example, in the arena of goods and services, or is it because of two possible alternatives that I can suggest to you?

First, is it the difference in the costs regime in the county court, where the loser pays the other side’s costs? That is a huge deterrent to someone considering bringing a claim. The tribunal is largely a cost-free tribunal at the conclusion of the case.

The other important reason to reflect on is about general awareness of disability rights, particularly in the goods and services area. We think an enormous number of 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. The question of how to educate both the provider of goods and services and the individuals themselves is a really key concern for us.

**The Chairman:** So what we see here is ignorance, the deterrent effect of costs and the lack of a champion to bring these cases where individuals cannot afford to for one reason or another.

**Rachel Crasnow:** At the moment the emphasis is on individuals enforcing their rights. Whether that is the most constructive mechanism for educating the population and achieving resolution is an important issue.

**The Chairman:** You have shown us just how painful it can be for the individual. We will move on to Baroness Thomas.

**Q47 Baroness Thomas of Winchester:** Before I start, I have to declare that I receive DLA. I am a vice-president and trustee of Muscular Dystrophy UK. I am a member of a user group at Lord’s Cricket Ground and a patron of Thrive. **We have touched on this question. Are there changes to current enforcement methods, or alternative models of enforcement, that could work better? Of course, one question would be mediation. I know that Lucy Scott-Moncrieff talked about this a few minutes ago.**

**Lucy Scott-Moncrieff:** I have taken a slightly different approach in terms of alternatives. Dealing with this issue of individual cases, it seems to me that there are existing roles that are not being exercised as well as they could be—for instance, by those who license premises, by regulators and possibly by complaints handlers of one sort or another.

If we think about who the Equality Act applies to in the provision of goods and services and so on and so forth, many of these organisations are either regulated or licensed, or in some way need to get a tick from somebody to be able to do what they want to do—to be able to do their business. You would not even need a change in the law.

If all these organisations really understood that they had a duty to ensure that the Equality Act was being applied properly by the people whom they were licensing or regulating or whatever it might be, and actually pushed that forward, then that would take away some of

the agony of having to bring individual cases. It would give a different route in for people who wanted to make a complaint that the regulations were not being complied with or whatever it might be.

It has to be an alternative. As a lawyer, of course I think that going to a lawyer is the best thing anyone could ever do in any circumstances whatsoever, but as somebody who has been through litigation I know how agonising it is. Anything else that can be offered would raise awareness among the regulated community and licensed community, but it would also raise awareness of where people could turn apart from having to go to court or getting legal advice.

There is much more that could be done with existing bodies to remind them of the power and the duty that they have in this area.

**Rachel Crasnow:** I would add a comment very briefly about the current judicial mediation scheme within the employment tribunals. It is a mechanism which applies to live claims prior to them reaching the full hearing where their complaint will be resolved by an employment judge.

The problem about the way that is operating at the moment is not that both sides have to agree to mediate. It is rather that you have to pay a fee of £600 in order to take part in the mediation. Were that simply a deposit—suppose your mediation failed, as sometimes they do, and you then went on to decide, “Okay, I am going to pay the fee for my full hearing”, which is up to £1,200—if you could set off the cost of the mediation against that, then you could see that there would be an incentive there, but that is not a possibility.

If you want to try to mediate your claim, you have to pay £600 and then it is not refundable. The concern is how that is acting as an incentive to both sides to take part in that. We really think consideration should be given to removing that judicial mediation fee. For one thing, for the Courts Service itself, it is incredibly expensive to go for a full hearing compared with a single day of mediation where you have an employment judge taking part just for one day. There is a cut-off of one day; you cannot have longer than that. A considerable number of cases do successfully resolve themselves during that process. It is clearly one of the objectives of Government that more cases are resolved outside the litigation framework. To see that operate in a wider framework, we would like you to consider how to make that a more attractive option to those within the tribunal system.

**Baroness Thomas of Winchester:** Would anyone keep statistics about court settlements in cases?

**Barbara Cohen:** There are a lot of settlements which drop out of the statistics. The figures I have given you for the number of disability discrimination claims started in the employment tribunal is 3,090 in the last financial year. When you get down to the number of cases that have gone to a full hearing, it is a very much smaller number. Many of them are withdrawn because there has been a private settlement, but they might be withdrawn for a whole range of other reasons. So far as I am aware, it is not precisely recorded how many cases get started and then are not there at the end of the process.

**Rachel Crasnow:** The tribunal service is not given that information. If someone writes my client a very large cheque, he or she will then withdraw their claim. They do not need to litigate any more, but we will not tell the tribunal why we withdrew. The matter is simply ended. The detail of that data does not exist, as far as I am aware.

**Barbara Cohen:** Regretfully, in some ways, most of the settlements are on a confidential basis, which means that really important issues are never disclosed. There ought to be ways

to know if a large supermarket chain settles a claim for reasonable adjustments for a person with HIV. That should not harm the confidentiality of the settlement terms.

**Q48 Lord Faulkner of Worcester:** I have to declare interests, all unpaid. They relate to my vice-presidency of the organisation Level Playing Field, my trustee membership of the Science Museum and positions with various transport and heritage undertakings. My question is about the public sector equality duty. I would be very interested to have your view because it seems to me that it does not really matter what the duty is, provided that the consultation which is undertaken in order to assess it appears to be acceptable. The outcome of the challenge does not seem to matter, as I say, provided that the various boxes are ticked and the consultation is all right. Is that a fair assessment of how it is?

**Lucy Scott-Moncrieff:** That is a masterful assessment. Somebody in my firm was involved in the Independent Living Fund litigation, where initially the public sector equality duty was found to have been breached. Subsequently, despite apparently not having done very much more, it was found not to have been breached. It was very much to do with process. That is also politics.

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. We have put in the written submission that you will shortly be getting a way of trying to beef that up so that what the duty appears to be saying is reflected in what the actual duty is.

I want to talk about the history very briefly. It is central to all of this and what it is that you are doing. I can remember when the Disability Discrimination Act was brought in by the previous Conservative Administration and how transformative it was in the way that it introduced very powerfully the concept of the social construct of disability and how disability 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.

The next Government did not do anything as brilliant as that, but it did sign and ratify the United Nations Convention on the Rights of People with Disabilities back in 2007-09. Then it brought in the Equality Act as a consolidation and strengthening Act. That was good.

I have not discussed this with my colleagues, but I am sure they will tell me if they think I am wrong. The coalition Government have not covered themselves in glory in the way that they have dealt with the Equality Act. The example of the ILF case is an example in point. They stick very rigidly to the interpretation of the law rather than looking at what the Equality Act is all about. They have simply failed to do that. The law was on their side but justice was not on their side.

**Lord Faulkner of Worcester:** Or common sense.

**Lucy Scott-Moncrieff:** Or common sense. I do not know if we will have a chance to get that far, which is why I am saying it now. One of the things we really hope this Committee might do is to think about ways of restoring that radical transformative approach to the social construct of disability.

The way the Law Society would like to see it done would be to encourage the Government to incorporate within domestic law the United Nations convention. Douglas will be able to talk about the way in which this will give a lot of teeth to the Equality Act which it currently lacks.

**Barbara Cohen:** I want to interject a couple of other events between 1995 and 2007 into Lucy's history. In 1999, the Stephen Lawrence inquiry reported and they referred to the issue

of institutional racism across all of the public sector. Following on from that was the 2000 Race Relations (Amendment) Act, which not only brought all public functions within the non-discrimination provisions but introduced the race equality duty. For the very first time, the law was putting obligations on public authorities to take proactive steps to eliminate discrimination and advance equality.

That was followed in 2005 by the Disability and Discrimination Act 2005, which included the disability equality duty. The DRC was very energetic and produced some fantastically good guidance and codes to make sure that public authorities understood that things had now changed and it was not just, “Don’t discriminate”, but in order to meet the social model and advance equality you had to take some positive steps.

While I understand that some of the litigation has led to people being somewhat cynical about whether the public sector equality duty means anything or not, my impression from working with different community organisations is that the kind of cases that are brought to lawyers secure change without needing to litigate. That is in the vast majority of instances where 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.

While it is about process and not content because judicial review is not about content, I am nowhere near discouraged. I would just mention that when the Equality Act was going through Parliament many members of this Committee may remember that at the report stage in the House of Lords an amendment was put forward by the DLA and a coalition of disability organisations which was going to add to the duty. It was not only the due regard obligation, but in carrying out their functions—

**Lucy Scott-Moncrieff:** I should say that the Law Society have pinched this from them.

**Barbara Cohen:** The duty involved taking appropriate steps to achieve the aims that were set out to which they must have due regard. It was appropriate steps to eliminate discrimination, advance equality and foster good relations. Had that been part of the duty, then we would be looking to see not only consideration of these matters in developing policies but making sure that as the authority carried them out they would need to be there.

**Q49 Baroness Campbell of Surbiton:** Is it true that the local authorities welcomed the disability equality duty because it helped them understand how to plan the environment and it actually cost them less money in the end because they did not have to put more in grants, or is that a myth?

**Douglas Johnson:** There is a theme there about a clear statement of what the law is and what service providers and local authorities have to do to comply with it. Lucy’s point about the benefit of incorporating the United Nations convention into domestic law means that those who have to deal with it would have a far clearer statement of this. 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”.

Similarly, when you talked about the disability equality duty, it would be far more helpful to local authorities to have a clear statement of this. This reflects a little bit what we have put in our written evidence about the statutory codes of practice. We said that the codes of practice were very helpful. In my experience in courts, judges find them very helpful. They say, “I have here the code of practice. I know I am required to take this into account when

making my judgment”, and that is that. People do not mess around with that. Those codes were drafted. They were very helpful, very clear and very practical.

From the point of view of a local authority officer who has to make a difficult decision in the climate of cuts and so on, if you have a clear statement of what that guidance is, then you know, as an officer, what you have to comply with. That will be a step forward. I am not sure that answered your question.

**The Chairman:** I am afraid the Government’s so-called Red Tape Challenge has meant a rolling back of these positive duties rather than forward, which is unfortunate. It is also the case that the UN—although I do not have the details—is taking an interest in British disability law, so there is more of that to come.

**Rachel Crasnow:** On the point you made about red tape cuts, certainly that has had an impact with the requirement upon public bodies to produce equality impact assessments following their exercise of the public sector equality duty. We would think it useful if you could consider whether it was necessary to remove that requirement once one had carried out the exercise of undergoing the duty. Was it 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 properly carried out and a check and a balance on all the requirements of the duty as laid down in statute and aided by the guidance that Douglas has been talking about?

**Lord Harrison:** Provision on the transport of disabled persons in taxis has lain silent on the statute book for 20 years. What on earth is going on there? Why is Parliament being flouted? Indeed, is it possibly unlawful that it has not been so implemented? Do you extend any of your thoughts to other forms of public transport?

**Rachel Crasnow:** One thing to note about Section 165 in the Equality Act, which has not been brought into force after 20 years of existing in writing, is that all the provisions are there set out for the exemptions to be put into place for those taxi drivers who will be unable to comply with, for example, taking wheelchairs in their taxis. If I am a taxi driver with a back problem and I have a letter from my GP showing that carrying wheelchairs even once a week would have a significant effect on my condition, then I can apply for an exemption to the duty to have to carry wheelchairs. If that is turned down, I can appeal against that process.

This provision was never intended to force all taxi drivers to carry wheelchairs regardless. An interesting point to consider is why it is that this particular strand of providers has been given carte blanche to ignore the provisions of an Act, which had recourse into all areas of workforce law and all areas of goods and services, especially those that interacted with disabled people’s everyday living. As we all know, taxis are a vital means of transport for many people with mobility problems. We think that there needs to be far more public awareness of the failure to legislate thus far and bring that law into force.

**Lord Harrison:** Answer your own question: why do you think it was formed in a way that it could be circumvented?

**Rachel Crasnow:** They intended it to be brought into force much earlier on and to be a user-friendly piece of legislation which would strike a balance between the disabled person requiring a taxi and the taxi driver who had genuine reasons not to be able to provide that service. You would think that would be a piece of legislation which, with sufficient regulations and guidance surrounding it, would be workable. The answer as to why we are still where we are we have not been formally given.



**Lord Harrison:** Perhaps some of the others would say whether what is happening is indeed illegal.

**Lucy Scott-Moncrieff:** I do not think it is illegal. It is not illegal not to implement something. I wonder whether, in fact, it is part of a mindset which does not really get it. The way that I would like to describe it is when you look at the ongoing consultation on court closures, where they say that 80% of people with their own cars are going to be able to get to court within an hour. That drops down to under 60% for people who need public transport. It would be interesting to know where it drops to for somebody who is in a wheelchair, who cannot get a taxi, where there is not a bus and they do not have a car. I think taxis are probably seen as nice to have rather than as an essential, and that feeds its way through.

**The Chairman:** Is it not deplorable that Parliament passes an Act intended to help the disabled, and then for 20 years Government departments, or whoever it is, do not bring those provisions into force? Indeed, one has fear for the future—that someone will say, “Well, it has not been brought into force for 20 years. We don’t need it”. I find this quite extraordinary.

**Lucy Scott-Moncrieff:** Yes; it is deplorable.

**Rachel Crasnow:** But who is making the fuss about it?

**Baroness Thomas of Winchester:** There have been questions asked and the Government’s response is, “It is still under consideration”.

**Baroness Campbell of Surbiton:** For 20 years.

**Douglas Johnson:** From my point of view in Sheffield, we have been lucky in that I have rarely had taxi cases. I cannot think of any, but that is partly because we have quite an active disability group and they work in good partnership with the licensing department of the council, who have been interested and have taken that on. They have quite a workable system and are quite rigorous with the way they test their taxi drivers for compliance with access requirements. That is good, but I suspect it is quite different in other parts of the country. I personally do not know about that.

**Lucy Scott-Moncrieff:** It brings us back to the question of licensing and whether licensing organisations could put that in as a way round the problem.

**Douglas Johnson:** It would seem very strange that those additional powers that some licensing authorities will need have not been given to them to use as they best think in their local areas. The question we have not asked yet is 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. Let’s get on and get the details done so that it can be brought into force and streamlined with all the rest of the Act”.

**The Chairman:** You go to the heart of the very issues that have come to us so far. I am sure what you say is right and I am sure our report will have something to say about the failure to bring these provisions into operation. It may even be that the United Nations rapporteur who is coming would also be interested in that too. It is not just a question for the disabled. It is simply wrong for Parliament to go through all the effort of getting these provisions on to the books and then they do not operate. This is a really bad situation.

**Douglas Johnson:** I want to follow up on that point, if I may. I think it is more than that. What I am saying is that there is a failure of leadership there among those organisations that really should be driving that.

**The Chairman:** That is a very important observation.

**Rachel Crasnow:** I want to add that, in terms of parts of the Equality Act not yet brought into force, there is of course the protected characteristic of socio-economic discrimination. Very often, it is unfortunately disabled people who are among the most deprived in our communities. There is a real crossover there between those two protected characteristics. We would ask you to give some thought to that. Whether discrimination on grounds of socio-economic status should be made unlawful or not is not a separate topic. It is a provision which like the one covering taxi drivers, has sat on the statute book doing nothing for a number of years.

**Q50 Baroness Jenkin of Kennington:** How effective do you feel that the EHRC has been in promoting and enforcing compliance with the Equality Act? How effective in your experience is the helpline now that it has been contracted out?

**Barbara Cohen:** I would like to answer that in three parts. The DLA is particularly disappointed that the EHRC has been so reluctant to use its statutory enforcement powers. It has very strong powers—stronger than the previous Commissions—to carry out investigations and to require organisations found to be discriminating to set out action plans and to enter into binding agreements which require organisations to eliminate discrimination in the ways that they operate. They can apply for injunctions to stop discrimination taking place and they have other powers to secure enforcement of the public sector equality duty. Sadly, they have been extremely reluctant to use those powers. Since 2007, when they were established, they have now embarked on their very first investigation. That is a great loss. If we are talking about how to make enforcement work, they have powers to do it and it can be extremely effective, as the work of the previous Commissions has illustrated.

They will rightly raise an issue about resources. A different role is far less demanding on reduced resources. The impression we have is that the EHRC has far too often chosen not to use its unique position to engage in public discussions regarding policies and practices which their own research or inquiries, or those by other reliable bodies, expose as discriminatory or involving significant disadvantage to disabled people. Issues come and go. We listen, but we look for and we do not often hear the EHRC helping us to understand when there may be some real equality issues there.

Thirdly, at two levels, the EHRC is not carrying out what we think is a fundamental educational role. One is the issue of statutory codes of practice that has been mentioned. Codes of practice are far better than guidance because courts must have regard to statutory codes of practice when cases come before them and an issue within the code is relevant.

Secondly, it is that educational role in the communities helping us all better to understand disability and what disabled people need in order to participate on equal terms.

We can all recall the excellent poster campaign of the Disability Rights Commission that helped all of us to understand how disability is part of our society. We miss the strong influence which a single statutory equality body should be providing.

**Lucy Scott-Moncrieff:** When I was reading the evidence of previous witnesses to your Committee, I noticed that they referred to their duty not to embarrass their sponsoring department. I do wonder how they interpret that. It may be that they think they must not speak out against their sponsoring department. I do not think that is how that duty manifests itself. If their department is getting something wrong, then I think their duty to speak out is much more important than their duty not to embarrass their sponsoring department.

**Rachel Crasnow:** In terms of the choices that the commission makes in relation to funding litigation, the strategic litigation which the commission currently gets involved with is generally intervening at the appeal stages of cases. While there have been significant cuts to the budgets which the commission has to use for representation, and indeed advice in challenging claims, there is a concern that strategic litigation can include first-instance decisions. It can include cases which are not necessarily going to take place in the Supreme Court or the Court of Appeal and so on. 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. We would ask that you give some thought to how that definition of strategic litigation is having an effect on such an important organisation being able to assist with important litigation.

**The Chairman:** What about the helpline, Mr Johnson?

**Douglas Johnson:** The helpline does not provide advice, and that is a very important point.

**Lord Faulkner of Worcester:** Or help?

**Douglas Johnson:** It might provide help, but when the EHRC ran its helpline, yes, it did provide advice and assistance. The remit of the Equality and Advisory Support Service helpline is very specifically not to provide legal advice. It provides information only and some limited amount of assistance, but 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.

It is also startling how many calls they get. We have some figures which you have in the evidence now. It is 90,000 calls over three years. That shows that there are a lot of people who are trying to get advice about discrimination issues and about their own personal circumstances presumably, and they are just not getting it.

I attended a small conference that the EASS was running a little while ago and I put the question to them. I should explain that on the employment side they really pass people straight over to ACAS, who also just give information but not advice. On goods and services they do that, and they will sometimes contact service providers and say, "It looks like you have discriminated and we think this was wrong".

What happens is that, if that service provider is basically a good service provider, they say, "Yes, you are quite right and what can we do about it?". That is good and they will sometimes get a result there. But if they respond negatively there is not really much more that the helpline can do.

I put the question to them, "Does that not really mean that you are taking action against those service providers who are willing to be more accessible, but those service providers who are just not interested and are quite happy to keep on discriminating, even once they know about it, are getting off scot-free?" The response to that was, "Well, that is really a question you would have to address to government". That does illustrate the issue. In some ways it can make things worse by saying, actually, discriminating or not is optional.

**The Chairman:** How many calls a year did you say they were getting?

**Douglas Johnson:** I think we have a figure of 94,000 over almost three years. I do not know if that has escalated. That is the figure we have had just recently. I have inserted it somewhere, but if I cannot find it I can provide it afterwards.

**The Chairman:** Is it sufficiently staffed or is it one of those lines where you have to hold on for a very long time?

**Douglas Johnson:** I do not know. I think you can get through reasonably well. You can get through by phone and there is e-mail. It is certainly more accessible than the legal aid helpline.

**Baroness Campbell of Surbiton:** Do you think it worked more effectively when it was housed within the Disability Rights Commission? Can you tell us anything about the link between the EHRC and the helpline? Obviously the helpline helps to enforce and guide the legal committee as to what cases should be taken. Can you tell me about that relationship?

**Barbara Cohen:** It did in the past when it was in-house. They monitored the issues and then fed that into the legal department.

**Baroness Campbell of Surbiton:** That is right. So what happens now? Is there a relationship between the EHRC and the helpline?

**Douglas Johnson:** My understanding was that there was going to be a referral mechanism for those cases that were significant enough to be referred to the EHRC. Of course, it is now referred to an external organisation rather than an internal one where people are physically further apart.

**Baroness Campbell of Surbiton:** So it cannot inform the work of the EHRC at all.

**Douglas Johnson:** I am not sure how much contact there is between the two organisations. It is certainly a lot less than was envisaged, so probably not very much really.

**Lucy Scott-Moncrieff:** We will do a bit of research and put it in our written submission so that you have the information.

**Baroness Campbell of Surbiton:** We have an inkling, but I just wanted to know your thoughts.

**Baroness Thomas of Winchester:** Does the Law Society have any sort of helpline? If anyone rang up the Law Society to ask about a discrimination case, would they be referred to the EHRC?

**Lucy Scott-Moncrieff:** We have something called “Find a Solicitor”, so if somebody phones up and says, “I have a discrimination problem”, we can tell them where the nearest solicitor to where they live is who would deal with that. We do not give advice over the phone.

**Q51 The Chairman:** As a way of summarising, what gaps are there in the legislation? We have heard from you about a number of those. Are there provisions such as reasonable adjustment which are unclear? What could be done to clarify them? In other words, bringing all this together as lawyers and legal advisers, what changes or gaps should we be concentrating on?

**Lucy Scott-Moncrieff:** As I said at the beginning, we think most of the Equality Act is all right in terms of its provisions. We do think bringing back in the statutory questionnaire would be really helpful and we do think that the public sector equality duty needs to be beefed up, but what we are really talking about here is lack of leadership and a lack of commitment to making this work. If we had that commitment in the way that the 1995 Government were committed to disability discrimination, an awful lot of the problems would fall away because there would be a sense that this was something that was important and that people should commit to it.

We do feel that incorporating the United Nations convention into domestic law, as I mentioned, would be a helpful indicator of that commitment and would make a practical difference to enforcement of the Equality Act and, indeed, bringing in other provisions. That is our wish list. A bit of leadership—quite a lot of leadership, actually—would be nice.

**Rachel Crasnow:** One of the things that the Bar Council has been seeking to look into for your assistance is how good the judicial training is on the Equality Act as a whole. There certainly is training on disability rights for all forms of the judiciary. Whether it is mandatory to have regular top-ups in this very fast developing area of the law is far from clear. What the Judicial Office says is, “We would hope that every judge who encounters the Equality Act has had some opportunity to be trained on its essential features”.

Where you have comments such as, “And of course many of these judges will have encountered Equality Act issues in their own private practice”, it does leave us with some concern that there is a reliance on what the judge knew or did in their former life as a practitioner.

We would say there should be consideration to ensuring uniform, continuing professional development about the Equality Act across the board for everybody who is going to be given Equality Act cases to determine. It is not enough simply to have that as part of your induction. It is not enough simply to have a brief summary of what disability rights are and how the Equality Act provides for them.

The Equal Treatment Benchbook, which all judges receive, has admirable sections on how the court should interact with disabled litigants, but that is a different point from how you determine and rule upon these very complex provisions within the Act itself. There is a whole range of different causes of actions that exist to give disabled litigants their various remedies. We think that is something which is important in ensuring that all these different principles are applied in a consistent and uniform way, subject of course to the different facts which arise in different cases.

**Barbara Cohen:** In preparing our written submission, we canvassed our DLA members as to whether there was a need for the Act to be amended to provide greater specificity in relation to reasonable adjustments. The general consensus was, ‘NO’, that the flexibility of reasonable adjustments as it is currently within the legislation is one of its real benefits because it fits a variety of situations and can be developed as technology changes and so on. What is urgently needed is really clear guidance and an updating of the codes of practice, based on some of the case law development, so that there are solid references for litigants, employers, service providers and others as to what reasonable adjustments could include.

I would like to use this moment quickly to add a couple of other gaps in the law where we think additional legislation might benefit. As you will be aware, the Stott case indicated that there was a gap in terms of protection against discrimination in air travel for disabled passengers. There is also, but not yet in force, the reasonable adjustments to common parts in relation to housing matters.

The DLA strongly supports the recommendation from the Bar Council relating to Section 1 of the Equality Act concerning the socio-economic obligation on public authorities because of the disproportionate representation of disabled people within people who are socially and economically disadvantaged.

We would also ask this Committee to consider recommending bringing into force Section 14 of the Equality Act, which is the provision on dual discrimination. All of us have many identities but very often people who are disabled are further disadvantaged because of their ethnicity, gender, sexual orientation and often because of their age. The legislation was intended to provide protection because of the combination of two protected characteristics, and we hope that you might look at that.

My colleagues have very strongly recommended that you recommend to restore the statutory questionnaire procedure. We also think it would be really useful to restore the power of employment tribunals to make a recommendation, when they have made a finding of unlawful discrimination. Up until 2013 when it was repealed, they had a power—not a duty—to make a recommendation that went wider than the individual claimant: that the employer within its workforce should make certain changes so that the discrimination that they had found would not recur. This is particularly important because in many instances the claimant is no longer there. He or she has left the job or lost the job, and so the recommendation power would not operate. Speaking to an employment tribunal judge, she has actually used this as a way of saying to employers, “I am thinking about making a recommendation. What would be most helpful to you in making the changes which you now see are necessary as a result of the findings of this tribunal?”. I hope it is something you will consider; thank you.

**Douglas Johnson:** I would agree with all the comments that my colleagues here have suggested. The fundamental point is that the legislation itself is fine. We could do a lot with it, but it is the enforcement of it that is lacking. I would not like to see amendments enacted to close up all these gaps but then still to remain unenforced. The enforcement is critical. Linked to this, what we would like to see are some updated and statutory codes of practice. Those are the ones that flesh out the legislation and make them useable for individuals, employers, service providers and local authorities. We need to have them on a statutory basis, but certainly the enforcement is key.

**Rachel Crasnow:** I would add that when the employment tribunal started (originally called industrial tribunals) in the early 1970s, they were intended as a forum for litigants to argue their cases on their own without legal representation. 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.

We would ask you to give really serious consideration as to how all those problems with enforcement, funding and fees act as a huge impediment to access to justice for these vulnerable users of the courts.

**The Chairman:** Thank you. Are there any final queries around the table?

**Lucy Scott-Moncrieff:** I would just make one last point. It is not a statement. The Law Society has very recently produced a discussion document on reforming employment tribunals. We will send you the link because it might be interesting for you.

**The Chairman:** Thank you. I think I speak for the whole panel in saying that we have been really impressed by the amount of expertise that you have brought together and given to us. It has been very impressive indeed. We are very grateful. We are also grateful to you for all that you do for the people that you are attempting to advise and help. We hope that you can continue doing so, albeit that circumstances are really very adverse. We do appreciate what you do. Thank you very much, and thank you for coming to us this afternoon.

*8 September 2015*

Barclays Bank, Business Disability Forum, Trades Union Congress, Association of Convenience Stores – Oral Evidence (QQ 72-78)

**Barclays Bank, Business Disability Forum, Trades Union Congress, Association of Convenience Stores – Oral Evidence (QQ 72-78)**

[Transcript to be found under Association of Convenience Stores](#)

## **Barclays – Supplementary Written Evidence (EQD0175)**

Thank you for the opportunity to appear as an expert witness at the House of Lords Select Committee on the Equality Act 2010 and Disability (the "Committee").

I promised to provide further information to the Committee following Baroness Campbell's question regarding Barclays interaction with the Equality and Human Rights Commission ("EHRC"). Additionally, I would like to provide some further information for the whole Committee in response to Baroness Browning's question regarding disabled employees wanting to have their needs met without the need to be labelled as disabled.

### Interactions with the EHRC

Baroness Campbell asked what in particular Barclays' interactions had been with the EHRC. Barclays has had limited interactions with the EHRC. These have been when responding to formal Inquiries such as the "Inquiry into Financial Services" and the "Inquiry into the recruitment and appointment of directors to the boards of FTSE 350 companies". We have also had discussions about how we make reasonable adjustments, the support that is in place for individuals and in particular how we train our line managers; we were happy to have those discussions with the EHRC and found the interaction productive.

### Baroness Browning's question

We recognise that disabled employees do not always want to say 'it is because I am disabled that I need X'. I wanted to provide some examples of how we are dealing with feedback we have had from employees individually and through Reach, which is our employee network that advocates on behalf of disabled colleagues on this point.

Employees said to us, 'When I change roles or if I get a new line manager, I don't want to have to start at the beginning again in terms of explaining my needs and the arrangements I have in place'. We are currently piloting a scheme called the 'Tailored Adjustments Passport'. It is document designed to be used on a voluntary basis where reasonable adjustments and other workplace accommodations can be recorded. It is designed to be dynamic, so as and when an employee's needs change it can be amended. Fundamentally, it is a tool which we think will remove some of the need for the employee to feel obligated to 'explain themselves', especially if they have a new line manager and they don't want their condition or disability to form part of their first interaction with them. As discussed with the Committee, we see part of our responsibility as a large corporate to share our tools with the broader business community. Once we have completed the pilot and if successful, we will share the document via our external partners to see if other organisations can also adopt this.

Mark McLane  
Head of Global diversity and Inclusion

*13 November 2015*



## **Aline Bearup – Written Evidence (EQD0118)**

As someone with a disability I would like to comment on the achievements of the Equality Act 2010 as follow:

### **ABOUT MYSELF**

I was born and educated in Vienna, Austria where I attended Grammar school (A-level subjects including subjects Latin, French, English, German, Geography, Biology, Mathematics, Music and Visual Arts); at the time my mother worked at the Canadian Embassy in Vienna and we moved to rural Devon over 24 years ago to join her British husband.

Due to a lack of funds as well as confidence because of my health problems I studied from home and successfully passed my London University Diploma (equivalent to a BA in Translation) with a merit in Science in 1998.

I also have a Diploma in Homoeopathy.

### **HEALTH**

My disability, disorder of the brain stem and cerebellum due to vertebra-basilar insufficiency can cause isolated/transitory insufficiency of the Arteria vertebralis. Although this is not a visible disability (except when loss of consciousness occurs), **I have as a consequence of this never been able to drive** as I have always suffered from lack of concentration, episodes of amnesia, sudden faints and panic attacks, which are also triggered by physical or mental stress. I also suffer from Hashimoto/ thyroid problems, hypoglycaemic swings and depression.

### **WORK AND TRANSPORT ISSUES**

Despite my academic achievement **stress and time pressure** have always been a huge **stumbling block, especially regarding interviews** when applying for a position.

**In the past I enjoyed a very good and positive working experience as a teacher in adult education** until the Council closed down the local facilities.

**I also shortly taught German** at the local school until the subject was taken off the curriculum.

The two afore-mentioned positions were very rewarding and as I mainly dealt with students and a very understanding Head Teacher. **I experienced no discrimination whatsoever.**

**However, not being able to drive and having to use the bus in more rural counties such as Devon seems to be viewed as a social stigma across the class spectrum, much more so than the disability itself.**

A considerable degree of **isolation** has resulted from this as none of my educated friends will join **me** on a bus ride, not even across beautiful Dartmoor. **The bus seems reserved for the poor, the unemployed, the disabled, pensioners, the occasional tourist and school children.**

**Allow me to point out that Devon unfortunately has a disproportionately high number of old buses where uncontrolled vibration and diesel fume particulates constitute a real health issue for the young, disabled or elderly passengers in particular.** Such problems often or always go unreported but should – in my opinion – also be considered when considering discrimination in this context.

With help through a government-funded initiative over 10 years ago I was employed at the office of a local paper. However, ***unlike* my support person** at the job centre **my employer had *not* received any training in dealing will employees with health difficulties, although he had been made aware of my disability from the start.**

It has to be pointed out that while the general public seem to have become more accepting of those with visual disabilities and employers are as a consequence more likely to offer low-paid manual work such as gardening or catering, **there seems to be no or very little understanding for academics with health issues and disabilities; interviews for professionals invariably involve a high amount of time pressure and stress, a huge hurdle for someone with my condition.**

**I may also add that having or not having the right accent seems to play a disproportionate part.**

Since 2004 I have been working as a self-employed artist. **Although self-employment takes away some of the work-related stress and time pressure for people with a disability, I think it would be important for government to help open up more professional job opportunities for academics with health problems and disabilities.**

In my own case being offered **adequately paid** employment as a translator, also **online**, could maybe lift me out of poverty. I am sure there are a lot of government departments where such work could be made available.

MPs and government departments buying stock from local artists instead of large companies would also help.

#### **INDEPENDENT LIVING**

It is very depressing and humiliating to see people with less dedication and education earning a decent salary.

Naturally all this greatly impacts on your social life and **where you can afford to live.**

Although I have **never** smoked, consumed any alcohol or drugs, I had this past January no option but to move out of my affordable, beautiful and conveniently situated apartment in Totnes due to circumstances beyond my control, caused by individuals with serious mental health issues who – since the cut of funds for their support – are out of control.

I have since then moved back into my parental home as in this case the social landlord was **unable and/or unwilling** to make good on their promise of safe independent living. **I would suggest that social landlords neglecting their duties should not be rewarded by financial support from the government via rent benefits paid to their vulnerable tenants.**

I would also like to stress that – given proper support from a social worker / carer etc. – wilful destruction of public property and social housing should not be tolerated nor rewarded, even when people have serious health issues.

#### **Was the Equality Act successful in the elimination of all forms of discrimination, in particular against people with disabilities and learning difficulties?**

In view of the above, I would like to say that although huge progress in public awareness has been made, the answer to this question would still have to be no, especially – as in my case – I have found support, understanding and opportunities for academics with serious health problems / disabilities sadly lacking.

I hope the above will be included in the panel's considerations regarding the amendment of the Equality Act 2010 and shall be available for answering any further questions in this matter.

*31 August 2015*

## **Jeanine Blamires – Written Evidence (EQD0171)**

### **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?

### **Summary:**

My experience of reasonable adjustments.

It is not always evident that staff, in different organisations, understand the reasonable adjustment duties. At times it is clearly evident they understand but are choosing not to comply.

The biggest reasonable adjustment a person or organisation can make is attitude. A willingness to make simple changes that are not costly but can be life changing. In my experience as a disabled household with multiple disabilities the following simple adjustments appear to be practically impossible for service providers to apply.

We need warning regarding change in routine,

- Such as ringing to arrange visits rather turning up on the door step. A particular problem with our housing association despite many requests.
- Or at school/college notifying a change in a timely manner. The consequences of not include distress and potentially an autistic meltdown.

When things go wrong, in health, education, social care, etc equal access to complaints procedures and services are paramount to ensure situations do not escalate and cause harm.

My experience is that complaint systems are set up with barriers that prohibit access by a disabled person with my kind of difficulties also the understanding of what is substantial disadvantage, accessibility and reasonable adjustments is poor.

Where I live advocacy is practically nonexistent, and as such you feel abandoned. This is especially difficult when you find yourself challenging large organisations such as County and District Councils, Utility Companies etc.

The most recent experiences of failure to make reasonable adjustments and abide by the Equality Act 2010 are in Education, Access to justice, Ombudsman and Access to Energy supplier services. I will start however with Health, because the risk to people like myself if this situation is allowed to continue is great.

### **Health**

Several of the hospitals I attend have a policy of if a patient fails to attend an appointment, the service I am receiving will be rescinded and I am referred back to my GP. Then I or my disabled daughter must go through the whole referral process again.

When I miss an appointment it is usually as a consequence of my disability or my daughters, some hospital departments are understanding and make a new appointment, others are not. There needs to be flexibility within this system to allow for this occurrence and ensuring that the disabled person continues to receive this service and gets timely treatment.

Another issue I have faced is that for a while I had difficulty speaking and making myself understood. I also especially when exhausted have difficulty processing information. I need help from my husband and/or my mother to engage with services including consultants. One consultant would not speak to my mother, who was supporting me that day, as a reasonable adjustment, saying he did not have time. He attempted to communicate with me instead. I was unable to get the information I needed to understand what was going on regarding my treatment until weeks later by letter. That was so distressing I transferred to another hospital.

### **Education**

In education, for example, in the past 4 months my Local Authority has refused to provide reasonable adjustments to enable my autistic daughter to access their service for assessment and preparation of an Education Health and Care Plan. She finds meetings stressful particularly in the large council offices where we live. She requested that small meetings be done via a free video conferencing service. This was refused even though the council has had video conferencing facilities set up in their offices for several years. It is worth noting that the Education Health and Care Plan process, which should take 20 weeks, has taken 18 months partly due to failure to make reasonable adjustments (our LA was a pathfinder for this process and trialling the service, hence 18 months.)

My daughter's local college refused to make the very small reasonable adjustments that would have enabled her being able to access her course. One of several such simple requests was for her teaching assistant to copy down her notes in bullet points. As a dyslexic as well as autistic, it would mean it was easier for her to see and interpret what she had to do. A decision was made not to do so.

Recently at my daughters new college I was advised that quite possibly not all my daughter's tutors would be willing to make the reasonable adjustments necessary to enable her to access the course she wishes to undertake. It was suggested, even though she has the required entry requirements for the course (it is A level equivalent) and has an unconditional offer, that she retakes her Btech Level 2 (She has a Merit, the equivalent of 4 B's at GCSE). She has asked that we help her fight this as she does not want another college to throw her out because of her disabled needs. Too often disabled students with learning difficulties are inappropriately moved from one low level course to another rather than being enabled to progress to the level they are capable of achieving and aspire to.

I would like to add, my daughter did not feel safe in school till she was seventeen and moved to an inclusive mainstream school with a zero tolerance policy for bullying.

Keeping a disabled child safe in school is as big a reasonable adjustment as providing a laptop or a ramp. It's an issue that is frequently ignored or justified because the child is different from his or her peers. Aspirations will not be achieved while disabled children are not safe in their schools and colleges.

I would also like to add how incredibly difficult it is to challenge a school when discrimination has occurred especially if that school is an academy. Complaints procedures need to be clear and support to make complaints must be provided.

### **Access to justice**

The focus on discrimination in law is too often employment over services, so the information to help challenge discrimination in services is quite poor and difficult to find. Others have submitted evidence regarding the Legal Aid changes, I have personally found access to the Civil Legal Aid Agency practically impossible, I currently have a complaint stalled at the Parliamentary Ombudsman regarding this service. The complaint is stalled because I am also having substantial difficulty accessing the service without necessary reasonable adjustments. Until I can access the service, my complaint cannot be addressed and quite simply I am not able to obtain legal aid until the complaint is addressed.

Access to Pro Bono help is an equal nightmare, the application process requires expertise, the CAB locally no longer has funding for legal help, and that expertise is being lost. It took months to complete the application and still it wasn't quite right and more information is required.

The Pro Bono service does not have the reasonable adjustments in place necessary to enable equal access for disabled people like me.

Cases that are in the public interest are not being heard.

The Court Procedure Rules online are not very easy to engage with as a disabled person with difficulties in processing information.

There are no easy read versions, or examples of good practice that are necessary to enable disabled litigants in person to even have a remote chance of a fair trial.

If the government legitimately wants to enable equal and fair access to the courts and justice this needs reviewing.

With regards to the Gov.uk website, as services migrate over to this website, essential information regarding access to those services and reasonable adjustments are not being transferred over

The GOV.uk website needs a pool of disabled users to act as mystery shoppers so as to identify these growing gaps in disabled information.

### Magistrates court

I have so far had 6 applications for warrant of entry to put a pre payment in my home for a disputed amount, withdrawn everytime by British Gas. The complaint is at the Energy Ombudsman and in deadlock. Each time I have had to attend court.

I cannot effectively access the Magistrates court without reasonable adjustments to enable me to participate on an equal footing.

It is practically impossible for the court to arrange reasonable adjustments in time for domestic disabled utilities customers who are attending warrant of entry applications. This makes it much harder for disabled customers to contest applications thus pre payment meters are put in our homes. This is not the courts fault, but that of the Warrant of Entry process.

The Court is unaware who the applications are against or who is actually seeing them until the day of the hearing.

The result is disabled people are at greater risk of injustice and failure to ensure Right to a Fair Trial.

### County court

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.

### Ombudsmen:

My worst experiences of attempting to get reasonable adjustments are from services that prefer to be remote, email, phone and document based many of which are ombudsmen.

The Local Government Ombudsman has an excellent document which includes how to enable disabled people like myself to access a complaints service?

### **Local Government Ombudsman, Guidance on running a complaints system**

<http://lgo.org.uk/GetAsset.aspx?id=fAA5ADYAMwB8AHwAVABYAHUAZQB8AHwAMAB8AA2>

The Local government Ombudsman has highlighted its continuing difficulty to make and record reasonable adjustments in several reports that are publicly available on its website. This is about recording reasonable adjustments on the customer's complaint record so that they can be applied.

Below are extracts from the Local Government Ombudsman's website.

**"CLA 2056 25 February 2014**

**Commission for Local Administration in England**

## **Quality and Service Standards**

*Standard 1: Our service is easy to access, we take full account of what people tell us and treat them with courtesy and respect*

Analysis of ECHO data shows a need to improve the quality of data collection around the reasonable adjustments we make. A reminder has been included in 'Talking Points' and the issue will be covered during training sessions on the ECHO upgrade."

**"CLA 2074 14 May 2014**

**Commission for Local Administration in England  
Quality and Service Standards**

An **amber** indicator relating to how we deal with reasonable adjustments was unchanged since the last Commission and will be reviewed at the May Leadership Team. Meanwhile, a reminder of the importance of recording reasonable adjustments was included in the February edition of 'Talking Points'."

**"CLA 2084 – Appendix A 9 September 2014**

**Commission for Local Administration in England  
Quality and Service Standards**

*Standard 1: Our service is easy to access, we take full account of what people tell us and treat them with courtesy and respect.*

- A **red** indicator relates to a report on how we deal with requests for 'reasonable adjustments', for example due to a complainant's disability. A sample of such cases revealed problems such as font size not being increased in all corporate documents (e.g. fact sheets) and simplified letters not being sent to people with learning difficulties. In addition, some information was not properly recorded on ECHO. Reminders have been sent to staff via the monthly *Talking Points* bulletin and managers will consider how we respond to reasonable adjustments as part of their casework quality monitoring. A further report on reasonable adjustments will be brought forward to the Casework Managers Meeting in October."

**"CLA 2111**

**9 December 2014**

**Commission for Local Administration in England  
Quality and Service Standards**

*Standard 1: Our service is easy to access, we take full account of what people tell us and treat them with courtesy and respect.*

One of the **red** indicators is unchanged since the last report to Commission. It relates to how we deal with requests for 'reasonable adjustments'. A range of actions were taken but we have not yet carried out a further sampling exercise. We had intended to do so in October but instead we looked at the two quality reports relating to reasonable adjustments and decided they should be amalgamated into a single, annual report in July. However, given that the indicator is currently red, we will now carry out a further sample to establish whether there have been improvements which would allow the rating to change from red. We intend to report the result to Casework Managers Meeting by January 2015."

**“COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND  
Minutes of the meeting of the Commission held in the LGO Executive Office, Coventry on  
Thursday 29 January 11.00am to 12.30pm”**

Re Point 20, Quality Monitoring report. It was agreed that trend data should be included for the next meeting.

This commission meeting does not disclose the condition of reasonable adjustments however the April 2015 meeting indicates the situation remained red.”

**“CLA 2129  
30 April 2015  
Commission for Local Administration in England  
Quality and Service Standards**

*Standard 1: Our service is easy to access, we take full account of what people tell us and treat them with courtesy and respect.*

An indicator about how we deal with requests for ‘reasonable adjustments’ has changed from red to **amber** since the last Commission meeting. This followed an audit of staff awareness of our arrangements for making reasonable adjustments.”

Where a body has a role in investigating cases where disabled discrimination has occurred it is fatally compromised when it is unable to make those adjustments itself.

**EASS**

My experience of accessing help from the Equality Advisory Support Service is both really positive and extremely bad.

They were incredibly helpful when I initially had problems with the Civil Legal aid Service and helped me with my claim form.

When I wanted help and advice on complaining against the Civil Legal aid Agency they refused, often misinterpreting what I was attempting to communicate to them, (speech/communication problems, processing delay). It was very frustrating. It took a lot of effort to get them to refer me to Voiceability. Then to get video conferencing, I had to complain. I still did not receive help to complain. In the end after letters to members of parliament and the Lords I was given leave to complain to the Parliamentary and Health Service Ombudsman, the CAB were able to help me.

Video conferencing is useful for those with speech difficulties, if you lose speech you can express yourself with your hands, face, show documents and write answers. It is less stressful than face to face, but more effective than email.

The experience was so bad I am not confident that I will get an accessible service from them in the future.



## **Energy**

British Gas

Staying warm is very important for disabled people. We are often at home most of the day. Recently it took me 27 minutes to get through to warm home discount team; there is no single dedicated team to handle disabled customers.

Usually it is impossible to get hold of someone with understanding of disabled needs and reasonable adjustments.

I finally have an offer of reasonable adjustment of face to face meeting after 4 years.

Warm home discount application is a barrier for vulnerable disabled to getting the discount. It relies on disabled being able to contact utility company and or fill in form. Elderly on pension credits receive the discount automatically. This should be automatic for those on ESA support. Currently Utilities save money by ensuring the process is not accessible.

The result is disabled people get into debt and end up on payment meters that are not practical and cost more.

Accessing the complaints process is also not easy, reasonable adjustments are not offered or made.

## **Conclusion**

I could go on, I have many more examples. I do not have the energy to do so. My biggest worry is that at some point I will no longer be able to fight back and I or my daughter will be vulnerable to bad decisions regarding our care because services are not willing to provide the reasonable adjustments to ensure either our voices or the voices of the people that care for us are heard.

*17 September 2015*

## **David and Jeanine Blamires, Andrew and Michèle Brenton and Carers UK – Oral Evidence (QQ 166-173)**

### Members present

Baroness Deech (Chairman)  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### **Examination of Witnesses**

**Ms Emily Holzhausen OBE**, Director of Policy and Public Affairs, Carers UK, **Mrs Michèle Brenton**, **Mr Andrew Brenton**, **Mrs Jeanine Blamires**, and **Mr David Blamires**

**Q166 The Chairman:** Good afternoon, everybody. Thank you very much for making the trip to come and see us. We particularly wanted to see the five of you because the written evidence you sent to us was so persuasive and interesting, we thought we would like to hear some more from you. Particular thanks to you for coming.

I should say to you that this session is open to the public. A webcast of the session goes out live, and is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence, and will be put on the parliamentary website. A few days after this session you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections, as quickly as possible. If, after this session, you want to tell us some more, clarify or amplify something—because, as you know, we have not got that much time, you have to be fairly concise and it may be that as soon as you leave you think, “Oh, I wish I’d said this”—do please write to us and we will take it on board. There may be some votes this afternoon, which will be evident to us from various scenes on these screens. If you find people stand up and walk out, that is simply because they have to go and vote. We will adjourn for a few minutes to allow people to go downstairs to vote and come up again. That is all it is.

I would like you to feel relaxed and comfortable. If you want to pause for a few minutes, pop out to take a deep breath, whatever, please do feel free to do so. Do not put yourself under any discomfort. Whatever it takes to make you feel able to give us the full benefit of your experience is fine by us.

We have got about five questions for you. Perhaps you would like, briefly, to tell us who you are, starting with Ms Holzhausen.

**Emily Holzhausen:** Thank you for inviting us to give oral evidence, we very much welcome the opportunity. Carers UK was set up nearly 50 years ago by a woman who had to give up work in order to care. We were founded on a very strong rights base, and that still continues very much today. We are a membership organisation of carers run by directly elected carers. Our evidence is not just from policymakers and practitioners; our evidence comes largely from people themselves. To us, the Equality Act was an incredibly important step in the journey of rights and visibility in society. I think your inquiry is quite right to look at whether that has been implemented for disabled people and their families.

**The Chairman:** Thank you. Michèle and Andrew Brenton.

**Michèle Brenton:** Thank you for inviting us here today. I am Michèle Brenton. I am Andrew's wife. I am somebody who has spent decades being a carer and, for the most part, not realising I was one at the time. That is something I realised quite late on in the situation, and, during that time, my own life and ambitions and interests dwindled until they have practically disappeared. Here I am, wife, mother, and not a lot else at the moment.

**The Chairman:** Anything to add, Mr Brenton?

**Andrew Brenton:** I am a multiply disabled person who has been on the end of direct discrimination from a university and had the struggle of trying to get things put right, trying to get inequality and discrimination sorted out, and found it is extremely difficult and extremely tiring.

**The Chairman:** I know that some of you are involved in cases of one sort or another, therefore you will not want to go into the details of them while they are still under consideration. We can talk in generalities, and if there is a question that you think is too probing into your case, you do not have to answer it. Mr and Mrs Blamires.

**Jeanine Blamires:** I am Jeanine Blamires. This is my husband, David Blamires. I am a disabled person who also happens to be a parent carer. Apparently, I can be either a disabled person or a parent carer; it appears that I cannot be both. I have been sick for 16 years with the condition I have, chronic fatigue syndrome, plus a few other bits and pieces, which you will notice from the involuntary movements that I have. We have two daughters, one who has complex difficulties, but is high functioning.

Our biggest issue at the moment is enabling our daughter's aspirations to be achievable, because the organisations out there, that are supposed to enable her to achieve as best she can, do not have the same aspirations. We would like to see that change.

**David Blamires:** I am a carer. Much as Michèle said, I fell into this role. Without offence, it is not one I would have chosen. Please excuse the glasses. I suffer from chronic pain and these reduce it a little bit so I can actually function. Unfortunately, I am at the stage where painkillers only cause more pain, so they are barely worth the effort these days. If I sound a little sharp or aggressive, that is the pain speaking; that is not what I mean to sound like. Please bear that in mind and listen to the content, not the tone.

**Q167 The Chairman:** Thank you. We have some questions for you. If anyone has relevant interests to declare, they will mention them before they put the question. I said some people might have to go out to vote; some people have to leave early or whatever, so do not take any notice if somebody has to go out briefly. You do not all have to answer every question, but if you have something to add, please do.

The first question is from me and it is to the Blamires and the Brentons. Both of your families have experience of challenging disability discrimination, and have faced barriers when doing so. What changes would you like to see to the court process to make it easier for disabled

people to access their rights? Would you have preferred to have been able to go to a disability ombudsman or a body that could offer mediation? Who would like to answer that one?

**Jeanine Blamires:** Could I answer that one? It is quite current. Can I split it with my husband; he is going to tackle the ombudsman issue. My experience is quite raw and still current. The biggest barrier to enabling a disabled person to achieve any sort of access to the court process is information. Information is so poorly written and so poorly presented on the Government websites, which are supposed to be there to enable us access; in effect, they are a barrier to accessing the court process, and that must change. To be frank, if I had the energy, I could sue the justice.gov website for being inaccessible for a disabled person. I should not be here saying that.

**David Blamires:** You should not have to say that.

**Jeanine Blamires:** 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. It takes too much time to go through them, pull out the strands and see where the problems are. It is impossible.

I need to say, two years ago when this started my speech was extremely poor. I have had my head rewired since—I am not sure for how long—but while I can speak I must say how horrible it is to try and make yourself understood on the phone to people who are not prepared to put the reasonable adjustments in place to enable me to communicate, so they misunderstand and misinterpret. You get told, “No”. Then you say, “You didn’t understand”. “We did”. “You didn’t understand, please let me explain”. Again, they are not hearing you. There is this criterion within the civil legal aid law that if they cannot follow the instructions of the applicant it must go to face-to-face. That is not happening. That did not happen in my case. I think the legal people have pointed out problems there previously. There must be some form of advocacy, whether it is through legal aid or on the doorstep, like it used to be through the citizens advice bureaux, somewhere you can go and say, “Help”, and they can say to the organisation, “Come on, all this person needs is to be able to communicate to you the problems she or he is having. How can you facilitate to enable this person to be heard?” That is all it takes, and then for them to do it. That is impossible at the moment.

I will also add—I know I am going on—if at all possible if I could get advocacy in another district, it would be helpful. There is advocacy available in law centres elsewhere but they are postcode restrictive; they are funded by different councils, so I cannot go there. If I have a complaint against my own council, it is a conflict of interest to go to an advocacy service funded by them locally. It causes problems, and has in the past. There must be some form of mechanism, if there is a perceived or obvious conflict of interest, for that person, family, or child, to go over the border and access advocacy from another service. That would solve quite a lot of issues.

I have got quite a lot more here, but I need to allow Michèle to have a say.

**The Chairman:** Someone was going to tell us about the ombudsman issue.

**David Blamires:** I can speak on that one. As at this moment, we are suing one ombudsman for discrimination, we have cases stalled with the Parliamentary and Health Service Ombudsman and the Energy Ombudsman because they will not make reasonable adjustments. Ombudsmen are reactive, not proactive. Both Jeanine and I come from an

educational background and, much as I am going to get a lot of angry teachers here, the Ofsted-type model of proactive assessment is very effective. Teachers hate it, but it does work.

On the point of mediation, mediation as part of the process is fine, but it does imply there is fault on both sides almost by its definition. As a general rule, discrimination is quite black and white; it either is or is not. From what we have gathered over the last two years, it is one of those areas of law where it is less about how it is interpreted and literally more about how it is laid out on paper. Mediation as part of the process, yes, but it must be face-to-face and wholly independent of any influence.

With respect to the comments on the Parliamentary and Health Service Ombudsman, the ombudsmen we are suing have committee members on the Parliamentary and Health Service Ombudsman and they are slowly merging together. It does beg the question: is there a conflict of interest? It leads me back to my point on an Ofsted-type assessment.

The other thing we thought of was the Information Commissioner's Office. A lot of discrimination is information based. Whilst lifts and ramps are big-ticket items, they are simple things to fit. Attitude and persuading people to change what is, quite frankly, centuries of ingrained attitude is going to be the biggest trick. It has been done with most of the other discriminated groups slowly over the last 50 to 100 years; it needs to be pushed further with the disabled. We appear to be the last whipping boys left.

**The Chairman:** Good point. Anything to add, Mr and Mrs Brenton?

**Michèle Brenton:** With regards to the court forms, et cetera, it is not as big a job as it might seem to make these accessible. One of the problems is it sounds like it is a huge immovable task, but if the will is there an awful lot of these things can be fixed with five minutes' common sense and consideration. For example, on the court website, we had our remission fees claims rejected, at one point because we had used the form that was online and it was out of date. It is simple things like that—keeping websites up to date—which is something you would expect would be a baseline. It causes a huge problem. Information is not available to the court people themselves. The second time we had a court remission fee nearly bounce because the clerk we handed it to did not understand the banding fees. We nearly timed out because of that.

That brings me to the other point, which is timing out. The timing out period is much too short. It is six months, as far as I understand, and that is nowhere near suitable. Disabled people are already dealing with challenges in their lives day-to-day anyway, and they then undergo disability discrimination which has various levels of impact upon them and they have to get their heads together to decide whether or not they are going to go to court. This takes time and consideration. They may be emotionally and physically impacted by the discrimination. They may not be able to think clearly. By the time they get themselves organised, looking for representation, advice, et cetera, that six months is a very narrow squeak. It can take quite a long time for the effects of the discrimination to manifest themselves, particularly physical manifestations of stress, et cetera, with ongoing long-term harassment. I am talking from a litigant in person's point of view now. You do not understand, you put your case together and, as far as you are aware, once you have done that it is carved in stone, and changing things as you go along is very difficult. It is hard enough getting there in the first place without making alterations as you go along. As the time goes on, if something appears, like a physical problem, you tend not to want to add it because it is going to complicate the situation and make what would have otherwise been a

straightforward case into a complicated case. It snowballs and gets very confusing and complicated. If you had a longer run at it, you could probably get your case clearer and have all your ducks in a row properly. That would make life easier for the courts as well as the litigants, because there would be fewer complications with things arising as you go along, because you would have a longer time to do research and see where you were before you went in.

The problem with ombudsmen is when discrimination is impacting upon somebody's studies, as with my husband and now with my son, it is ongoing while something is running alongside it. I presume it is similar with employment discrimination as well. You are afraid to rock the boat because it can damage something you still hope will turn out well and do not want to cause a problem with people thinking you are troublemaker. If ombudsmen were fast and had a kind of triage system, that would help. If you had a discrimination situation which was a one-off situation, that could go on the backburner because it is over and done with; it is all over bar the shouting and how it is going to be sorted out. If it is still impacting on somebody's life, snowballing and getting worse and worse, that is something that needs to be nipped in the bud. A triage system might say, "We will speak to you first and see if we can sort something out fast". That is what I would say about ombudsmen.

We would have liked to have gone to a disability discrimination ombudsman if they could have moved faster and sped things up and we could have solved the problem. The most important thing for us was to solve the problem, not to get compensation after the fact, because by that point the damage is done. At that point you are acting altruistically, trying to get things changed for other people, because the damage has been done for you and cannot be undone and no amount of money can fix it.

**Jeanine Blamires:** Can I comment on that?

**The Chairman:** Can we just hear from Mr Brenton first and then we will come back?

**Jeanine Blamires:** I am sorry.

**Andrew Brenton:** I would like to add to that. As far as I am aware, the only redress is through civil action, for which you will not get legal aid because of the complexity. The Civil Procedure Rules are really complicated. I count myself as a reasonably well educated person. The first thing that an institution will do is engage the most expensive lawyer they can to try and frighten you, which is what happened in my case. My court case is settled and over, so I can talk quite freely about it. They engaged a firm of London solicitors. One of the first things they said was, "You're not doing it according to Civil Procedure Rules. You've gone wrong this, that and the other way. By the way, our fees are likely to be somewhere in the region of £65,000. When you lose, you'll have to pay that". It is going to frighten off a lot of people, and I believe that is the objective.

The next thing that happens is they do something called a Part 36 offer, which is a payment into court that the trial judge is not privy to. If it goes to full trial and you are awarded less than the best Part 36 offer that is in force, you will probably have to pay the defendant's costs even if you win. In my case, they made a very low Part 36 offer, which they subsequently upped. It is playing fees roulette, almost gambling on what the judge is going to award. There is no clear scale of compensation. The compensation is usually based on the Employment Tribunal, on something called the Vento scale, and the lowest to the highest is an extremely wide band. You are trying to second-guess what somebody else is going to think of the injury to your feelings, which is not something you can be objective about. By its

nature, an injury to your feelings is very subjective. That is the second part. The Part 36 is another way of pressuring you to settle for an unreasonable amount.

**The Chairman:** We have heard quite a lot about costs. We know that is a problem.

**Andrew Brenton:** In my view, in the case of discrimination under the Equality Act, it would be beneficial if the Civil Procedure Rule Part 36 was not allowed, so there could be no offer into court. This would immediately put the defendant at risk of costs, which would focus the mind.

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 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.

**The Chairman:** We have heard that problem very forcefully.

**Andrew Brenton:** It is very, very distressing.

**The Chairman:** A final quick word from Mrs Blamires.

**Jeanine Blamires:** The judicial process is not bound by the Equality Act. It needs to be. They try to compensate for it with their equality handbook. It is possible for solicitors, defendants, respondents, to continue discriminating while the court is in process and that affects the overall objective of being able to settle and save on costs. We cannot go much further than that. All parts of the court process must come under the Equality Act so that you know once you hit the court process you are safe from discrimination, and at the moment you are not.

**Q168 Lord Faulkner of Worcester:** Before I ask Mr Brenton a question, could I offer my congratulations to him on securing his postgraduate degree, despite these extraordinary difficulties he must have experienced in the process? That is an inspiration to everybody. We understand that you challenged the university on making reasonable adjustments for you because you wanted them to change their policies, not just for you but for other students. Has anything happened since you graduated? Are other students experiencing the same sorts of problems as you did?

**Andrew Brenton:** In my opinion, the university has paid lip-service to changing. They say they have changed and rewritten some of their equality policies. I have it from an extremely reliable source that students are still being discriminated against, both through learning difficulty and physical access. I have it on authority that one of the university’s newest buildings is not wheelchair accessible in the way that it should be. My son is still being discriminated against with regards to his neurodivergence and learning difficulties. It is still going on.

This is possibly a problem with the attitude of senior management. They are fairly divorced from the learning experience, because they sit quite a way above the lecturing and contact levels. When I spoke to them wanting to drive change, to eradicate the problems, they saw that as me being somewhat of a nuisance, and it was discussed amongst themselves. I have been privy to all the emails through a subject access request under the Information Commissioner’s Office’s policy.

**Lord Faulkner of Worcester:** Freedom of Information Act.

**Andrew Brenton:** It was actually under the Data Protection Act. At one point, they decided that my complaints—and my complaints through the internal complaints procedure were upheld—were vexatious and I was a troublemaker. They tried to create this scenario where

they could stop listening to me, because I was being a nuisance, when these were very, very real problems.

**Lord Faulkner of Worcester:** I should have declared an interest as vice-president of the charity Level Playing Field at the beginning. I am attempting to get legislation through Parliament regarding access for disabled people to sports grounds. Can I ask you another question, Mr Brenton? Did anybody explain to you that you could have applied for an injunction to make the university carry out the reasonable adjustments that would have helped you?

**Andrew Brenton:** No, because we did not have anybody that could advise us. When I went through the internal stage 1 and stage 2 complaints, the university clearly instructed me the next course of action that I could take against them was to take it to the Office of the Independent Adjudicator, which is effectively the university's ombudsman. We knew at that point the university's ombudsman had made a statement that they will not judge on cases of discrimination—they see that for the courts—because of the complexity. If I had taken it to the Office of the Independent Adjudicator, the case would have timed out because they take 12 to 24 months to go through their process. The issue that Michèle brought up of the statute of limitation on bringing a claim is very real and valid, and, in my opinion, it needs to be somewhere nearer three, four or five years. It is quite hard to bring a case against a university where you are studying, because you fear they may take retaliatory action by penalising you academically. They did not.

**Michèle Brenton:** We did know that an injunction was available, but they kept saying they were going to get it fixed. It was always, "It'll be done in a minute. It'll be done in a few days. It'll be done in a month", and it just dragged on and on. By the time we were at the point when we would have thought about going to an injunction, that was the point when it did get fixed. By that time the discrimination had moved on and was not just the physical lack of access that had been the problem; it had now turned into something a lot wider and the discrimination was turning into the way Andy was being treated personally and being called into meetings, which arguably could count as harassment. It was turning into a very nasty, unpleasant, stressful situation.

Basically, Andy was getting up in the morning, feeling sick with nerves, going into university, doing what he could, keeping his head down, trying not to make a fuss, even though he would go into a lecture and the lecturer would not face him. He is deaf, and they would not face him so he could see their lips. Or they would give a film to watch and there would be no subtitles, so he would have to leave because there was no point in him sitting there. If he left, because there was no point in him sitting there watching a film he could not understand, he was treated as though he was being unreasonable and disruptive. This was the kind of thing that happened over and over. This was the baseline level of discrimination that was background constant noise all the time.

He was called into a meeting at one point, which he thought was a meeting with two people to discuss how to support him, and it turned out he was facing seven or eight people, was it?

**Andrew Brenton:** Seven senior managers.

**Michèle Brenton:** Seven senior managers, who basically grilled him. I have actually got the transcript of that. By this point, things were so bad Andy was carrying a recorder to protect himself, because we did not know what was going to happen next. He was coming home at night, debriefing with me—I was trying to take some of the flak off him—and then was going straight to bed. We had no life. He has chronic pain anyway, and it is made worse by stress.



What was supposed to be three years of him being a student and us having a fairly pleasant time of it turned into hell on wheels, frankly, and our lives were awful.

**Q169 Baroness Pitkeathley:** I have to declare an interest as vice-president of Carers UK. My question is initially addressed to you, Emily. The concept of “discrimination by association” protects carers from being discriminated against because of the disability of the person they care for. Do unpaid family and other carers know they have such rights under the Equality Act? Does the Act provide enough protection for carers who are themselves disabled, as we have colleagues with us here today?

**Emily Holzhausen:** I do not think I could possibly be accompanied by two better examples than Michèle and David. The vast majority of people who do care, as many of you will know, do it as part of a close relationship, either as a family member or close friend. People do not call themselves carers, or use that label. Generally, people find it quite hard to find out about their rights and entitlements. From the outset it is difficult. To understand the concept of discrimination by association is quite a leap for most people. When you read the legislation, and Section 13 itself, it is quite difficult to understand until you get into practical examples of how somebody talks to you in a very negative way because your son has a learning disability. Another example raised by one of our members was a health professional saying, “Well, it’s not worth you having the operation because you’re caring for your husband, so you won’t have any benefit from it”. It is those sorts of things, everyday discrimination, which disabled people recognise very well, and the impact that goes beyond just the disabled person. That is also the whole point of this: if the person in your family or your close friendship is disabled and they are discriminated against, it impacts upon you directly.

To come to the particular point of double discrimination, we find a lot on our advice line and some assessment processes through local authorities where people do not necessarily understand that you can have a disability and still be a carer. It is possible. Equally, in the benefits system it is possible to have a disability and be a carer and get PIP as it is now—personal independence payment—and carer’s allowance. It is possible to do both, just as it is possible to have many other roles in life at the same time. There is still a big awareness job to be done to understand from the family’s point of view, but also for everyday services and professionals.

**Baroness Pitkeathley:** Mr Blamires, would you like to comment?

**David Blamires:** I have got one line. 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. I am not amazingly well educated, but I have worked in education and am not uneducated. It does not appear to be readily available information and needs to be pushed a bit more. That is pretty much all there is to say.

Jeanine made a point in our notes. As far as we can determine, I am effectively a slave to the Government. The premium comes to £30 a week. That is broadly slavery in any other terms.

**Baroness Pitkeathley:** Thank you. Mrs Blamires, would you like to comment?

**Jeanine Blamires:** They removed evidence that I was a disabled carer from my daughter’s social care records. That caused me harm.

**Baroness Pitkeathley:** They removed it?

**Jeanine Blamires:** They removed it. They removed my husband’s difficulties too. When you are a parent carer and you have a disability, if you are not assessed for the help you need so you can be a better parent, you cannot be a better parent. In effect, you are set up to fail.

**David Blamires:** If you ask for a reassessment, in our case they threatened, “Well, you’ll get less care because we’re having budgetary restrictions”. You are left with your backs to the wall and the ground in front of you falling away. It is quite uncomfortable.

**Baroness Pitkeathley:** I am sure it is.

**Jeanine Blamires:** Can we put our area in context? In North Yorkshire there is a problem. North Yorkshire is the area where they went to court to get permission to, in effect, imprison a young man in his own home. This is North Yorkshire County Council v MAG, which you will find on Steve Broach’s blog, “Rights in Reality”. I will send you the link. Every day we deal with that mentality where all efforts are put in place to make it as difficult as possible for people in North Yorkshire, who have needs, to get those needs met. Our needs are seen as a cost. They do not look at us and see the benefit we can bring to the community.

**Baroness Pitkeathley:** Or indeed the value of your contribution. Thank you very much.

**Q170 Baroness Thomas of Winchester:** My question follows from the last. First, I must declare my interests. I receive DLA. I am a trustee and vice-president of Muscular Dystrophy UK, a member of Lord’s Cricket Ground Disability Access Committee, and a patron of Thrive. Is there a need for carers to have the same right to reasonable adjustment as disabled people? How significant a problem is it that the Act does not currently require this? Would such a provision be the most effective solution? Perhaps I should ask Emily first of all.

**Emily Holzhausen:** Thank you for asking that question. In reading the Equality Act—and I still maintain, despite some of the issues of implementation, the DDA is an incredible step forward, as was and is the Equality Act—I thought part of that would naturally lead to reasonable adjustments. I had a good discussion with the lawyers about that. Because it is not inherent in the law there is no direct right to have reasonable adjustments, only to not be discriminated against by being associated with disabled people. Even the concept of indirect discrimination is not there for carers. I would say the best implementation of law is something that is easy and readable. A step towards reasonable adjustments for carers would be a positive step forward.

I also wanted to put this in context, if I may. With an ageing society, and people living longer with disabilities, it will become much more commonplace for people to be working with disabilities, or caring for somebody and looking after somebody at the same time, so we should put these measures in place to be able to keep people working in jobs that they wish to do for longer.

**Q171 Baroness Thomas of Winchester:** That is a very good point. Could I put my next question to Mrs Blamires? In your evidence, you talk about the needs of your household rather than each individual within it.

**Jeanine Blamires:** Yes.

**Baroness Thomas of Winchester:** For example, when a missed hospital appointment may be due to your own disability or that of your daughter. Should the hospital look at reasonable adjustments for the carer as well as the patient?

**Jeanine Blamires:** Yes, absolutely. The example I have has come up today but it is not a hospital.

**David Blamires:** In the last 24 hours.

**Jeanine Blamires:** It is education. My husband says it is applicable. An appointment has been arranged for my daughter’s EHC plan without discussing with us if it is a good time, and it is not. My autistic daughter is very unhappy and making her unhappiness known, as autistic young people do. We have to deal with that. There are things I have to do for her, whether it

is social care or health, and, because I am like this, my family needs to do for me. We are constantly juggling balls in the air, whether it is court cases, social care or health care. I am repeating myself. They are all on the calendar. When people ring up or send an appointment through, literally we have to ring back and say, "I can't do it. Can we move it?" and then it can be, "Can we move it again?" It can be multiple times before we get to do a specific task, and it is how long it takes. I am doing this because it is necessary, but I will be poorly afterwards. It is easier if I have smaller meetings and it helps my daughter too. We ask for smaller meetings and it is seen as unreasonable. I cannot understand why. We offer things like Skype, because it is a phone call with a screen. I cannot see why it should be so hard to cut a big phone call with a screen down from an hour to five, 10 minutes, and have it over a couple of weeks. It is not making more effort. You are picking up the phone, pressing a button, but it is impossible.

**David Blamires:** Or it seems to be.

**Jeanine Blamires:** Where we live there are some good initiatives coming through. Airedale Hospital is doing great things with the older carers by telemedicine, where you do not have to come in, they contact you and do blood pressure through videoconferencing, but it is not available to me. I would like it to be available to me. Not all departments within hospitals understand the needs of the carer or the cared for. They can be downright rude, which I have said in my submission.

We have got to the point where we just do not stay with that department, we go back to the GP and say, "Right, where's the next hospital?" and we go to that hospital and find the ones that are kind to carers and disabled people. I cannot put my role as carer separate from disabled person, so I cannot answer your question as a carer, because I am both. If you want just a carer's view, you must ask my husband. As both, I need both of my needs looked at. 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. Both are the same person. I am not seen that way. I am sure some of you will get this. I am either a "poor thing" or I am a "horrible thing". I admit, sometimes I have been very angry. I was angry when the council altered my daughter's records, which is a crime. I was angry about that and I shouted. I became this terrible person, but what they did was bad and still is not redressed. In the records I am a poor person because I am ill. I cannot be both. 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.

The other issue is my daughter is a carer too. She is autistic. She is still my carer when I am bad. When you have a household of more than one disabled person, you have a circle of carers. As that household gets older, so do the parents. My parents, who helped us tremendously, are now having difficulties, so they are part of that caring circle. My sister, who has autistic children too, is part of that caring circle. We are all propping each other up, in spite of the services that are putting barriers in place to make our life hard. That is the tough bit. I think I have gone way off what you wanted me to answer.

**The Chairman:** Lady Campbell is going to ask the next question. I will just tell you her interests. She is a patron of Just Fair, a patron of the National Disability Arts Collection and Archive, a founder and member of Not Dead Yet UK, recipient of a social care personal budget, disability living allowance and access to work. She was a disability rights commissioner throughout the life of the Disability Rights Commission, and a commissioner of equality and human rights on that commission for three years.

**Q172 Baroness Campbell of Surbiton:** My question is to Ms Holzhausen. Hello, Emily, it has been a long time. There are two questions I want to ask—the first one because I did not get an opportunity to ask earlier. Do you have any figures of how many carers are discriminated against in employment due to their caring responsibilities?

**Emily Holzhausen:** We do not have any figures. That is a really good question. They are not collected centrally, so it is very hard to tell. Could I come back to you when I see what sort of evidence we have within our surveys?

**Baroness Campbell of Surbiton:** That would be great.

**Emily Holzhausen:** I will see what might be reliable. I would say the right to request flexible working that has been brought in has loosened up a few attitudes to different work patterns, but there are some more entrenched issues. For example, people think flexible work patterns is working different shifts, 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. Could I come back to the Committee with that?

**Baroness Campbell of Surbiton:** Any indication on that would be really helpful.

**Emily Holzhausen:** Of course.

**Baroness Campbell of Surbiton:** The question I am down to ask is very much about the research that you carried out in Carers Week looking at carer-friendly communities. In your report you talked a lot about the problems with the lack of carer-friendly public space and services. Would this be addressed if existing accessibility and reasonable adjustment requirements under the Equality Act were met, or is more needed in your view?

**Emily Holzhausen:** We would go a long way if the provisions for disabled people were implemented. A lot of the comments made by carers are made as family, as friends, who want to go out together, go to cafés, who want the person with the disability to be able to travel on their own safely, independently. That said, some of the issues we have talked about—getting GP appointments, not being carer friendly—are because the care service does not come in to sit with your husband and make sure he is safe and well. You cannot take him with you because he has dementia and gets very disturbed and upset, so you cannot get access to healthcare. Those sorts of things still exist for carers, because they 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. Not every disabled person has a carer, of course, but there is that second bit that needs to be addressed.

The primary issue of the harassment and victimisation is often due to people not understanding disability, or having misconceptions about it. Another carer was talking about the private rented sector. She has a child with special needs, and was asked several times whether he was destructive or would burn the house down. That is clearly discrimination by association, but it is also directly discriminating against her child and the knowledge of disability.

**Q173 Baroness Campbell of Surbiton:** Some 45% of your respondents said that the high street was the most unfriendly place going. Why is this? Why do you think the percentage is so high?

**Emily Holzhausen:** That result was more of a surprise. You never quite know what you will get from people when you ask them, and it was a big surprise. I think it is a combination of things, judging from people's comments. It is everything from parking to people who are semi-ambulant but not wheelchair users, and distances are an issue. It is physical

accessibility of getting into shops and then how you are treated in the shops and services by the staff. It is a consumer journey, if you like. I think that is where we can make an everyday difference by making changes in what we do in our communities locally.

**Baroness Campbell of Surbiton:** Was the availability of taxis mentioned very often in the responses to this survey?

**Emily Holzhausen:** Yes, availability of taxis did come up. You can also ask David and Jeanine about taxis as well.

**Baroness Campbell of Surbiton:** We know about taxis. I am interested.

**Emily Holzhausen:** The availability and accessibility of taxis did come up.

**Baroness Campbell of Surbiton:** Was it a recurring theme?

**Emily Holzhausen:** Yes, particularly when you are a wheelchair user. Not all the responses were by wheelchair users, but people who perhaps find different interactions more complicated or challenging.

**David Blamires:** If I could jump in on the point Emily was making that Baroness Campbell was drawing from. In one of the towns local to us, taxis charge more for disabled people. That is in Keighley. Considering you are folding your wheelchair up and putting it in for them, I do not understand why. Apparently, just because you have a wheelchair in the taxi, that costs you more money.

**Baroness Campbell of Surbiton:** This has been a recurring theme.

**David Blamires:** I suspect it will be.

**The Chairman:** Can I thank you all very much for making the effort to come? I think I speak for the whole Committee in saying we greatly admire the way you are coping and standing up for yourselves and others. You have really helped us have an insight into the difficulties that disabled people face. We are very, very grateful to you. We wish you all the best. We will do whatever we can for you in our report. Thank you very much indeed.

**Jeanine Blamires:** Can I ask one question? Is this liable to make change?

**Baroness Campbell of Surbiton:** We hope so.

**The Chairman:** We are going to report about a whole range of issues and will do our best to persuade this Government—or another Government if it drags on—to change the law as required. We want to get a change in attitudes as well. We want employers and service providers to understand. As one of you said, the battle against discrimination has gradually been won by other minorities and it is time that battle was won by disabled people too. It is a question of changing attitudes, getting information across two ways, as you said, Mrs Blamires. We do understand all of that. I cannot promise, but we will do our very best within our constraints. We are absolutely persuaded of what you have told us, have no doubt about that.

**Jeanine Blamires:** Thank you.

**The Chairman:** I am sorry I have to shoot out, but I do appreciate your coming. Thank you very much.

**David Blamires:** Thank you for inviting us. We greatly appreciate the honour.

*8 December 2015*

## **David and Jeanine Blamires – Supplementary Written Evidence (EQD0197)**

Thank you for inviting us to give evidence.

We wished to give some context to the attitude regarding disability where we live. See the link below.

In defence of Article 5 and the right to liberty – North Yorks CC v MAG

<https://rightsinreality.wordpress.com/2015/11/05/in-defence-of-article-5-and-the-right-to-liberty-north-yorks-cc-v-mag/>

With regards to the questions asked we would like to add hopefully some useful points and in particular do a better job of answering the question regarding reasonable adjustments for carers by hospitals. Much of this has been done with help.

### **What changes would you like to see to the court process to make it easier for disabled people to access their rights?**

Further to comments in Jeanine's submission regarding the Magistrates court. 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, without them or the Personal Support Unit we wouldn't have been able to get this far.

**Civil Procedure Rules are the court process.** These are accessed through the Ministry of Justice Website which is designed for the use of able bodied Legal practitioners, as the number of disabled self litigant's increases this is desperately in need of an overhaul. Currently it is a barrier to accessing and understanding the rules that enable you to represent yourself in court as a disabled person.

It is not organised well, at the very least a site map is needed. There is no download facility, no PDF documents available, sections cannot be sent to e-mail, so considerable numbers of pages have to be highlighted, copied and pasted. This is very difficult if your hands do not work very well.

Free access to information on civil procedure rules must be made available in as many formats as possible including by book, video, webpage, or face to face with advocate support. They must be in easily accessible language, no jargon, easy read as a minimum standard for accessibility. Easy read does not mean removing meaningful content.

The rules on how and when to bring a claim under the Equality Act must be clearly visible and easily accessible in the public domain for all to access.

Overhaul the solicitors Code of Practice so that duties to disabled litigants in person are clear. At the moment we are dealing with a solicitor's service that is comfortable using discriminatory behaviour during the court process. Where is the information as to whether they are allowed to discriminate or how to stop them?

Provide an Easy Read detailed step by step guide to taking a discrimination case through the civil courts at all levels with examples of Particulars Of Claims for claims against services as well as employment cases, Statements Of Cases, Skeleton Arguments and how to bill when costs are awarded etc. Unlike solicitors disabled litigants in persons do not have access to the online libraries that are restricted to the profession. We need access to these libraries or an alternative service that links to current case law.

Provide access to the Personal Support Unit at all courts, they provide the reasonable adjustments that enable us to do the administration tasks necessary when taking a case to court, they listen and help organise thoughts so that they can be put forward as a coherent argument. Give them proper funding and enable them to develop a virtual conferencing service for those hard to reach areas due to court closures.

Provide access to legal help through the Royal Court of Justice model. Properly fund it and quickly roll it out in tandem with the Personal Support Unit. Ensure virtual conferencing is provided as part of funding so more disabled litigants in persons and their carers can be reached.

Cases must be owned by a single judge only.

Most importantly celebrate good practice, when a court, public service or business provides exemplary access for the disabled, promote them.

**Would you have preferred to have been able to go to a disability ombudsman or a body that could offer mediation?**

We would have preferred to have been able to go to an organisation that would have enabled us to access their service through reasonable adjustments. That does not happen in any of the ombudsmen services we have attempted to access. We would have preferred an organisation that listens and protects proactively and reactively. The only ombudsman that appears to be reactive and proactive is the Information Commission which has teeth.

**Does the Act provide enough protection for carers who are themselves disabled?**

No, the Act does not provide enough protection for disabled carers, because the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Act nullifies it. Care needs to be taken when formulating law to ensure that one Act does not bar access to another. A good example of a law inadvertently causing discrimination is the Food Information Regulations 2014. Our eldest has complex needs including attention deficit disorder and others like her cannot eat wheat, she cannot also have artificial colours, flavourings or preservatives because they exacerbate her condition. These were not part of the allergens list that businesses must provide information on. <https://www.gov.uk/guidance/food-labelling-giving-food-information-to-consumers#allergen-labelling> Like others who also have allergens that are not on the preferred list this restricts her from going out to have a proper meal.

We can no longer tell if a food is safe for her to eat unless we make it from scratch. We can no longer go out for a meal as not all ingredients are listed. She is now excluded from many normal social activities and settings that include food and drinks. For someone with autism

who needs good social interactions this is a disaster. Food free from artificial colours and flavourings are disappearing from the high street. Please is there any way this can be sorted out now?

With reference to the comment “They removed evidence that I was a disabled carer from my daughter’s social care records” refers to the tampering of social care records, currently part of a complaint. Too often our difficulties in accessing services have been compounded by the failures of the services to ensure our records are accurate and secure. Attempting to access a service as a disabled person who is recorded as able bodied becomes practically impossible and injustices occur. At its worst it has 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.

My family would not be having such difficulty accessing services if all services recorded the disabled needs of their clients and had a clearly visible alert on screen so that the service worker knew how to enable that disabled person to access that service. Of course the pathway to gaining justice needs to be re established too.

**Should the hospital look at reasonable adjustments for the carer as well as the patient?**

Yes they should. Caring is a tremendously difficult job that is both physically and mentally demanding. Carers and young carers need access to timely medical care, mental and physical before they become so ill they become the cared for, at which point they become a cost not a benefit. Carers must be identified as soon as possible and like the well woman clinic or well man clinic be provided with routine health checks and monitoring.

Young carers do not get any financial acknowledgement such as carers premium or carers allowance. They get no help to stay in school or attend college and as carers are usually poor they will now be penalised for going to university by having the maintenance grant removed. At the very least hospitals and gps should record that the child is a young carer and be able to refer the child to young carers assessment and support. Also hospital appointments for their cared for loved one must be after school and on time, waiting hours to be seen means school work does not get done.

Carers should be exempt from car parking costs, often they are making multiple visits for their cared for person who though disabled may not be entitled to a blue badge. Full time carers are often poor, the parking costs add further unnecessary financial pressures to already very difficult situations.

Being included in letters/discussions, people see a snapshot of the disabled person, the carer deals with the reality of that disabled persons health. They need to be heard, it could save that disabled persons life.

**This was not asked but as parents of a young carer we feel this needs highlighting. We appreciate you may not choose to use this but felt it must be said.**



Young carer siblings of disabled students/pupils do not have an easy time. Within the same school they can be put on a pedestal as a carer whilst their own needs and aspirations are not met, but, they witness bullying, name calling and the failure of Teachers and Teaching Assistants to provide the basic provisions outlined in their sibling's Statement. They are in an impossible position, 'who do I tell?' 'How do I tell?' 'If I tell will I lose all my friends?' 'My sister/brother is hurting horribly, I can't help, How can I help'

Our youngest says “The rules around bullying are a joke, I've not seen them work ever. 'Go tell a teacher.' What help is that?”

To protect the sibling, to protect the disabled child: Zero Tolerance – promote positive aspirational attitudes towards the Disabled Child see that the child is an asset not a cost.

Do not put the sibling in the position, especially if the child is younger, smaller, weaker, of being a silent witness to the harming of their brother/sister. The damage done by abuse in school is just as great as that done in an abusive home, but it is ignored, in fact, deemed acceptable especially if the disabled child develops at a different rate to their able bodied classmates, attitudes will only change if such bullying and callous behaviour is perceived as wrong.

One family worker said, after a particularly distressing incident, that our elder daughter was 'behaving like a victim.' The acceptance of such behaviours by professionals cannot be acceptable under any circumstances.

Young carers must be identified as soon as a sibling is found to have a disability, as that child will automatically be considered as a 'carer' for their disabled sister/brother and need appropriate support.

The child has as much right to a childhood and a good education, family and friends as any other child irrespective of family circumstances. Most importantly he/she must not be used by Social Services as a way of saving on care costs. Far too often the voice of the Child carer is silent or overlooked, much to their own detriment.

*6 January 2016*

## **Judith Bond – Written Evidence (EQD0087)**

1. Q1 I tell companies I can't use the phone because I can't hear as a matter of course so they give me a phone number if I need to speak to them???. Gp's refuse to provide communication support. Hospitals are the same. The surgery rang for me even though my hearing impairment is noted on the screen. My husband explained I can't use the phone. The surgery said she would call back later?? The NHS is the very worst for dealing with the hearing impaired. I asked a nurse to repeat herself and she screamed so loud down my ear it was painful. I complained but the hospital claimed they didn't know who she was. This was at a hospital in Bradford.
2. Leeds teaching trust was directed to pay me £400 because of the treatment I received as a patient receiving treatment after a stroke who was hard of hearing
- 3 I have an ongoing complaint with the local police in that they refuse to reply to emails and have done for 2 years. I sent them a prohibited conduct questionnaire. They ignored it. I filled out the form to commence legal action. THE Court wrote back informing me I hadn't supplied copies for the court and police. I had. I kept trying and the court wrote back refusing to go further every time.
- 4 I had been abused about being disabled by people on an online news forum for several years. The local police inspector refused to act and became friendly with the main perpetrators, one who described killing me daily.
- 5 I had a stroke and am in a wheelchair. Most shops are inaccessible where I live due to high/a few steps. My chair is electric and will not go over steps. I can't enter most buildings. The council are turning down shop owners who want to install ramps because it's on the pavement. This is what a charity told me.
- 6 There are shops with access but with so much stock I can't get round. Charity shops are an example. An example is a shop called [NAME REDACTED] in Blackpool. I love to look inside but since the stroke I can't as the aisles are narrow because of stock. The last attempt got me stuck with the shop owner following me in case I broke anything claiming she had been "passed" for wheelchairs;" by what body (!) Does the government want me to take all these places to court?? The act is useless the commission and helpline are useless. How do they help the disabled? Public disabled toilets are nearly on the ground. some rooms are not big enough to turn the chair around to lock the door, I have been stuck a number of times. Hospitals are much worse
- 7 7 The act left out media for the nine million hard of hearing and deaf.

Dvd distributors don't have to subtitle their products Why? Surely it's a reasonable adjustment? Usually sellers online of DVDs don't state whether the DVDs have subtitles. Amazon online rent out DVDs. The latest rental dvd was received yesterday and after switching it on, I was disappointed to learn it has no subtitles. The rental service doesn't tell you if the disc has subtitles. Its pot luck

*3 September 2015*

## **Breakthrough UK – Written Evidence (EQD0065)**

1.1 Breakthrough UK is a Manchester based disabled people's organisation. We are led by disabled people, and we support other disabled people to work and live independently.

1.2 Breakthrough works to make positive changes at an individual, regional and national level. We provide disabled people with person centred support to develop their independence and gain access to training and employment. We advise employers, policy makers and other organisations to understand and remove barriers that disadvantage disabled people. Our aim is to bring about a society where disabled people can participate fully in all areas of life.

1.3 This is a focused answer to question three about reasonable adjustments in the Call for Evidence. A large proportion of our work is carried out in the field of employment. 60% of our current workforce are disabled people. Our response draws mainly on our work with local disabled people who are seeking employment.

**Question three. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?**

**2.1 Knowledge of reasonable adjustments:** Our work with disabled people since the Act came into force has consistently shown that knowledge of workplace reasonable adjustments is minimal amongst our clients. Usually, disabled people we work with know nothing about them at all when they first come to us.

2.2 For example, one of our Employment and Independent Living Advisers who currently works with 28 clients said that only one person was aware of the concept when they first met. He works with people who claim Employment and Support Allowance and had previously been on the Work Programme for two years.

2.3 Many of our clients live with family members or with support workers. Often these key people in their lives also know nothing about reasonable adjustments.

2.4 One adviser said: "Clients on the whole are not familiar with the term reasonable adjustments, especially new clients, and I see it as a big part of my role to assist them to understand the legal requirements of employers." This holds true for employer's responsibilities as well.

2.5 This lack of knowledge of reasonable adjustments, and of other rights under the Equality Act, is a big barrier for disabled people. It results in people, especially younger disabled people, having restrictive and unhelpful aspirations about the kind of work that might suit them.

2.6 The result is that they - and others close to them - do not realise that an aspect of the job role which presents a barrier may be negotiated and the barriers removed. Knowing about adjustments and how they work means that disabled people can be more creative when planning their careers and open to a far broader range of employment possibilities.

**3.1 Access to Work:** A wider issue is that many of our clients are also unaware of the Access to Work scheme and the support it can provide to remove workplace barriers.

**4.1 Pervasive negative messaging:** 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. This is a sharp contrast. Often people will be highly reluctant to identify as a disabled person because they see it as negative. If they do identify as a disabled person, this often leads to an assumption that employment is automatically inappropriate. This says a lot about the prevalent messages people are receiving.

**5.1 Increased awareness of rights following support:** Client's understanding of the Equality Act and societal barriers quickly changes following our involvement. One client recently contacted us to say that she thought her boyfriend was being discriminated against by his new manager. This is significant because it shows quite a powerful change in her understanding once accessible and meaningful information was provided.

5.2 We are currently piloting training on the social model of disability for disabled people who are moving towards work. The first session demonstrated that participants had plenty of suggestions on how to remove barriers and make adjustments in a whole range of contexts. And this was with a group of disabled people who did not know about this approach at the beginning of the session.

**6.1 More publicity on Act needed:** Much more therefore needs to be done to prioritise getting accessible information about reasonable adjustments and rights at work out to disabled people and the wider public. Wide promotion is essential.

**7.1 Employer's awareness of adjustments:** Employers we work with tend to have more understanding of reasonable adjustments, although this is mixed and can be theoretical.

**8.1 Intervention often needed to make adjustments happen in work:** A key finding for us is that it often takes the intervention of one of our advisers to make an adjustment happen. This suggests that they may not happen at all if the disabled person was acting on their own behalf:

8.2 "Many are good about making reasonable adjustments around interview straight away and some once I push for it ( e.g. a school who had no box on interview form did make reasonable adjustments once I highlighted the need for it and indeed, may have shortlisted my client because of my involvement ). However, many employers may require being shown the need for making reasonable adjustments regarding job carving."

**9.1 Small businesses:** It appears to be harder for smaller businesses to keep on top of their obligations which leaves disabled people trying to manage barriers themselves:

9.2 One adviser said: "Small employers are not at all aware of their responsibilities and feel very much the onus is on us or the clients to change or adapt before the employer has to..."

**10.1 Bureaucratic barriers:** The incident below was related by an advisor. It was also highlighted during the training session mentioned above as an unacceptable barrier by the disabled person involved:

10.2 "I had a work trial set up for a client with mobility issues and it was going well except there was a set of stairs which were difficult to navigate. The employer was not willing to consider adjusting any role to avoid using the stairs or moving any stock downstairs to

enable this person to work there ongoing, because ‘the business is set up this way because it works this way’’. A classic example of bureaucracy being used to justify a failure to make a reasonable adjustment.

10.3 After experiencing this, the person concerned decided that they would not want to work there even if a job had been an option. It also had a negative impact on her confidence.

**11.1 More work with employers required:** Our experience is therefore that employers have, at best, a patchy approach to reasonable adjustments. Often third party intervention is required to make adjustments happen even if employers are aware that they should be considering them. More work is required to even this out. In four years from March 2010 we saw our revenue from Disability Equality Training for employers drop by over two thirds. This says something about the lack of investment businesses are currently making in keeping on top of the Equality Act and barrier removal more generally.

**12.1 Disabled people’s organisations as exemplar employers:** As a disabled people’s organisation we consider ourselves to be an exemplar employer of disabled people. We have disabled staff employed at all levels of our organisation and there is strong evidence of career progression and job retention. A key aspect of this is our flexible approach to adjustments and consistency in ensuring that all staff have an opportunity at least 6 weekly to let us know whether their adjustments are still effective. This entails going over and above the letter of the Equality Act to ensure that our working environment is barrier free for all staff. Our sickness rates are also below average benchmarks.

**13.1 Unions and other sources of support for disabled staff:** We find that the organised labour movement has not been sensitive to disabled people’s experiences of high unemployment and underemployment. The position of trade unions in respect of disabled people’s issues and their struggle for independence is generally supportive in principle, but at the coal face disabled people are still telling us their unions are not well equipped to support disabled members. They are often left to fend for themselves in disability related employment issues around failure to make adjustments. We do not believe that there is anywhere near enough accessible and affordable support available for disabled people who need help and advice with employment disputes - and the services that do exist are massively overstretched.

*3 September 2015*

## Andrew Brenton – Written Evidence (EQD0095)

1. I have recently graduated as a mature student from The University of Wales Trinity Saint David with a First Class Honours Degree in Photojournalism. At the start of my second year, several issues arose that impacted me as a disabled student: I was unable to access the campus library as the disabled persons lift was out of order and subsequent to its repair, disabled people were barred from the library due to fire evacuation concerns, This persisted for 143 days and had a negative impact on my results for this section of the course and also impacted upon my learning experience. Additionally, I became aware that I should have been assessed upon enrolment some 12 months earlier for a Personal Emergency Evacuation Plan – I am multiply disabled with mobility and sensory impairments (I am severely/profoundly deaf and have Asperger syndrome along with ADD. I am also partially sighted in one eye). No such plan was contemplated and upon requesting this be done when I became aware of it, it took nearly 5 months for this short exercise to be undertaken and completed.
2. During the period when I was unable to access the library I raised two formal complaints in accordance with the university complaints procedure. I complained of discrimination due to my disability and these complaints were subsequently upheld. The resolution offered by the university consisted of a statement of intent to rectify the two issues ‘as soon as possible’ – this was after several months of trying to get the issues resolved.
3. I attended a meeting with [NAME REDACTED] to discuss the issues that were on going. I attended the meeting with my wife and carer Michele Brenton. I stated at the start of the meeting that I was going to record the meeting as a reasonable adjustment and this was denied. [NAME REDACTED] was then extremely unpleasant to my wife and myself. The meeting eventually took place but my wife was not allowed to attend and a student union representative took minutes. This was another instance of discrimination.
4. The issues had been resolved and the emergency plan completed and put in place by April of 2014. In May 2014 there was a fire alarm at the building where I study and students were evacuated. I went to the position that had been agreed in the planning exercise and waited to be evacuated. The caretaker responsible for evacuating the building instructed me to leave the building as he rushed past me on the stairs. I was left in the building. Fortunately it was a false alarm. I had again been discriminated against – I was not evacuated nor did the responsible member of staff question why I had not left the building.
5. A few days after the fire alarm incident I was asked to attend a meeting with the senior management of the university. At this meeting I was asked for my input into the best way to evacuate a building in the event of a fire – this was somewhat alarming as it became clear that the current procedures were woefully inadequate.
6. I have never been treated with any respect during the period of trying to resolve the issues. It was suggested that my life would be less stressful if I complained less and I was made to feel like I was simply a nuisance and the university would rather I just went away. It was the general attitude to disability and the obvious lack of care and duty that resolved me to take the university to court with a civil claim. The university seemed only to be interested

in money and this seemed a good way to make them pay attention. The case has been settled out of court for a sum of £20,000 but the conduct of the university and their legal representatives during the case further compounded the situation. The initial defence from the university was that I was not actually disabled at all – this despite my being on DLA then PIP, being registered deaf, and their student services section billing the student finance system for all the support and mentoring that I was receiving due to my disabilities.

7. The university essentially hid behind their solicitors and refused to meet face to face to discuss the issues and give me any re-assurance that changes had been made. The purpose of pushing ahead with the legal action was to make it so costly for the university to ignore the Equality Act 2010 that they would pay better attention to it and cease discriminating against disabled students. It was attempting to address the university in the terms that they seemed to measure everything – money. A member of senior management at the university had admitted in an email that one of the campus buildings had been built with disregard to the Disability Discrimination Act in force ‘to save money’. This email was obtained as part of a subject access request to the university.
8. I will now attempt to address the points of investigation by The Committee in the order set out in the consultation document
  1. I don’t feel the Equality Act 2010 has strengthened nor harmonised disability discrimination law. The text of the act is not very specific and as it deals with all equality issues of the nine protected characteristics, I feel this tends to dilute the case of disability somewhat. I do, however, consider the act in itself pays more heed to the impact of disability in society and the broader base that is addressed is better.
  2. I don’t think there are any gaps that are not covered by the act.
  3. In the case of the university it would appear that there is a considerable level of ignorance around the obligations of the institution to make reasonable adjustments – there is a fundamental lack of understanding and little apparent will to train staff effectively and implement policies.
  4. The law – the conjunction of The Act and the government technical guidance documents – seems, in my opinion, to make the law surrounding reasonable adjustments absolutely crystal clear. The technical guides give numerous varied examples of each point of the act and how it might apply in the circumstance the guide is targeted at.
  5. I cannot make a contribution to this point on Public Sector Equality Duty.
  6. Again, I cannot contribute to the point on the differing approaches of the countries with the UK.
  7. I cannot contribute to the point concerning departmental and ministerial division of responsibility.
  8. I approached the Equality and Human Rights Commission to see if they could

assist with my concerns. They advised that they can only get involved in cases that 'are in the public interest'. It seems that the loss of the Disability Rights Commission has resulted in many institutions and businesses being allowed to fail to comply with the equality act with regard to disability with seeming impunity. It is my view that the EHRC has made little impact on the rights of the majority of disabled people. There have been a few small cases that they have become involved in but this seems little more than tokenism.

9. If other regulatory bodies were given sufficient remit and power to force the implementation of the act then they could make a very positive contribution. In my own case, the universities ombudsman – The Office of the Independent Adjudicator (OIA), were not able to deal with a case of discrimination due to disability under the equality act as they state they will not pronounce or judge on matters of disability – 'it is for the courts to decide'.
10. The current enforcement mechanisms are very inadequate in my opinion. The only recourse in law open to me was a civil claim for damages against the university. I could not get legal aid and could not afford legal help or a solicitor. I made the claim as a litigant in person and the defence solicitors lost little time in trying to frighten me off with the costs estimate for the defence running into the region of £75,000. They continually complained about my lack of strict adherence to the civil procedure rules, were discriminatory in the way they dealt with me – for example requesting a case conference by telephone when they knew perfectly well I was deaf. It was a very unpleasant experience and the university were not of a mind to try and put right the cause of the issues and re-assure that they had updated policies and such like to prevent re-occurrence. They seemed only interested in money – it costing as little as possible. The total amount of the spend by the university on this case I would estimate to be around £65,000 – It would seem a small amount and possibly 'worth the risk' as opposed to correcting their processes, knowledge, attitude and infrastructure to accommodate disabled students. It puzzles me that – if I understand it correctly – the Equality Act 2010 is on the criminal statute yet there is no route to examination of cases by a criminal court. Maybe if a body were able to force punitive fines upon offenders and even a custodial risk for persistent offences under the act then businesses and institutions would be more likely to comply.
11. In the cases in the civil courts that concern discrimination – especially on the grounds of disability, it would be fairer if Part 36 offers were not allowed by the defendant. A part 36 offer puts the claimant at risk of the defence costs should the trial judge award a lower amount of damages. This was one factor that pushed me into a low settlement. If part 36 offers were disallowed then more cases would be heard by the court and more public awareness would ensue. Additionally, institutions that had sought to discriminate to save money would risk and exemplary damages award against them and as such discriminating to save money would no longer be an attractive option.

*3 September 2015*



## **Michele Brenton – Written Evidence (EQD0096)**

**Michele Brenton** as a private individual in my capacity as carer for my disabled husband (Andrew Brenton) and son and as a disabled person myself. I have been supporting my husband, who was a litigant in person, through a disability discrimination case which has now been settled by agreement for £20,000.

### **My background.**

I have been married for twenty five years during which time my husband's progressive and complex disabilities started out as being deaf and then went on to be identified and diagnosed as including a progressive genetic physical disability involving sight impairment, mobility impairment as well as the deafness and then he was also diagnosed as being neurodiverse with ADD and Asperger syndrome. His diagnoses followed the birth of our son who was born with the same genetic physical disability, Stickler Syndrome. Our son was then diagnosed with ADD aged seven and was identified as having Asperger syndrome only a few years ago in his twenties. I am a qualified teacher with an IT degree and studied law for a couple of years before having to abandon my studies in order to home educate our son who was not adequately provided for by the state system due to his complex educational needs and when our finances deteriorated to the point we could no longer continue to keep him in his prep school. I currently volunteer as an intern at a disability equality organisation one day a week and for the past two years I have been 'running' my husband's Disability Discrimination Case. He has very recently settled out of court (27th August 2015) with the solicitors for the University of Wales Trinity Saint David for a sum of £20,000.

We are in possession of documents obtained via a Data Subject Access Request which comprise evidence of my assertions but as we only settled the case this week I have not had time to append these to this submission if I am to get this in within the deadline. All the evidence is available if you should request to see it at a later date. I think my experience is mainly useful in relation to the following questions. I apologise for not putting this in better order but as you will appreciate we did not know we would be in a position to submit to this Select Committee until almost the very last moment so I hope you will forgive the roughness of this submission.

### **General questions.**

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?

### **Oversight and enforcement.**

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?

**My Submission.**

When a large wealthy organisation sets out to commit discrimination because it saves them money to do so (we have evidence in our possession to evidence that this is believed to have occurred by a senior staff member at the UWTSU and that is believed to be ‘common knowledge’ among staff) the following things happen:

1. Individuals with impairments have illegal barriers imposed upon them and often those barriers severely impact their access to services, education, personal development, employment and independent living. One example in particular my husband and other students with mobility problems were denied access to a library containing important and necessary educational literature for a number of months due to first a problem with the lift and then after it was repaired they were refused access because it was unsafe because the building had been built against DDA regulations to save money – evidence to support this available on request. When complaints or concerns were raised about the very real negative effects on my husband’s experience as a student (he eventually gained a first but only because he had no other life than his studies and he had me to support him in every way outside the university, his health was badly affected by the stress and our home life was well-nigh made intolerable by the obstructive, defensive uncommunicative stance of the university who treated all complaints and issues as annoyances to be silenced and shut down. The general attitude being that disabled people know less about their needs and requirements than anybody employed by the university no matter how unqualified they were. They responded to official complaints very slowly and only after we tried every way to get the problems resolved in a sensible manner. They were very clearly of the opinion that students should be seen and not heard and disabled students were an annoyance and inconvenience. We have internal emails evidencing this attitude.

2. Some of them try to get their rights protected by seeking an authority to uphold the laws that exist to safeguard their right to not be discriminated against. I spent quite some time floundering about on the internet trying to find out who could enforce this issue, with the frustrating answer being: nobody but ourselves.

3. They find out that while the Equality Act 2010 and the United Nations Convention on the Rights of Disabled People cover their rights and while breaking the EA 2010 is criminally illegal there is nobody to impose any pressure in order to stop discriminating nor to punish any lawbreakers and the only way to make sure the law is taken seriously is for them to individually take the law breakers to court in a civil action. Even on mentioning the Equality Act within a meeting and asking specifically if the staff member was ‘refusing reasonable adjustment under the equality Act 2010’ I was told “Yes.” I have an internal document written by the staff member where he describes that request from me ( I cannot remember the exact words but they are in effect) as ‘spouting some legal stuff or other’ and then says he refused the request because ‘I don’t respond well to threats.’ Where ignorance of the Act is such that a senior Pro-Vice Chancellor for Student Experience has no recognition of it and construes its mention and a request that he comply with the law of the land as ‘a threat’ there is not much hope for service providers in general to be familiar with the law and any more respectful of it.

4. They find out that there is very little legal help for those being discriminated against, legal aid has been cut back so only a very few people are eligible. So the choice is either pay for a solicitor or become a litigant in person. 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.

5. They find that the big wealthy organisation can afford expensive legal counsel. They find that they are threatened with the risk of having to pay the costs of the big wealthy organisation if they proceed to court. We were presented with the threat of costs in the region of £80,000. They also find that within their daily lives and interacting with the defendants that 'victimisation' is another illegality that is blithely engaged in. My husband had been elected Disabled Students Officer but he was targeted by ancillary staff who were implicated in the situation around the discrimination case and he felt so threatened that he had to resign from that position in order to safeguard his degree. He was also hounded by the Health and Safety Officer they eventually appointed (we have evidence that the University was without a Health and Safety Officer for a number of months which is why there were so many issues with disabled people's safety) who insisted my husband needed to provide medical evidence that he had hearing problems and for his mobility problems and that simply stating them was not enough for the university to comply with his requests for reasonable adjustment and providing him with a satisfactory Personal Emergency Evacuation Plan. This hounding only stopped after a firm communication from an Equality Discrimination Organisation who reminded the staff member that his requests were inappropriate at a time when the university were using as their main defence to my husband's discrimination claim that he was in fact not disabled under the act. They were receiving money from Student Finance Wales to support him as a Disabled Student and he was getting support services from the university's student support service department – albeit an unreliable service but a service nonetheless from which they were making a income.

6. They find that the court process is very difficult to navigate. If they are entitled to court fee remission they find the forms are hideously difficult to fill in properly and it can take many multiple attempts to get it right and if they aren't quick enough they 'time out' - run out of time because taking a case to court is time limited. We ended up sending the original remission claim forms in I think it was four times – it may have been three – but it took ages and was very stressful. The forms online are not up to date (or they weren't when we applied) and so we first applied on an old form.

7. The big wealthy organisation racks up huge costs and tells the individual that they are at risk of having to pay costs of around £60,000 to £80,000 if it goes to court and they lose. In our case they also said that my husband was not disabled and he had to prove he was disabled. Even though we provided them with evidence that he was registered deaf, diagnosed with ADD, had a progressive physical disorder which meant he had severe hypermobility syndrome and he was in receipt of Personal Independence Payments with enhanced rate personal care and standard rate mobility. Even though he had been assessed

by the local authority as being a disabled student and in receipt of Disabled Student's Allowance and the university was being paid by Student Finance Wales to provide him with Disabled Student's Support services. This had the effect of making my husband feel that they were calling us liars and benefits cheats and added to the fact that members of staff of the university had been heard to call into question my husband's disabilities made us feel very pressured and stressed.

8. If they continue with the case the big wealthy organisation makes a part 36 offer - usually stupidly insultingly low. But the existence of a part 36 offer means that even if the individual wins the case, they may still end up paying the costs of the big wealthy organisation if the amount the judge decides to award them in compensation is less than the amount the defendants have offered in the part 36 offer.

9. If they continue the big wealthy organisation makes incremental improvements to the Part 36 offer until it reaches a low amount the individual cannot be sure that the judge will offer higher than.

10. At that point the individual cannot risk continuing. So they accept the offer and the big wealthy organisation does not accept they did anything wrong in the first place and apart from some money wasted on the case they do not see why they should change their ways and they go back to doing what they were doing in the first place; discriminating against disabled people because it saves money. Because they don't have to spend money making sure their buildings are accessible or that their staff is properly trained to deal with people who have impairments. We accepted an out of court offer of £20,000 and then had them attempt to get my husband to sign an agreement that prevented our son from taking any legal case out against them in the future. Our son is studying at the same university and has also had issues regarding failure to provide reasonable adjustment to the extent he became clinically depressed and needed to be prescribed anti-depressants. The agreement also sought to prevent me from suing at any time in the future and also attempted to silence us from speaking about the case. We refused those conditions. However my husband did sign that he could not help anyone else sue the university. I was not included in that and I fully intend to help as many people as I possibly can help if it is needed to ensure they comply with the law and stop discriminating against students.

11. The end result is that disabled and discriminated people are left with the financial and emotional and legal burden of policing the law of the land. They are left weighing up whether to put their health and financial security at risk in order to try and protect other people from the same thing happening to them. Even if they decide to go ahead the odds are against them completing the process because the whole adversarial process focuses on money only and not in finding solutions which means it is all weighted in the big wealthy organisations' favour.

12. I think the rule where a defendant can make a part 36 payment into court to put the claimant at risk of costs should be taken out of cases which involve disability discrimination because these cases need to be heard for the public benefit and it is not fair for a person who has been discriminated against to be subsidising the UK government by doing its job for them in policing the law because it seems the protection of the disabled and the laws associated with it are not considered important enough to put infrastructure in place to

support its policing officially. Disabled people are already struggling with barriers and even when they have a clear case of discrimination they still have to struggle against the added barrier of having to put together a case and fight it. Even if they had legal aid this payment into court system would still be an unfair burden and it would still have the same effect of shutting down any opportunity of reducing and deterring organisations from persisting in their discriminatory behaviour. Because the only possibility in this process for an organisation to be made to mend their ways is if the case proceeds all the way to court where a judge may pronounce and order which is enforceable. But the system rarely gets that far and only results in a monetary compensation and not an order to comply with the Act.

13. If there was a body with teeth to act against those who broke the law and discriminated, they could order the transgressors to stop discriminating and to rectify the discriminatory behaviour. If the transgressors persisted the body could fine them. If the organisation still persisted the body could fine them at a level that impacted in proportion to the money the organisation had sought to economise and if the transgression was seen to be persistent and serious enough the body could prosecute through the criminal courts and the organisations could find senior decision makers at risk of a custodial sentence.

14. This would act as a deterrent and would reduce the number of discrimination cases because each case would make a substantial impact instead of being isolated hidden incidents as they are in the current system. Each case would stand as a public example to other organisations as a warning as to what could happen if they tried to scrimp on necessary implementations for making reasonable adjustments proactively as is called for in the EA 2010.

15. Most disabled people are not able to fight a lengthy court battle in order to gain compensation of a monetary nature. Most disabled people just want the discrimination to stop and for discriminating organisations to be made to realise they have responsibilities under the law to disabled people and that they are not above the law of the land and must comply.

16. Most organisations are ignorant of the existence of the many very detailed and clear guidelines produced by various government departments that exist in respect to how to comply with the Equality Act 2010. If they were afraid of fines and custodial sentences they would probably discover the guidelines and read them and learn from them in short order.

17. If organisations discriminate to save money then the only way they will stop is if they believe there is a substantial risk that it is going to be more expensive to do the wrong thing than the right thing. If they only value money then the way to persuade them is by taking it away from them. But individuals are generally not interested in money. If their grievances/barriers could be dealt with quickly enough to allow them to enjoy the benefit of whatever they were attempting to achieve in the first place then they would not need much financial compensation if any. If they could get their grievances/barriers sorted out swiftly and amicably there would be no need to go to court.

18. In most cases the systems needed to be put in place to put right the injustice of discrimination are those that will benefit everybody involved in the long run and so society and the organisation will eventually benefit.

19. It makes more sense to have a strong enforcing body overseeing organisations and policing the law efficiently than to leave it for wealthy powerful organisations to fight it out with disabled people who have limited resources. Currently we have a David and Goliath situation where Goliath nearly always comes out on top and even when David wins he is left almost destroyed by a pyrrhic victory that is a win in very limited and unsatisfactory terms only. Leaving Goliath free to repeat the scenario over and over again.

20. In our case it was only when we faced a huge discrimination that could not be tolerated that we realised we had to sort something out and began investigating into what my husband's rights were as a disabled person. In doing so we came to realise that he and our son had been discriminated against over and over again in many ways, mostly due to educational problems and all of them had been extremely detrimental to our financial and emotional security as a family unit and as individual people. But we had never realised there was any legal recourse and by the time we realised we'd been discriminated against it was too late to do anything according to the 'time out' rules. Despite the incidents having timed-out they have had permanent and lastingly damaging effects on self-esteem, career prospects, financial circumstances. Our son has amassed far more student loan debt than he needed to due to different educational establishments failing to adhere to the reasonable adjustments and disabled students needs assessments. He left one HNC course in Bridgend college in IT because they could not accommodate his needs and insisted on him doing group work instead of providing an alternative assessment arrangement. He then studied music and eventually was accepted onto a music degree course in Neath Port Talbot College where his Disabled Student Needs Assessment was not passed along from Bridgend College and Neath Port Talbot College did not seek it out. So my son with ADD and Asperger Syndrome and physical disabilities despite having 'ticked the box' did not get the help he needed and did not realise until it was too late and he had already fallen so far behind and become so demotivated that he left the course and transferred to Swansea Metropolitan University (later to become UWTSD) to study where my husband was already studying and where we hoped my husband could keep an eye on making sure the same thing wouldn't happen again.

Unfortunately despite strenuous efforts on both my husband's and my part the same thing did happen again and our son's student services provision did not begin at the start of term as it should have done. Our son is now in the position of needing to resit his second year because of the failings of the system to provide support in a timely and reliable manner. This means he has two years extra student loans to pay back which is entirely unfair, given that we had to pay for private schooling when he was a child not through choice but necessity and had to home school him which meant although he has a high IQ and is academically gifted he had no formal qualifications until we supported him through the years at Bridgend College to gain a BTEC level two in Music.

We know many students who have accrued student loan debt and then either dropped out of college or university or who have got through with more debt than they should have because the educational establishment failed to provide reasonable adjustment. I know one student who like my husband gained a first class honours degree but the strain of coping without adequate support led to a breakdown. Another student with dyslexia who had not even had a disabled student's assessment done by the university until quite some time into the second year of his study and that only happened when my husband marched him to the

office and stood with him while the services people arranged for it to happen as a matter of urgency. That student had to resit a year. The problem is that there is a conflict of interest for the universities. The worse they fail the students the more the students have to resit years which makes more money for the universities especially in a time of falling student numbers. Then if the university pushes the students to breaking point the students leave before they can affect the results at graduation. The universities continue to charge the Student Finance organisation even when the services are substandard. This means there is no incentive for the number crunchers running the budgets to improve standards and couple this with a general attitude of senior management to be seeking professional advancement by sticking to budgets and bringing in revenue means the students are the victims every time. Now that universities are to become the purse holders for disabled student's allowance this situation can only get worse.

It is my experience that Higher Education establishments are either negligent at best or deliberately flouting the Equality laws at worst.

*3 September 2015*

Andrew and Michèle Brenton, David and Jeanine Blamires and Carers UK – Oral Evidence (QQ 166-173)

**Andrew and Michèle Brenton, David and Jeanine Blamires and Carers UK – Oral Evidence (QQ 166-173)**

[Transcript to be found under David and Jeanine Blamires](#)



## **British Deaf Association – Written Evidence (EQD0101)**

### **SUMMARY**

This submission focuses specifically on issues pertaining to Deaf people using British Sign Language (BSL) as their first or preferred language in the UK. The Deaf community, with its unique culture and sign languages, is virtually invisible in UK disability policies. The Government recognised BSL in 2003 as language in its own right, and ISL (Irish Sign Language in Northern Ireland) in 2004 but there have been no attendant changes in policy.

Existing equality legislation is impractical as a mechanism to reduce discrimination and ensure that Deaf people's linguistic human rights are respected since it relies on the individual citizen to pursue cases through the courts. Current policies are impacting adversely on Deaf people's lives, specifically: health services, education, the justice system, employment, political participation, and the ability to partake in culture, sports and recreation.

Since the Equality Act 2010 came into force in October 2010 it has failed to strengthen the law as far as Deaf BSL users are concerned. For example, holistic wellbeing and health, access to emergency services, education and employment are just some of the areas where Deaf people's rights are not protected adequately by the Act. The Act has also failed to guarantee BSL for access to criminal justice, sport, telecommunications, broadcasting, leisure and civil justice. The Act also does not focus on the value and integrity of BSL and Deaf culture. It accords rights to individuals to protect them from discrimination but it does not protect or promote BSL as a language. We believe Parliament must strengthen the Act to ensure a clear interpretation of what "reasonable adjustments" are in the context of Deaf BSL users.

The Public Sector Equality Duty is too broad and we see that Government departments are not following the example of private sector companies in embracing advanced technology in order to enable Deaf customers to access their services.

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 through BSL Act and through additional legislation to implement the specific provisions in the fields specified by the UNCRPD

This would strengthen the Equality Act 2010 allowing it to be applied and rendered workable and to end the pervasive socio-economic linguistic exclusion that blights the lives and limits the opportunities of Deaf people and their families. This would help to:

- Ensure that Deaf people are given full citizenship through legislation that protects their cultural, social and political citizenship;
- Ensure that hearing people and families of Deaf children can learn BSL and appreciate the culture-linguistic diversity of Deaf culture that still exists in the UK that can enrich their lives;
- Put BSL / English interpreting on a statutory footing; and
- Implement additional legislation to ensure that BSL, as the UK's one of indigenous minority languages, Deaf culture and heritage are safeguarded and protected.

## **BACKGROUND**

The UK Deaf community has its own distinct language and cultural heritage that stretch back at least 250 years (Ladd 2003).

Since the BDA was founded in 1890, its primary purpose has been the status and recognition of the Deaf Community and British Sign Language (BSL) in the United Kingdom. The cornerstones of the BDA are: valuing and promoting our language, BSL, and asserting our linguistic rights; working with and supporting the UK-wide community of BSL users; fostering a strong and positive Deaf identity, especially amongst young people; preserving our Deaf heritage and representing the needs, aspirations, rights and responsibilities of Deaf people.

As a member-led organisation, our work is focused on achieving equality for Deaf people through community empowerment, membership and campaigning. Working with local Deaf and BSL Communities is crucial to the success of BDA campaigns and creates opportunities for Deaf people to develop, participate and contribute to wider society.

The BDA is a high profile national 'Deaf People's Organisation' with a strong presence throughout England, Scotland, Wales and Northern Ireland. We operate in a fast-paced, politicised environment dealing with complex and often controversial social issues with multiple stakeholders.

The BDA has been pressing for official governmental status for BSL since the early 1980s. Between 1999 and 2003 the BDA participated in a nationwide campaign for formal legislation which resulted in a limited recognition of BSL by the Department for Works and Pensions on 18<sup>th</sup> March 2003.

In 2002, the UK Government gave protected language status to the indigenous UK languages including Welsh, Scots, Ulster Scots, Scottish and Irish Gaelic and recently Cornish. BSL is not included in this list which reflects the continued policy perception of BSL as a communication

tool for disabled people despite extensive academic research to the contrary that BSL is the UK's one of the indigenous minority languages.

Although DWP “recognised” BSL in 2003, this was merely an acknowledgement by one Government department that it exists as a language and did not offer any legal rights.

Deaf sign language users qualify for protection under the Equality Act 2010. This gives Deaf people a set of rights which speakers of minority spoken languages did not have especially in relation to accessing the private sector.

Recognising continued social exclusion and the limitations of the Equality Act 2010, Deaf people in the UK still suffer pervasive and endemic social exclusion. Compared with hearing people they experience:

- Well below average Deaf school leavers’ achievements (BDA Scotland 2015a);
- Inadequate access to health information (Signhealth 2014 and BDA 2014a);
- Higher than average levels of acquired mental ill health;
- Exclusion from employment, criminal justice and civil engagement;
- Deaf prisoners also experience extreme social isolation (BDA 2014b).

The BDA continues to press for legislative change and action by the government, in order to ratify and implement international legal instruments for the benefit of the sign language community.

### **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?**

1.1 The Equality Act 2010 may have harmonised the law across the protected characteristics but hasn't strengthened the law as far as Deaf BSL users are concerned.

1.1 Our research shows that the Equality Act 2010 is not always respected nor implemented on a day to day basis (as detailed in the BDA's *Legal Status for BSL* discussion paper 2014c). This places a heavy burden on individual Deaf people having to make claims in either the County Court or Employment Tribunal enforcing their rights for each and every instance of

discrimination. In addition, Deaf people face significant linguistic barriers to pursuing their rights through the courts. The Equality Act 2010 places the onus on Deaf individuals to enforce their rights through the courts on a case by case without full access to the legal system. Given the lack of qualified legal representatives who use BSL, it follows that invoking the Equality Act 2010 is generally intimidating, burdensome and inaccessible.

## 1.2 Existing legislation does not deliver linguistic rights as shown in the examples below.

### **Holistic wellbeing / health**

Health services for Deaf people are so shocking that we believe the UK Government is in serious breach of human rights.

During the consultation commentators complained of being forced to interpret for their Deaf relatives. This practice is dangerous as family members are emotionally involved and unqualified.

*“I grew up with Deaf parents and have been using BSL all my life. Since I was young, I accepted responsibility for my parents... During my early teens, I interpreted for my parents at different events such as a parent evening or a doctor appointment. It was inappropriate”.*

Failure to use qualified interpreters has led to poor understanding of medical treatment, reluctance to seek medical advice and issues with lack of informed consent (BDA 2014c).

*“We need better access in hospitals because when I was in hospital for 2 weeks, I tried to ask for an interpreter but the staff kept ignoring me. I was upset in the 2nd week and my hearing daughter was furious and had a word with the staff. I got an interpreter in the next day. Why did they not listen to me? They only listened to my hearing daughter. I was the patient! “*

*“Why is it always awful in hospitals? Every time I ask for an interpreter for my hospital appointments, no one turns up. It is so frustrating. Why other people with different languages have better access to their interpreters?”*

In March 2013 the Scottish Public Services Ombudsman ruled that failure by NHS Tayside to provide an interpreter for a Deaf patient was a breach of their informed consent policy. Sign Health states that “poor access and communication suggest the health service is at risk of harming Deaf patients. It is certainly not meeting the requirements of the NHS Constitution or the Equality Act.” (2014:3).

### Access to Emergency Services

Access to emergency services is also severely restricted for Deaf BSL users and the potential for misunderstanding using written English potentially dangerous.

*“I tried to ask for help from NHS24 when my friend was ill. I was using a minicom but it was awful. I was confused with their questions. It took 2 hours before the ambulance came to collect my friend who was really ill. If I was able to communicate in my language – VRS – my friend would be in hospital much quicker”.*

The European Universal Service Directive (article 26)<sup>51</sup> requires OFCOM to regulate electronic communications making caller location information available for such calls. Next Generation 112 aims to give full access to disabled users to emergency services, but so far only NG Text Relay is being implemented. We hope that the Equality Act will be strengthened by recommending that OfCOM add Video Relay Service (VRS) to the regulator's mandate to make it possible to have the NG 112 service, that emergency control centres are able to use video when receiving calls, making services much faster (embracing Total Conversation); and that sign language interpreters can be invoked by the emergency centre operator (as happens for other non-English groups).

### Education

The Equality Act also obliges schools to make reasonable adjustments. However, using level 2 Communication Support Workers in mainstream settings denies learning to deaf children who need BSL (above level 4). Wales and Scotland offer their own language education and should be able to offer enhanced BSL-medium instruction where this is required.

However, it is currently not possible for a family to choose sign bilingual-bicultural BSL-medium education for their child because there is virtually no provision.

Two sources of statistical information about the signing skills of teachers of deaf children in Scotland: a survey carried out by Grimes (2009) and the CRIDE survey 2014 (NDCS, 2014). Both conclude with very similar results: **around 8% to 10% of teachers of deaf children in Scotland have signing skills at level 3 or above.**

Under article 24 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) schools should now employ “teachers, including teachers with disabilities, who are qualified in sign language”.

*“I teach BSL. That is my job. One of my students came on my*

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<sup>51</sup> Council Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002.

*introduction to BSL course. She told me she is a classroom assistant in a mainstream school. She is supporting 2 deaf children. But she doesn't know how to sign yet so how can these children understand her?"*

In addition, Deaf parents have also complained of lack of access to their hearing children's schools and the abusive and inappropriate practice of asking children to interpret their own parent-teacher interviews.

*"I asked for a BSL interpreter for the parent evening at my children's school. They kept forgetting to provide one. It is not right to use my children to interpret for me and their teacher because they can sign"*

There is also a strongly felt wish for BSL to be offered as a modern second language in schools, considerable work has already been invested into a National BSL curriculum for this which could be draw on at minimal cost.

*"BSL should be on the school curriculum. If hearing children learn BSL at school, this will mean, in the future, the society will be more deaf and BSL aware and able to communicate with us"*

## **Employment**

Deaf people have reported difficulties in securing employment, and getting interpreters for appointments at the job centre.

*"I went to the job centre to find a new job. The receptionist refused to help to contact a potential employer. She told me to use the phone but how can I hear or speak on the phone??"*

*"I asked the Job Centre for a provision of BSL interpreters. They refused or forgot to provide one. Because of this, I have difficulty in finding a job. My dad has been involved with helping find a job for me. He is unhappy with the Job Centre service. I am still looking for a job."*

Another contributor provided a brave and very emotional personal account of how failures by Job Centre Plus had resulted in him losing his home and his relationship. Also that, after becoming homeless, his efforts to get re-housed had failed due to social landlords not providing interpreters leaving him with a feeling of hopelessness. This avoidable tragedy was not unique and illustrates well the point that the Equality Act should be strengthened to place greater responsibility on public services to deliver equal service access to Deaf people. It is not just the right thing to do, it is a necessity if tragedies like this are to be avoided in the future.

During the consultation Deaf contributors have also reported difficulties in retaining employment and in getting interpreters for interviews:

*“I have great difficulty in finding a job for two years. I want to work as a cleaner but because of my bad English and being deaf, my application has been rejected. I got sacked because of my so-called attitude. No one believed me that I was bullied for my lack of speech at my previous job.”*

*“For a job interview, I was refused a BSL interpreter. It was totally unfair”.*

Since the late 1980s, Deaf people have relied on Access to Work (ATW) payments to enable them to be employed on an equal basis to hearing workers. The BDA survey (2014d) found numerous structural failures with this system. In acknowledgement of restrictions imposed by ATW, i.e. the ‘30 hour rule’ introduced in 2011 requiring Deaf people who use over 30 hours of ATW funded support to employ lower salaried Communication Support Workers, instead of freelance interpreters (BDA 2014c), the Government suspended the ruling for three months from May 2014 pending a review<sup>52</sup>. This is a welcome development but the BDA remains concerned about the future of ATW especially new cap level restricting Deaf people’s highly skilled jobs in the future, heavily relying on the BSL/English interpreters

- 1.3 Holistic wellbeing and health, access to emergency services, education and employment are just some examples of the many policy fields where Deaf people’s rights are neither protected adequately by the Equality Act 2010 nor by international instruments such as the UNCRPD.
- 1.4 The Equality Act 2010 has also failed to guarantee BSL for access to criminal justice, sport, telecommunications, broadcasting, leisure and civil justice among others (BDA 2014a, BDA 2015a). BSL users are forced to rely on the Equality Act 2010 for their rights within the private sector.
- 1.5 Currently language rights for BSL used by Deaf people in the UK are only offered under the aegis of disability legislation, however speakers of other indigenous spoken languages are not required to self-identify as disabled to access their language rights. The Equality Act 2010 does not make specific reference to BSL and it is therefore up to case law and judicial interpretation to determine what constitutes a “reasonable adjustment”. Reasonable adjustments are achieved primarily through the use of BSL-English interpreters (the majority of interpreters have acquired and use BSL as a second language). The mere provision of

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<sup>52</sup> The announcement was made by The Minister for Disabled People (Mike Penning MP), on 12 May 2014, to the House of Commons Select Committee < <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news/access-to-work-launch/>> accessed 13 June 2014.

second language speakers acting as interpreters would not for one moment be considered adequate to safeguard and protect the integrity of other (spoken) indigenous languages.

- 1.6 The Equality Act 2010 does not therefore focus on the value and integrity of BSL and Deaf culture. It accords rights to individuals to protect them from discrimination but it does not protect or promote BSL as a language.
- 1.7 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. The Equality Act is not capable of safeguarding, protecting and promoting the culturo-linguistic resource embodied in BSL. The current situation of absent statutory guidance on language protection also constitutes a threat to Deaf people's collective culture-linguistic diversity and heritage and amounts to a diminution of prospects for self-actualisation and achievement.
- 1.8 In Scotland, the Scottish Parliament's Education and Culture Committee report (April 2015) "Stage 1 report on the British Sign Language (Scotland) Bill" states that some public authorities felt existing legislation, notably the Equality Act 2010, was sufficient for addressing the communication needs of Deaf people as employers and service providers have an obligation to anticipate the needs of employees and service users and to make reasonable adjustments for them. However, others rejected the view that existing legislation could adequately address the needs of BSL users. BDA Scotland told the Committee that the Equality Act 2010 "accords rights to individuals to protect them from discrimination, but it does not protect or promote BSL as a language". The Minister for Learning, Science and Scotland's Languages, responded to comments saying that although Deaf people are covered by existing legislation, such as the Equality Act 2010, their needs are still not being met despite those legal protections.
- 1.9 In conclusion, despite the Equality Act 2010, Deaf people still face significant discrimination in almost every aspect of their everyday lives. There is an enormous disparity in opportunities for Deaf and hearing people and evidence points to the fact that Deaf people have fewer basic civil, linguistic and human rights than most hearing people. The BDA therefore calls on the UK Government to take immediate steps to remove these layers of exclusion and ensure that our sign language communities and Deaf people are granted full citizenship and language justice: Language justice entails social justice through language access and linguistic cultural protection rather than other form social redistribution (Batterbury 2013). In the spheres of education and health especially, Deaf people are treated as an underclass: this is wholly unacceptable and the Government has a duty to resolve this without delay.

## **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

- 2.1 The European Convention on Human Rights (ECHR) grants directly actionable rights to individuals through Article 34 against public authorities. It is implemented in the UK through



the Human Rights Act 1998 (HRA). It does not, however, grant specific rights to national minorities. The Equality and Human Rights Commission (EHRC) feels that the creation of a UK Bill of Rights should not be an attempt to undermine the HRA 1998 and also they have advocated the inclusion of “a fully enforceable free standing right to equality” in a future Bill of Rights. The BDA insists that this fully enforceable right to equality includes Deaf people and BSL users.

2.2 The UNCRPD imposes a number of obligations on the UK including the promotion, recognition, and support of Deaf people’s linguistic identity, sign languages and Deaf culture, recognition of sign languages, and employing Deaf teachers qualified in BSL. Currently this is not happening across the UK (BDA 2014a). The UNCRPD contains five articles specifically referring to sign languages:

1. Article 2 includes sign languages in its definition of “language”;
2. Article 9 linguistic access;
3. Article 21 freedom of expression and opinion (see below);
4. Article 24 education (see below); and
5. Article 30 participation in cultural life, recreation, leisure and sport (see below).

<p><b>Article 21</b> Freedom of expression and opinion and access to information</p>	<p>States must “ensure disabled people have <b>the right to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice</b>, as defined in article 2 of the present Convention.”</p> <p>Article 21, (b) requires states to assist this by ‘<b>accepting and facilitating the use of sign languages</b>, ... by persons with disabilities in official interactions’</p> <p>and by “<b>recognizing and promoting the use of sign languages</b>” (Article 21 e)</p>
<p><b>Article 24</b> Education</p>	<p>Clause 3 stipulates that inclusive education should be offered at all levels, requiring <b>states to facilitate: (b) ...’the learning of sign language and the promotion of the linguistic identity of the deaf community’</b>; and, ensure that <b>education (c)...’is delivered in the most appropriate languages</b> and modes and means of communication for the individual, and <b>in environments which maximize academic and social development.</b>’</p> <p>Clause 4 requires states to: ‘<b>employ teachers, including teachers with disabilities, who are qualified in sign language</b> and/or Braille, and to train professionals and staff who work at all levels of education’</p>
<p><b>Article 30</b> Participation in cultural life, recreation, leisure and sport</p>	<p>Persons with disabilities shall be entitled, on an equal basis with others, to <b>recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture’</b> Article 30, Clause 4</p>

- 2.3 The BDA calls on the Government to implement its obligations under the UNCRPD by giving legal status to BSL through a BSL Act and through existing legislation, such as the Equality Act 2010 to implement the specific provisions in the fields specified by the UNCRPD. The BDA does not accept the Office for Disability Issues' (ODI) report to the UN Disability Committee (2011) which failed to expose the level of social exclusion of Deaf people and did not acknowledge the Government's failure to implement the UNCRPD fully through all the nations of the UK.
- 2.4 The UNESCO Convention on the *Protection and Promotion of the Diversity of Cultural Expressions* (UNESCO 2005) imposes further obligations on the UK to protect and promote the diversity of cultural expressions and create conditions of cultures to flourish and build bridges between communities. However, the UK has not yet ratified the UNESCO Convention for the safeguarding of the intangible cultural heritage (2003). Smith and Waterton suggest the apathy towards recognising this convention indicates a willingness only to engage with "cultural stasis and status" (2008:300). The BDA calls on the Government to recognise the UNESCO Convention to demonstrate its commitment to Deaf people and to the UK's sign language community
- 2.5 The BSL (Scotland) Bill is now at the Third Stage which will be debated and voted on by the Scottish Parliament on 17<sup>th</sup> September 2015. The BSL (Scotland) Bill would move the Scottish Government closer to fulfilling its existing international obligations for promoting the linguistic identity of the Deaf community, fostering cultural linguistic diversity and the potential economic value of the BSL community, and the value of BSL for shaping identities. If the Bill becomes an Act, it will exclude the other three nations of the UK so would not be added to the Equality Act which is there to ensure fairness and equality for all the UK.

### **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?**
- 3.1 The 'Our Health in Your Hands' survey (2013) shows that 48% of deaf respondents have reported that they have been unhappy with the standard of the interpreter they were given. This means there is an increased risk of unsafe diagnosis. The Equality Act 2010 requires service providers to make reasonable adjustments, but the notion of reasonable adjustments offers considerable wriggle room for providers. Health providers frequently do not know how to book interpreters nor how to work with them and this causes frequent lapses in standards of care.
- 3.2 We know that providers have to make reasonable adjustments. Without BSL, these "reasonable adjustments" cannot offer full inclusion nor adequate access. For example, deaf schools have been progressively closed down and replaced with mainstream provision. Almost all Deaf children are disadvantaged by being denied access to native BSL. The concept of "reasonable adjustments" is currently weak and inadequate response to a genuine requirement for equal access to teaching and learning. The Equality Act 2010 is not

working: pupils and students are powerless to invoke their rights and often do not know how to complain. They are not getting the support they need to access mainstream education nor to cope the encompassing isolation of being in an inaccessible school environment. The current interpretation of the Equality Act 2010 does not offer parity between Deaf and hearing students.

- 3.3 Another example is the Code of Practice for the detention, treatment and questioning of persons by police officers (Police and Criminal Evidence Act (PaCE) 1984, Code C (Section 13.1)), which previously required Chief Officers to book NRPSI and CACDP registered BSL/English interpreters for Deaf people (Code C 2008).<sup>53</sup> This was amended in 2013 so that Code C now only requires interpreters for people who are detained suspects or who are being interviewed under caution. References to 'deaf people' have been dropped and the Code now states: "if the suspect has a hearing or speech impediment, references to 'interpreter' and 'interpretation' in this Code include appropriate assistance necessary to establish effective communication with that person" (Section 13.1). In furthermore in the health care field where there is no obligation to provide an interpreter; only to make reasonable adjustments. It is not unusual for public services to ask for children and underage young people to interpret, unpaid, especially in the health and education fields as we have seen. Thus the Equality Act does not always deliver an appropriate response. Ultimately, interpreter delays can also mean that Deaf people are denied freedom and liberty for longer than hearing people.
- 3.4 Public and private sector providers are required to make reasonable adjustments under the Equality Act 2010. The UNCRPD also specifies sign language interpretation should be provided when required in official interactions. However there is a conflict with the Data Protection Act 1998 (DPA) which very often proves a stumbling block. For example, banks will not speak with people making a telephone call on behalf of a Deaf person because of the rules of the DPA 1998. The Deaf person either has to write a letter naming another person allowed to make phone calls on their behalf, or go to the bank themselves. This requires resolving through statutory regulation of the interpreting profession. However, there are several difficulties achieving access as illustrated by the following examples:

**Inland Revenue – lack of access, no reasonable adjustments made until lawyers contacted them**

One Deaf man started freelance work in April 2008 and had to register for Self-Assessment Tax Returns. As English is not his first language, he experienced difficulties in understanding the forms that had to be filled in. As a result he provided inaccurate information every year. This led to tax arrears and his debit almost totalled £14,000 of which he had one priority debt of £6,550. He was struggling to make his monthly repayments of £350. He stopped freelance work in November 2011. He went to the RAD Money Advice Service for assistance as he was unable to obtain assistance from the Her Majesty's Revenue & Customs

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<sup>53</sup> National Register of Public Service Interpreters (NRPSI) or the Council for the Advancement of Communication with Deaf People (CACDP)

(HMRC) due to the communication barriers. RAD contacted HMRC directly on his behalf and arranged an appointment for him at his local HMRC office and ensured that a BSL interpreter was present. Due to having appropriate communication support during the appointment his issue was solved successfully. His tax arrears of £6,550 were cancelled and he was reimbursed for the money he had already paid. He was very happy with the outcome and RAD continued to support him with filling in future tax forms.

#### **Bank: Failure to make reasonable adjustment**

One young lady attended a mainstream hearing school and wears hearing aids. She is able to speak and sign. She went to the bank to discuss her finances. On arrival she noticed a sign for a hearing aid loop in the window but when she reached the desk she found it would not work. Using written notes she informed them that the loop was not working. The manager was called and told her it would be repaired in a few days. She then received a letter offering £50 compensation. This is not why she went to the bank as she needed to discuss her finances so she wrote a letter explaining this. She then received a reply offering a further £20 compensation. However she has still not been able to sort out her finances. The bank has not booked an interpreter nor any alternative means of communication.

- 3.5 Given evidence of the widespread social exclusion of Deaf people from almost every area of life that involves communication. The Equality Act 2010 is meant to provide equal access but as things stand it is not able to do this mainly because of “reasonable adjustments”. Suing for rights under this it is time consuming and difficult, and requires literacy and a source of legal advice and support.
- 4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**
- 4.1 We believe that “reasonable adjustment” is a great concept, capable of evolving and keeping pace with changing technologies, from time to time. For example, companies provide SMS which enables Deaf people to send text messages. Ten years ago this would not have been reasonable because they would not have been able to do it. So as the definition of what is reasonable adapts and changes, therefore the law itself should be updated every five years to match the contemporary ideals of what is reasonable. This includes a more open societal acceptance of BSL as a linguistic and cultural resource. It is time our legislation recognises this explicitly.
- 4.2 There is considerable ambiguity on what now constitutes a reasonable adjustment following the Employment Appeal Tribunal’s decision in *Cordell v Foreign & Commonwealth Office* UKEAT/0016/11/SM, which makes it clear that there is a cap on the costs an employer is expected to pay for adjustments. In this case, it was considered that £250,000 for lip-

speakers to accompany a deaf diplomat in Kazakhstan was unreasonable. The Communication needs of D/deaf people must be better understood and Parliament is required to ensure a fairer distribution of resources in the judicial process.

- 4.3 In conclusion, we believe there is too wide a scope of what constitutes “reasonable adjustments” as interpreted by the courts to provide a definitive meaning, allowing more consistent application across the board. Parliament is essentially required to strengthen the Equality Act 2010 to ensure that a clear interpretation of what “reasonable adjustments” are in the context of Deaf BSL users to allow full access to information and support in BSL, to end the blighted prospects of Deaf people and to enable an inclusive economy and society we can all be part of. It is therefore proposed that this should form part of a UK-wide BSL Act.

### **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?**

- 5.1 To our knowledge, we believe there is no research in this area.
- 5.2 We could easily identify with the repealed Disability Discrimination Act 1995 and the Disability Rights Commission which did a lot of good work to ensure that public authorities produce disability duty plans and provide online information support for those who need advice before taking any further action. However, we find the Public Sector Equality Duty (PSED) less effective under the Equality Act 2010 and the EHRC mainly because they are so generic, they would be OfCOM or OfSTED to fine and/or challenge providers to improve services within the spirit of the law.
- 5.3 The PSED is too broad as it now covers the nine protected characteristics. There are also no Codes of Practice for each of the protected characteristics.
- 5.4 We therefore believe a great need of a revived high-level commitment to the PSED and to the principle of organisational systemic change on each of nine characteristics, rather than a reliance on individual redress.

**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?**

- 6.1 In our experience of working with each nation’s parliament/assembly, we have encountered different agendas towards disability work. For example, the Scottish Government is very committed to investing in the Disability/Deaf/BSL Equality programme. They have also supported the BSL (Scotland) Bill which will see every public authority asked to contribute to a national BSL plan outlining what they would deliver to promote the interests of Deaf BSL users in Scotland. This is the first legislation of its kind specifically focused on BSL. We hope the UK Government will soon consider rolling it out to the rest of the UK.

### **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?**

- 7.1 It has been clearly established that Government departments are not following the example of private sector companies in embracing advanced technology in order to enable Deaf customers to access their services.
- 7.2 We are also aware that Members of Parliament are often reticent in providing BSL/English Interpreters for one to one meetings with Deaf constituents and for any public events organised by them; and indeed, they are not covered by the provisions of the Equality Act 2010 themselves.
- 7.3 We would like to see the Minister for Disabled People being part of the Cabinet Office team, not the Department for Works and Pensions (DWP). Currently it is a junior minister post (parliamentary under-secretary) downgraded from Minister of State by the current government. This seemed to suggest to the disability movement that disability issues were less important despite the Prime Minister making a commitment to the role of the Minister a few years ago. We hope the Prime Minister will consider moving the minister and the ODI from DWP to the Cabinet Office. This would enable fair representation of the disability agenda across all government departments.

**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?**

- 8.1 The Equality and Human Rights Commission appears to be working on a smaller budget for Disability issues than the former Disability Rights Commission. Some services disappeared soon after the new merged commission set up in 2010.

Whilst understanding public expenditure restraints, we hope the Government will consider investing more in the EHRC to make it more productive and responsive to disability issues so that providers and disabled people are able to make a more positive contribution to the disability equality agenda in the next decade.

We are unaware of how many deaf related legal cases (civil and criminal) they have been dealt with since 2010

**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?**

- 9.1 Other regulatory bodies could indeed play a more significant part. We believe that the likes of the Parliamentary and Health Service, Financial Service, Local Government, Legal, Retail, Housing and Prison and Probation Ombudsmen all have a significant role to play in raising awareness through their services among providers in the importance of recognising Deaf BSL users' rights to access information and services in BSL.

**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?**

10.1 As mentioned, there has been a serious impact from the changes in legal aid resulting in the Royal Association for Deaf People closing down Britain's only specialist legal advice service for Deaf people early last year. Deaf people are still facing unfairness and discrimination at work or in goods and services but they are clearly finding it difficult to exercise their rights without knowing where to get access to legal advisers using BSL.

10.2 There is evidence that Her Majesty's Courts and Tribunal Service is routinely failing to provide BSL/English Interpreters for Court and Tribunal hearings attended by Deaf people, either as claimants, defendants or observers (Deaf Studies Trust 2012).

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

11.1 The BDA strongly believes we do need legislative safeguards to:

- enable BSL users to participate as equals in an inclusive economy;
- promote and safeguard Deaf culture, our BSL language and heritage;
- protect our threatened British Sign Language and to facilitate resurgence and reconstruction within the sign language community; and
- counter the continued social exclusion, education and health disparities faced by UK's BSL community and their families.

11.2 These things have neither been protected by existing equalities legislation nor by voluntary codes of practice. People who do not have a good understanding of BSL traditionally see only disability and work towards integration of Deaf people into mainstream society. However BSL is a minority indigenous language and deserves the same protection and promotion afforded to other indigenous autochthonous languages in the UK (e.g. Welsh, Scots Gaelic and Cornish). Without legislation the importance of BSL as an indigenous language of the UK is almost always overlooked.

11.3 In hope of strengthening the Equality Act 2010, UK will become a beacon for change leading the rest of Europe to see a model for good practice which they can emulate. The UK will also come much closer than the rest of Europe to meeting the existing international obligations under the UNCRPD and the UNESCO Convention on the *Protection and Promotion of the Diversity of Cultural Expressions* (2005).

11.4 In addition, it would be useful for the Lords Select Committee to understand more about other countries' legislation relating to Deaf people using sign languages. The matrix below summarises the different policy domains covered by sign language legislation in the different states that have recognised their national sign languages.

Policy Domain	States	Comment
Bilingual education	Hungary, Finland, Brazil, Greece, Cyprus, Norway, Iceland, Sweden, Slovakia, Portugal	Still quite rare
Free sign language instruction to hearing parents	Iceland, Sweden,	New Zealand is working towards this
Provision of interpreters for witnesses and defendants in court.	UK, New Zealand, Austria, Finland	Applies to many countries – very common through disability legislation
Access to public services	UK, New Zealand, Finland, Austria, Romania	Applies to many countries – very common

11.5 The existence of sign language legislation in these different states offers a precedent that shows that it can work cost effectively in small states and that other communication systems have not been adversely affected. The Hungarian, Austrian, Finnish and New Zealand cases show how the requirements of the UNCRPD are being met and offer exemplars of good practice.

11.6 The New Zealand case is worthy of note as the New Zealand Sign Language Act 2006 was reviewed in 2011 and the Government has been working with the Deaf community to enlarge the policy domains covered to include:

- increased awareness training in Government departments and courts,
- use of New Zealand Sign Language (NZSL) in schools and preschools,
- use of NZSL in health boards.

11.7 The review very strongly advocated increased access to education via NZSL; this is an important lesson in considering what can be learned from the New Zealand experience and the desirability to specify education and holistic wellbeing and Health that should be strengthened in the Equality Act. Key actors in the Deaf community in New Zealand have said:

*“Much progress has been made. It has been a positive process and we are looking forward to the outcome”.*

11.8 In Finland, Deaf sign language people have a budget that they can use for interpreting in social and civil situations which enables them to participate in voluntary activities such as school boards and local councils. Currently this does not exist anywhere in the UK further contributing to the social exclusion and lack of full citizenship of Deaf BSL people (Emery 2009, BDA 2014a).



11.9 Uniquely among minority language users, Deaf BSL people find barriers to acquiring spoken languages and are therefore not likely to change to a different language in a different policy context. This fact heightens the need for protection, promotion, usage and acquisition planning for BSL. As a group there are barriers to acquiring English, this causes linguistic exclusion which materially affects their lives in terms of accessing medical care, education, employment and other basic civil rights.

11.10 In conclusion, the BDA continues to press for legislative change and action by the government, in order to ratify and implement international legal instruments for the benefit of the sign language community:

- Ratify United Nations Educational, Scientific and Cultural Organisation's (UNESCO) Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO 2003) thereby protecting the undoubted intangible heritage of the sign language community;
- Apply the safeguards envisaged in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO 2005) to the sign language community by according legal status to BSL.
- Follow the current initiatives of the Nordic Council and investigate if the European Charter on Regional and Minority Languages (CoE 1992) can be applied to BSL
- Implement its obligations under the UNCRPD by giving legal status to BSL through BSL Act and through additional legislation to implement the specific provisions in the fields specified by the UNCRPD

This would strengthen the Equality Act 2010 allowing it to be applied and rendered workable and to end the pervasive socio-economic linguistic exclusion that blights the lives and limits the opportunities of Deaf people and their families. This would help to:

- Ensure that Deaf people are given full citizenship through legislation that protects their cultural, social and political citizenship;
- Completely restructure Deaf education and instigate a national plan;
- Ensure that hearing people and families of Deaf children can learn BSL and appreciate the culture-linguistic diversity of Deaf culture that still exists in the UK that can enrich their lives;
- Put BSL / English interpreting on a statutory footing;
- Recognise minority group rights in regard to protecting, promoting and safeguarding BSL; and
- Implement additional legislation to ensure that BSL, as the UK's one of the indigenous minority languages, Deaf culture and heritage are safeguarded and protected.

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## **Appendix 1**

### **The British Deaf Association – BDA**

#### ***The BDA stands for Deaf Equality, Access and Freedom of Choices***

#### **Vision**

Our vision is Deaf people fully participating and contributing as equal and valued citizens in wider society.

#### **Mission**

Our Mission is to ensure a world in which the language, culture, community, diversity and heritage of Deaf people in the UK is respected and fully protected, ensuring that Deaf people can participate and contribute as equal and valued citizens in the wider society. This will be achieved through:

- Improving the quality of life by empowering Deaf individuals and groups;
- Enhancing freedom, equality and diversity;
- Protecting and promoting BSL.

#### **Values**

The BDA is a Deaf people's organisation representing a diverse, vibrant and ever changing community of Deaf people. Our activities, promotions, and partnerships with other organisations aim to empower our community towards full participation and contribution as equal and valued citizens in the wider society. We also aim to act as guardians of BSL.

- 1. Protecting our Deaf culture and Identity** – we value Deaf peoples’ sense of Deaf culture and identity derived from belonging to a cultural and linguistic group, sharing similar beliefs and experiences with a sense of belonging.
- 2. Asserting our linguistic rights** – we value the use of BSL as a human right. As such, BSL must be preserved, protected and promoted because we also value the right of Deaf people to use their first or preferred language.
- 3. Fostering our community** – we value Deaf people with diverse perspectives, experiences and abilities. We are committed to equality and the elimination of all forms of discrimination with a special focus on those affecting Deaf people and their language.
- 4. Achieving equality in legal, civil and human rights** – we value universal human rights such as the right to receive education and access to information in sign language, and freedom from political restrictions on our opportunities to become full citizens.
- 5. Developing our alliance** – we value those who support us and are our allies because they share our vision and mission, and support our BSL community

*3 September 2015*

## British Deaf Association – Oral Evidence (QQ 66-71)

Members present

Baroness Deech (Chairman)  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### Examination of Witnesses

**Terry Riley**, Chair, and **David Buxton**, Director of Campaigns and Communications, British Deaf Association

**Q66 The Chairman:** Good afternoon, everybody. Mr Riley and Mr Buxton, welcome. This is the first time that a Committee of the House of Lords has taken evidence in British Sign Language. We are very glad that this gives us the opportunity to take evidence from you that you could not otherwise have given to us. A warm welcome, too, to the interpreters, who are making this possible, and to the members of the public. A webcast of this session goes out live via the parliamentary website, which will show members, witnesses and the signers.

A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections as quickly as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence or you have any additional points to make, you are welcome to submit supplementary evidence to us in writing. We are very grateful for the very full and helpful written evidence from the British Deaf Association, which explained to us the work you do.

I should warn you that there may be Divisions, i.e. voting, this afternoon. You will see a sign on the screen if that happens. If that is the case, in order for us to go downstairs and vote, there will be an adjournment for about 10 minutes.

As I said, we will declare our interests when asking a question. For the sake of speed, I am going to read out the interests of Baroness Campbell, because she has so many more than the rest of us. Her interests are, patron of Just Fair; patron of Disability Archive UK; founder and member of 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; and Commissioner of the Equality and Human Rights Commission for three years.

I am going to kick off, as Chair, with the first question. In your submission, you argue for legal recognition of BSL. Can you explain where the current gaps are and what form such

recognition should take? What would be the relationship of such recognition to the Equality Act? If, at any stage, you have information for us about your relationship with the Equality and Human Rights Commission, we would be pleased to hear it.

**David Buxton:** My Lord Chairman, thank you very much for inviting the BDA to give evidence. The BDA has published this document about the legal recognition of BSL. The reason that we have published this is that we have looked at why the Equality Act does not sufficiently support sign-language users, i.e. those who use sign language as a first or preferred language.

The Equality Act addresses access to buildings and services, et cetera, for physical purposes, but the Equality Act does not cover BSL users. For us, it is access through our preferred language that gives us access. We believe that hearing dogs for the deaf have more protection than deaf people. People do not have a good understanding of what BSL is. They see it only as a disability issue, but we see it as an issue that enables inclusion into mainstream society. We believe that a BSL Act would protect and promote sign-language users' rights in the same way as Welsh and Scottish Gaelic are protected. The Equality Act does not cover BSL use.

**Terry Riley:** Madam Chair, you said before that this is the first and only occasion you have had evidence given via sign language. To me, that is proof of why we need a BSL Act. You have shown, by your positive attitude, that we can be equal. You have provided interpreters and paperwork for us, in order that we can say what we want to say in our first language, which is sign language. Sometimes we do not need legislation; sometimes a positive attitude, as is shown here, can be helpful as this is a good example of reasonable adjustment.

Importantly, 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. We will talk more about this later.

**David Buxton:** The final point I want to add here is that this paper describes the evidence and the stories of why the Equality Act needs to be strengthened. I will give you examples. Last week, *BBC South Today* had a news story about a deaf couple who have a four-year-old child, a hearing child. They were looking for a school placement for their child and wanted to visit schools, ready for next September. They asked whether a sign-language interpreter would be provided for the information evenings, and the schools were quoted on the news item as saying that they would not give interpreting support. The parents thought the Equality Act would give them the right to an interpreter, but they were told, "It is a school's responsibility to provide interpreters". That is what the council said. They went to the Department for Education, and they said, "It is the school's responsibility". The Equality Act says that it is clearly the responsibility of schools to provide access via sign language, but that has not happened; the Equality Act simply is not strong enough.

**The Chairman:** Is there a central fund that provides for this? Have you ever been in touch with the Equality and Human Rights Commission about this?

**David Buxton:** This news happened last week, but the British Deaf Association will speak to the EHRC and ask for clear guidance. But, at the end of the day, it all comes down to the individual school's responsibility, using the Equality Act, to provide a reasonable adjustment, which means that the school can simply argue that it does not have the money. It is not

really about money; it is about the parents wanting to get the right school for their child. Under the UN Convention on the Rights of Persons with Disabilities, Articles 19, 21 and 24 talk about giving equal rights, freedom and education.. The British Deaf Association believes there should be a central Government responsibility to provide funding for interpreting. In countries like Sweden and Finland, the Government provide a voucher system for interpreting services. Deaf people can use that to go to parents' evenings and other occasions. It is a more relaxed and flexible system. If the Government would learn from those models, I feel it would be hugely beneficial.

**The Chairman:** Are you saying that you are treated worse than, for example, parents who arrived at a school and spoke, let us say, a not very well known foreign language?

**Terry Riley:** Yes. It is a fact of life. The UK is a very diverse country. Many people do not use English as a first language. Those people would automatically be provided with an interpreter and other forms of access. When it comes to deaf people, people become resistant. They do not recognise our language; they do not recognise our cultural needs. They believe that we are assimilated. You also get situations where children are asked to interpret for their parents. Where are the child's rights in all of this? How can a child interpret about access to a new school or about a disciplinary matter?

We sit between two stools, where the school has responsibility and will say to the Government, "We do not have the money", and the Government will say, "No, it is the school's responsibility". We get stuck in the middle. Both sides expect the other to do something in order to provide interpreters. Schools are placed in a situation where they have to choose between paying for an interpreter and buying books for their library. I do not blame them for refusing to provide interpreters. The Government should be centrally responsible for interpreting services.

**Q67 Baroness Pitkeathley:** I declare an interest as Vice-President of Carers UK. You refer in your evidence to the BSL (Scotland) Bill, which has been enacted by the Scottish Parliament. This requires the Scottish Government and a wide range of authorities to prepare a national plan for the use of BSL. I have three questions following from that. First of all, what practical results do you think this will have as far as health and education are concerned? Secondly, would you like to see similar legislation in England and Wales? Thirdly, will this give adequate legal status to BSL?

**Terry Riley:** I will answer the third one. The BSL (Scotland) Bill does not really recognise BSL as a language per se in the same way as Scottish Gaelic. Gaelic is a recognised language. The Scottish Bill now is an acknowledgment of BSL. The Scottish plans will certainly raise the profile of BSL and the deaf community. More and more people will be aware of BSL. We think that access will improve, and public authorities will start to recognise the issues in health and post-16 education and think about how to address these issues in their plans. It is not just about BSL; it is also about changing attitudes and recognising the language as a language in its own right and BSL as a culture.

As time goes on, we will see what arises in the plans. The plans will have to involve the deaf community itself. Decisions will be made for the community, and the community will be actively involved in this. They will have to support hospitals and education authorities in how to provide services. Health and education are both very important issues. In health, you have to have full access to information; you have to be informed about your condition, your problems and the diagnosis. That means you have to have full access to information. You cannot make decisions on the basis of a lack of proper information. If you provide interpreters at doctors' interviews, et cetera, the person can then make an informed choice.

Often, deaf people, through lack of education, will sign a consent form, for example, without really knowing what it says. That can have huge implications if there is a lack of information in what you have been told. I am sure that any individual has the right to have full information to make an informed choice.

In education, many deaf people have a poor experience because they have been taught via an oral educational method or where sign language is denied. In that situation, they do not have full and meaningful access to the curriculum; they do not have access to the teachers. They may not have full access to the teaching assistants. It may be that the child has a more fluent use of sign language than the person who is supporting them. It should be the other way round. Why do we allow that to happen in 2015? If it happened to other sorts of children, people would be up in arms. Parents would demand equality, but deaf people do not know how to assert their rights, so they had to put up with it.

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. BSL is sometimes seen as an inferior sub-language. As I said before, it is a language. It has its own grammar. I can fluently use this sign language. The only difference is that you access me through a sign-language user. I can give you my views; I can express my frustrations.

A BSL Act would therefore improve the quality of interpreting. It would become a regulated profession. At the moment, there are no proper standards supported by Government. There is no investment in interpreting. There was a £1.2 million investment made about 15 years ago. Since then, there has been no Government investment in interpreting. In Scandinavia, they invest very heavily in sign-language interpreting training, because they know that a penny spent now will recoup a pound later on.

**David Buxton:** I would just like to add, on the subject of education, the British Deaf Association has compiled a paper that talks about the education of deaf children in Scotland. This was published in April 2015. We have a number of case studies, which outline very concerning stories about deaf children in mainstream environments rather than special education. There are certain deaf children who cope well in this environment, but there are others who do not. They have access to their education through a communication support worker, who maybe has BSL level 1; that is an introductory level of British Sign Language. You are talking about a child who has access to education through somebody who does not sign very well and cannot match their own signing levels.

As we have seen now in Scotland, with the Bill, it is important we have more people learning BSL to a higher level. It is important 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. What is very important in this environment is that we are looking to provide teachers and those who provide education to deaf children with the language needed.

**Terry Riley:** I would like to ask the Committee an impertinent question, if I may. Would you, yourselves, as parents, prefer your child to speak or to write the English language? In terms of access, would you rather that they could speak or that they could write? That is the



question that many hearing parents face when they have a deaf child. The information they are given is that, if they take the oral education route, they are going to give their child access to being able to speak. Actually, this situation is incorrect, really. We are talking about language. Language will get me a job; language will give me quality of life; language will give me access to society. Speech in itself, without an understanding of language, will not do that.

**The Chairman:** Can I ask a quick question, out of curiosity? Is modern technology coming to your assistance? I remember, when the late Jack Ashley was a Member of this House, there was some arrangement—others may remember better than I do—whereby words came up on the screen for him. Surely, in this modern age, one would have thought there could be some investment that would at least be of partial help.

**Terry Riley:** Absolutely. Technology has changed so quickly in recent times. Up until 20 years ago, telephones were completely inaccessible for me as a deaf person. I could not speak to my parents; my parents were both deaf. I never spoke to my parents on the phone until I was 40, because we could not use the phone. We never had a phone; we did not have a landline at home. 20 years ago, there was a new piece of technology called a Minicom, a text phone, where we could communicate using the written word. Now, fast forward to 2015, we have iPhones with which we can communicate. I communicate with the Board of the British Deaf Association, who are located across the UK, using things like Skype, FaceTime or ooVoo. These are platforms through which we can sign to one another from different parts of the UK.

What is really important about technology is that it is a tool. It gives us access, but it cannot replace an interpreter who can provide face-to-face interaction between interlocutors in that way. Technology is very useful, but an interpreter can break down those barriers. Of course, we have to feed our interpreters with tea and biscuits; you do not have to do that with a form of technology, so both have their advantages.

**Q68 Lord Harrison:** Madam Chairman, I too was going to raise the question of Jack Ashley, whom I remember being in the House of Lords. Most party political conferences have sign language at the side. What more can we politicians do in order to bring the deaf into the political process?

**David Buxton:** 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, but I know that it has not yet been agreed to continue that. It is a shame to provide something and take a step back so soon afterwards.

The Government need to look very carefully at how they are being equal and inclusive towards deaf people in the political process. There is a real challenge for any deaf person who wants to get involved in politics, whether that is local politics 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 delegates in the hall. This is where I need somebody with me at my side to be able to talk. As we all know, the main work happens on the floor through networking. That is where we need to have an opportunity, and that is where there is a gap in terms of bringing the deaf community in to engage with politics in this country.

**Terry Riley:** I knew Lord Ashley very well. I worked with him in my time at the BBC. What happened with Lord Ashley was fantastic in terms of technology. Initially and still to this day, the rules of Parliament are that you are not allowed an interpreter on the Floor of either of

the Houses. If David or I, let us say, had an ambition to become a Member of Parliament, it would be an impossibility, because we would not be able to bring an interpreter on to the Floor. There has been an MP in Canada; there are two MEPs currently in the European Parliament. In all of those situations, they are allowed sign-language interpreters on to the floor with them in terms of access.

There is a certain degree of irony that in court, as well, I could not be a juror. There are 12 jurors, as we know. You are only allowed 12 people in the jury room, so you are not allowed an interpreter because that would introduce a 13th person. In terms of my civil duty, I cannot take part in that process. As has been mentioned, we are talking about technology; we are talking about different things that can remove barriers. When the system itself is what is preventing access, that is a real concern. While traditions of certain features are understandable, that is a concern.

**Q69 Baroness Campbell of Surbiton:** Maybe, Mr Riley, you and I ought to get together, because, as you will know, I was the first person in the House of Lords to bring a PA into the Chamber. I see no difference between a PA and a sign-language interpreter. When you arrive in the Lords, you and I will work together on this one. That is a promise.

It is very good to see you both. I am an old friend and sparring partner of Mr Riley. He and I have had many discussions about the issue of “deaf or disabled”. I promise you, today, that we will not have that philosophical debate, but I want to ask you whether there are barriers other than language recognition that deaf people face in accessing employment, services and other areas covered by the Equality Act. For instance, we would both say, I believe, that, as you would not want your child to be your interpreter, a disabled parent would not wish for their child to be their carer. I see this as the same issue; I see it as a reasonable adjustment.

Could you give me some examples of perhaps some of the issues that we share other than that which is different, i.e. sign language? I mean things like attitudes to employment of deaf people. I know it is not just a language issue; there are huge issues such as, “Would they fit in? Would they make the other members of the staff group uncomfortable, because they cannot speak sign language?”. These are often issues to do with attitudes, so perhaps you could give me some examples of that. Is the current legal framework adequate to address these other issues? Try not to talk too much about language and more about the other issues and barriers you both see deaf people facing, if you could.

**David Buxton:** Thank you very much for the question. You are right. Outside of sign language, there are other barriers with attitudes, particularly in employment. We are very fortunate now to have the Access to Work scheme, which is a fantastic scheme. It gives deaf and disabled people the ability to progress within their professional careers. I know that is the same for me. I know, when Terry was at the BBC as the editor and series producer of the *See Hear* programme, he had an interpreter provided by Access to Work.

But the budget for Access to Work has remained the same, even though the number of users and the demands on the service have increased. In terms of providing people opportunities to get on into work, that is a real concern where we face a barrier, which is that support into the work environment. Access to Work is about providing support for equality in the workplace, where we can work together to change the world for the better.

Secondly, we have spoken about technology and the positive developments in technology, along with some anecdotal things Terry has already mentioned. Yet a telephone is clearly still a barrier for a deaf person. We now have video-relay services; you can use interpreters in that way, and that would remove a barrier. I could give an example. If I want to make a

phone call to talk about my pension or my benefits, or if I want to book an appointment, if video-relay services are not available, it is impossible to make those telephone calls. There is also the point of attitudes towards access and inclusion and how we seek to remove those barriers.

**Terry Riley:** What is interesting is that we face barriers in everyday life. David has mentioned video-relay services as a potential solution, but, in terms of modern society and barriers we face in modern society, let us say that a person has a subscription to cover their central heating in the event of a breakdown. If that happens, you make a phone call and they make that repair. For a deaf person, it breaks down. You ask your daughter to make the phone call on your behalf. “Sorry, we cannot take this via a third party”. I have a subscription I pay for that pays for the event of a breakdown, but I cannot actually make the phone call for this to happen.

Take my bank, for example. If I need to make an important call to my bank, they will not accept my wife to speak on my behalf; they will not accept my daughter to speak on my behalf. You may have a situation where somebody does not have English as a first language. They can make that call and it is acceptable. For a deaf person, can they come on to the phone? Can they confirm who they are? No, because we cannot hear the person on the other end of the phone. These are everyday barriers.

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, I am stood there and, 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 heard examples of people who have missed planes. I have in fact missed two planes because there has been an announcement of a change of gate.

All it takes is something like subtitles or captions on certain announcements. That would make all of the difference. The really important point to subtitles and captions is the value added it would provide to society. It is not only for deaf people or those with difficulties hearing or who are hard of hearing. Those people who do not have English as a first language would benefit from having things like captions and subtitles.

We strongly feel we are not seen as being equal; we are seen as being defective in some way. I have hearing impairment; I have some impairment to my hearing; I am “defective”. I am not defective. I am a deaf person. I do not have a problem. I am perfectly fine. I have a language. I can communicate. I see myself as an equal.

**Baroness Campbell of Surbiton:** Mr Riley, do you see that as truly different from the kind of barriers that disabled people face? For instance, if there is an announcement of a change, and a train is on platform 3 and I am on platform 1, there is no way I will get to platform 3 in time. I will be on that platform with you, watching the train disappear. I cannot use my hands anymore; otherwise I would have greeted you in sign language. I cannot sign my name, even. My bank will not accept the fact that I cannot sign my name on a cheque and that I use a stamp. Where is the difference in discrimination? Do you really think disability discrimination is so different from that discrimination faced by deaf people? Answer without going into the long philosophical debate, which you and I have often talked about.

**Terry Riley:** You have the Disability Discrimination Act, which recognises you as a disabled person. I am not disabled in the same way as you. I am linguistically impaired. Also, you know how to use legislation; you know your way through it. Deaf people become passive. It is a fact of life. Deaf people do not know how, or are afraid, to argue. They feel that, if they

argue, they will lose the service. We train deaf people in how to make decisions, how to be assertive, how to be involved and to bring about change.

The BDA has published a BSL Charter document. We use that with local public authorities in order to change their services: health, education, police and hospital services. We are working with disabled groups as well. What suits them might well suit us, and we work in partnership.

**Q70 Baroness Thomas of Winchester:** It is very nice to see an old friend, David Buxton. I have to declare some interests. I receive DLA; I am a trustee and Vice-President of Muscular Dystrophy UK; I am on the disabled access committee of the MCC at Lord's Cricket Ground; and I am a patron of Thrive.

I now have two questions about reasonable adjustments. Your submission argues for the Equality Act to be strengthened to ensure a clear interpretation of what reasonable adjustments are in the context of deaf BSL users. Why do you believe this to be necessary? What would such a change look like?

**Terry Riley:** Part of the question gives us the answer. What is a reasonable adjustment? Who decides? Is it me, the provider or the funder? We have pen and paper. That is considered a reasonable adjustment. A lot of deaf people are very resistant to using English, because it is not their first language. Reasonable adjustments can have lots of positives. You can see changes over time. You can see changes in technology. In schools, we have seen changes over time, but we have not seen any way in which we can decide whether a reasonable adjustment is working. You have an example of the school and the parents. Who decides whether this should be provided or that should be provided? It is left up to individuals, and people fall between two stools.

Parliament needs to think about becoming more assertive in order to make sure that, for example, every five years, reasonable adjustments keep pace with technological change. Parliament has an obligation to make it very clear what a reasonable adjustment is. The words themselves are open to interpretation. If we had a clear interpretation of what BSL and reasonable adjustments meant, and how deaf people would benefit, that would enormously improve the quality of our lives.

**David Buxton:** I just want to add to this important point about reasonable adjustments. Sign language, BSL, is my first or preferred language. How do you define reasonable adjustments in relation to that if you discount BSL? Just translating things into English is not a reasonable adjustment. The Equality Act is talking about access to buildings, but BSL does not really fit into that. What does a reasonable adjustment mean in relation to BSL? Parliament needs to look at that very clearly.

For example, imagine if a group of Lords went to meet the President of France. Special arrangements would be made. A reasonable adjustment is to book a French interpreter. Let us say they were only good enough to understand chit-chat about holidays and so on. Would you think that was a reasonable adjustment? Would you accept that? No, you would not. You want somebody who is fully qualified; you want somebody who would fully inform you so you could make whatever decisions you had to make in order to meet the President of France. At the end, you would get positive action and positive change, and move forward. That is how the deaf community sees BSL. That is why Parliament needs to look more carefully at what reasonable adjustments mean in relation to deaf people.

**Baroness Thomas of Winchester:** You do not think that the word "flexible" is important. That is what some people think. They think reasonable adjustments need to be a bit vague so they have flexibility to be interpreted year on year.

**Terry Riley:** Flexibility is important. You cannot be too rigid about things. Yes, of course you need flexibility. For example, some deaf people can cope well using speech to text. They might be able to cope using a video-relay service, working from a screen. What if I do not want those? What if I want a BSL interpreter? I should have the right to say, “I want that. That is my preferred mode”.

Technology can let you down. I know that some deaf people are not happy with technology. It is not reliable; it does not always give you access. Sometimes things are not clear. It is about choice. Deaf people should have that choice. Technology also has its limitations. Flexibility is important, but the question is really about this word “reasonable”. Who decides what is reasonable? Is it you, me or someone over there? It is just not clear.

I am not allowed to drive without a seat belt. The law is very clear on that. “Reasonable” would mean I could wear it or not; I make the decision. It would be left open to individuals. It is open to misinterpretation.

**David Buxton:** This is important. When we are talking about reasonable adjustments, who has the power? It is usually the provider. We are powerless in that relationship. We want access. They decide what to provide. My opportunity to be involved is reduced. They win the argument. They have used the argument of reasonable adjustments, but it is an excuse. I accept, yes, that there should be flexibility, but we need the law and its interpretation to be clear. Parliament needs to be clear about that. It should not be the case that the provider always wins.

**Terry Riley:** I just want to add one further point. In the health arena, providers will say, “Interpreters are too expensive. We will use a less qualified interpreter”. They will say, “That is fine; that looks like a reasonable adjustment”. Who is saying they have to provide a highly skilled, qualified interpreter? The law does not say that. They can just provide an interpreter. Therefore, they use people with level 1 or level 2, a very basic level of sign-language skill. There is misinformation or misunderstanding. This is really about safety, is it not? It is not about money. It becomes a numbers game.

Most of the complaints that deaf people have are about the low quality of interpreters. I would not call them interpreters. They are people who can sign, but they have not been trained and do not know how to interpret. The problem is this word “reasonable”. The service provider says, “I am providing you with someone. That is reasonable”.

**The Chairman:** That takes us neatly to Lord Northbrook’s question, which comes to the heart of the matter.

**Q71 Lord Northbrook:** What makes an adjustment reasonable can depend, to some extent, on its cost. How has this operated in the context of BSL? Where providing a BSL interpreter is not possible either because of availability or cost, would alternatives be acceptable? If so, what would they be? In particular, I am thinking of the case cited by the BDA of Cordell v Foreign & Commonwealth Office.

**David Buxton:** That case is quite complicated and it is at a very high level. 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 video-relay services, for example. Technology has improved so much. There are better technological solutions.

In the Cordell case, it was the beginning of the way in which the Equality Act was changing. This woman is now a freelance worker, but her prospects have been reduced.

**Terry Riley:** We have talked about costs and expenditure, but we have not talked about income. For example, if I use an Access to Work interpreter, it means I am working, I pay my tax and I am an important part of society. I have self-esteem; I am not on benefits. If you take away my reasonable adjustment, what am I left with? Perhaps I will have an inferior job; perhaps I will face dismissal because I cannot do the job. I will go back on to benefits; I will not pay tax.

It is about the positives as well as the negatives of expenditure. You cannot consider one without the other. There is a flaw in any argument that just talks about the costs. If you have one, two or three children—it is about cost, yes, but there are also benefits to having more children. You have to balance these positive and negative aspects.

**David Buxton:** I want to make an important point about cost. It is an important one, whether you are employed or not. If you invest that cost in that person, that person will generate income far greater than the cost of that. It is an investment in that person and the economy. We need to change the attitudes of people. What benefits are there to the British economy of someone doing a decent job? We need to look at the value for money. That is what we should be working with.

**Terry Riley:** In the mental health area, research shows that one in four people will have enduring mental health problems. We see many children who have mental health problems because of lack of access to a language and lack of access to support. That cost will continue of those deaf children throughout their lives. It would be much better if you provided the child with access to a language and support via interpreters. That would benefit the child and save the Government money in the long term. As I say, it is a penny spent now and a pound benefit later on.

**Baroness Campbell of Surbiton:** Can I just ask a question? Have you ever conducted a cost-benefit analysis of providing the access that deaf people require in society? You talk about it in terms of investing in deaf people. Has there ever been a cost-benefit analysis as such?

**David Buxton:** The only reference we would be able to show is our Access to Work report, which we published some 18 months ago now. That is where we showed it was a positive investment when you saw the progression of people within employment, the levels of jobs they received, how involved they became in decision-making within society. Using an example of our BSL Charter, once local authorities took on board our charter, we saw a really big improvement in the lives of deaf people within those regions. The Access to Work model is something we have.

**Terry Riley:** I could give you an example here. I am a living example. My dad was a presser. He could not find any other job. It was manual labour whereas I was a series editor at the BBC. I have been a chief executive. That is all because I have been given correct, reasonable adjustments throughout my career. I did not have these aims to achieve the things I have when I was 15. I did not have those aspirations in that way. But the world has changed, and those changes have been positive. They have given me exposure and I have taken those opportunities every step of the way.

We might have deaf children in schools today who would aspire to be Members of Parliament. They do not have that opportunity. There are six such Members of Parliament in the world. That is not because deaf people do not have the ability to do it. Provide deaf people with the correct tools and they can do what they want to do. Being told they cannot do things is the problem we have.

If you take this year's International Week of the Deaf theme "With Sign Language, Deaf Children Can" —we are talking about sign language and recognition of sign language—we know what we can achieve, given the right tools. And I have not changed.

**The Chairman:** On that optimistic note, I would like to thank you very much. This question of cost is a really serious one and our report will try to get to grips with it. We all understand very clearly what you are indicating about cost benefit. We have found this very illuminating and helpful. We are very grateful for the work you do. It is very heartening to see that you have been able to take advantage of what has been on offer to help you up the professional ladder, and we hope for more of that for the next generation, in the future.

**David Buxton:** Thank you.

**Terry Riley:** Thank you for having us.

**The Chairman:** It has been a successful first BSL session in the House of Lords. Thank you.

*27 October 2015*

## **British Psychological Society – Written Evidence (EQD0103)**

### Introduction

1. The British Psychological Society (BPS) Working Group on Neurodiversity in Employment would like to offer the following comments and information regarding the application of Committee's questions on the effectiveness of the Equality Act to adults with neurodiversity, namely: dyslexia; dyspraxia; ADHD; autistic spectrum condition; dyscalculia. Group members each provide assessment, training, coaching and consultancy to employers, often via Occupational Health, acting internally for some employed members and as external expertise for those who are self employed. We come together as a research group and best practice group. We conduct surveys and academic research to support the development of our field, which has been criticised for a lack of evidence upon which to base practice (Gerber 2012) as well as provide guidance to our BPS colleagues. The group is also embedded within the Work and Health Committee at BPS Cross-Divisional level and this submission has the support of the group chair, Dr Wilde.
2. The group recommend that neurodiverse conditions, which fall under the umbrella of 'hidden disability', are distinct in their nature from other disabling conditions for the following reasons: 1) the conditions and their adjustments are often unseen and not obvious to colleagues; 2) they are often not disclosed at recruitment; 3) they are subject to much stigma; 4) they fall out of the remit of medical practice, there being no clear path to diagnosis and treatment within the NHS or privately; and 5) neurodiversity as a disability offers a well documented opportunity for talent, as well as difficulty and the provision of adjustments is often the only barrier to success. As such, neurodiversity requires special consideration in this call for evidence.
3. The group are agreed that questions 3 and 4 fall into our remit and that our experience and research can contribute to the Committee's understanding. Answering in order, we will first outline the difficulties we observe in providing reasonable adjustments to neurodiverse adults, followed by our recommendations for improving employment opportunities, followed by comments in relation to question 4. Some of our answers also bear relevance to other questions, this will be highlighted in the text.

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Question 3: Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?

Difficulty 1: lack of understanding of the disabling impact of neurodiverse conditions

4. The cognitive factors underlying the above named conditions are sometimes divergent from their stereotypical symptom list. For example, although dyslexia is associated with literacy difficulties, there is evidence that working memory deficit is a key issue (Torgeson 2001) and that it perpetuates into adulthood, responsible for a great deal of occupational dyslexic difficulty (Doyle & McDowall 2015; McLoughlin & Leather 2013). Indeed, working memory difficulties are associated with most neurodiverse conditions (Baltruschat et al. 2011; Malekpour et al. 2013; McLoughlin & Leather 2013) as well as mental health needs. Similarly, autism is associated with social and communication difficulties, but neurological research is demonstrating that these symptoms are related to a sensory processing overload rather than a maladaptive social intention. This means that people with autistic spectrum conditions cannot focus on emotionally appropriate interactions because their sense of sight, sound, smell or temperature, for example, may be overwhelmed (Grandin 1995). Nevertheless, disabilities stereotypes persist and people provide the adjustments that make the most sense according to their stereotype understanding, rather than a person centred approach (Colella et al. 1998). This affects the implementation of reasonable adjustments, because the day-to-day impacts of the condition are misinterpreted and therefore attention is misdirected to areas that may not make the difference in work performance required for the job.
5. Sadly, most neurodiverse people themselves are also faced with this lack of understanding and less likely to present complaints related to executive functions (including working memory, planning, prioritisation and problem solving) than those that seem most obvious (such as literacy, numeracy, motor control or social relations). This means that the usual starting point for reasonable adjustments, which is to ask the client directly, may not lead to an effective adjustment. This problem persists because there currently is no obligation on the part of the

diagnostician to ensure that children, their parents or adults receive adequate information on the nature of the disabling condition during assessment, thus clients themselves remain uninformed. Our working group is addressing this issue internally with the BPS Committee for Testing Standards and we hope it will improve over the next few years. Nevertheless, the current situation in practice is that many people are struggling with work-based difficulties that they do not understand and cannot self-advocate for the reasonable adjustments that would improve their situation. Likewise, their employers and indeed many disability non-specialist assessors, do not understand the nature of the complaint. For example, with working memory difficulties, the main cause of the work-based difficulty can be a subtle environmental noise distraction, which can be resolved cheaply and quickly with the use of earplugs, headphones or use of quiet, corner locations. Indeed, in a recent survey, Doyle (2015) found that less than half of 214 adults surveyed were using environmental distraction management as part of their adjustments. This is just one example of many potential adjustments that are well understood by specialists and not included as standard by assessors, employers and neurodiverse adults, based on a lack of understanding of the conditions themselves.

#### Difficulty 2: The social nature of hidden disability & employer engagement

6. Neurodiverse conditions are social in their disabling nature (Riddick 2001; Kapp et al. 2012) due to the ways in which we have constructed our workplaces. It is not true, for example, that hairdressers need GCSE standard literacy to cut hair well. Hairdressing, as a skill, relies on parts of the brain unaffected by dyslexia, yet modern apprenticeships require literacy before access to many practical, visually based careers (plumbing, electrical engineering etc). Likewise, it is not the case that to be a good computer programmer or engineer you also need to excel at team work, but these skills are selected at interview despite their irrelevance to the eventual role. We have constructed workplaces that expect 'all-rounders', like our school system. The social nature of hidden disability means that creating adjustments are not equivalent to putting in an accessibility ramp – they can involve adjusting our expectations of the role, the person and making exceptions. Adjustments for hidden disability are relational and difficult to assess, they require the involvement of the employer and even the team.
7. In a recent survey focused on dyslexia, Doyle (2015) found that adjustments in place were split into the following categories and prevalence:

Employer supportive action	50.08%
Organisational Assistance	49.53%
Environmental flexibility	46.9%

Social Support	41.21%
Workload flexibility and task discrimination	39.96%
Assistive Technology	37.95%
Training and induction adjustments	32.36%
Coaching support	25.22%

The most prevalent adjustments are around management style, adjusting the pace, format and flexibility of workload and social factors. These informal adjustments can make a huge difference to the likelihood of neurodiverse adults sustaining employment and they reflect the social nature of the conditions. Managerial behaviour makes a great deal of difference in general (NICE, 2015) and for this client group it can be the main area that needs to be addressed in adjustments. The survey shows that many organisations are able to put supportive measures in place for neurodiverse adults, which is encouraging.

Around 1/3 of dyslexic people in the survey had formal adjustments. Research presented by the group at the BPS Division of Occupational Psychology conference this year (Doyle and Cleaver, 2015) showed that 1) neurodiversity negatively impacts on well-being, general health and insomnia, but that 2) organisational support moderated the impact positively on health and wellbeing, but not insomnia.

The relative prevalence of informal to formal adjustments may reflect a lack of investment, or appropriate use of resources – without further research we cannot be clear on the relative effectiveness of each adjustment category and need. However, we should state that currently, bodies such as Access to Work (AtW) assessments do not include a provision to talk to the employer at all, let alone provide advice on informal, free adjustments that managers can adopt. Access to Work focus on formal adjustments such as the provision of Assistive Technology and Coaching which, whilst potentially effective in improving performance (Doyle & McDowall 2015) do not engage the employer in co-constructing solutions.

8. In addition to actually inhibiting informal adjustments, failure to engage the employer can cause very practical difficulties in deciding which formal adjustments are necessary. One anecdotal example is the case where a client was interviewed by a lay AtW assessor, and expressed her difficulties with time management but reported that her literacy levels were fine. The assessor recommended coaching alone. However, during the coaching it transpired that the line manager did not agree that literacy was fine and the individual was at risk of job loss unless this improved – coaching was not sufficient and Assistive Technology was necessary to address literacy. This vital information was missing from the assessment, could have been addressed with a 15 minute phone call. Failure to engage with line managers leads to frustration for employers and sense of being ‘mandated’ to provide costly adjustments, which they may not understand or agree with. They ‘tick the box’ and may move on to disciplinary action with a sense that they have had to jump through an unnecessary hoop. Engaging from the start of the process could improve employment outcomes and build understanding within the pool of UK employers, which will lead to the wider adoption of informal adjustments before the ‘call in the

experts' stage is reached, thus preventing the break down in employee relations and saving money.

Recommendation 1: Ensure that expertise is shared

9. The BPS working group are actively promoting understanding in Occupational Health and employer forums through conference presentation and publication where possible. We would also welcome engagement from Access to Work and their associated subcontractors to ensure that lay assessors are aware of the full range of informal and formal adjustments for neurodiverse clients. Specifically, training provided to staff involved in making recommendations regarding the specific needs of neurodiverse clients can cut costs and improve understanding. Broadening the range of approved adjustments available to include mediation, team training and manager/client co-coaching would also benefit this client group – clear understanding of needs and reasons behind awkward behaviour can save a lot of employment issues and well as point to the solutions required.

Our answer here relates to question 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? Also question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

Recommendation 2: Increase the evidence base for the field

10. In a recent meeting with Access to Work, one group member was informed by a phone advisor that she didn't think coaching was useful and was more likely to recommend assistive technology. The difficulty here is that there is no evidence base for her position, and while her opinion may resonate for some cases, it is undoubtedly untrue for others. The result is that official support structures may be giving out inaccurate and unhelpful advice.
11. Members of our group are actively researching the impact of coaching as a reasonable adjustment, for example, and while only preliminary results are currently available (Doyle & McDowall 2015) a randomised control trial is in progress. Other members of the group are investigating the impact of extra time on cognitive assessments, which are frequently used in recruitment. Essentially, we need to retrospectively tabulate the existing adjustments that people use and test their effectiveness as interventions, since there are very few examples of this in the academic literature (McLoughlin & Leather 2013). Support from the public bodies involved such as DWP would be welcome in this endeavour, as would withholding their personal judgement on the effectiveness of various adjustments until the

results of such evaluations were available. We would be willing to engage as a group and provide academic support for this research.

Our answer here relates to question 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? Also question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

### Recommendation 3: engaging employers

12. At a minimum, the group recommends that Access to Work include a provision to discuss reasonable adjustments with employers before writing reports and ‘signing off’ on a recommendation. Over time, this will lead to better understanding of neurodiverse conditions and wider uptake of informal adjustments that can be provided freely, without the need to rely on expensive expertise and before problems arise rather than as a reaction to poor performance. On an ongoing basis, publications and communication must include the need to approach adjustments in partnership with employers in the case of neurodiversity, where adjustment could be informal, relational or job evaluation changes as opposed to the provision of equipment.

Our answer here relates to question 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? Also question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

Question 4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

13. The adjustment is not ‘reasonable’ if it poorly delivered and lacking in supporting evidence. The main difficulty experienced by the consumers of adjustments for neurodiverse adults, is that they are lacking in clarity, bench-marking and evaluation. If non-medical support such as coaching, assistive technology and training are delivered badly, they are worse than no help at all, since they lead all concerned into a false sense of security that ‘we’ve tried everything’. The law should be more

explicit on ensuring that those providing reasonable adjustments are properly trained, evidence-aware practitioners. Access to Work could provide greater assurance by vetting companies that provide coaching and training and forming a preferred supplier list, requiring companies to publish evaluation and 1 year job retention data to raise standards. This action would also serve to reassure employers and clients that adjustments work, and are worthy of their financial and personal investment.

Our answer here relates to question 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? Also question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

14. The law could also be more explicit on the role of reasonable adjustments in the employment process. We have, as a group, anecdotally experienced many occasions where clients are being performance managed and assessed for job capability *during* the process of embedding adjustments. This makes no sense and cannot support the aim of the legislation to prevent people with disabilities from employment discrimination. It adds stress to the adjustment process, which is self-defeating. Once a disability-related work difficulty has been identified, the adjustments must be put in place *before* performance is reassessed. We would also argue that a ‘bedding-in’ period of up to three months is also accommodated, as adjusting one’s work flow may take time to become automatic and therefore may slow down performance initially, while it is being learned. Our answer here relates to question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

13. In summary:

- X Lack of understanding hampers widespread adoption of key adjustments;
- X informal adjustments are not recommended frequently by lay assessors;
- X employers and neurodiverse adults themselves still require better guidance on how to implement adjustments;
- X there is a general lack of research evidence, intervention evaluation and sharing of best practice between key professionals.

- ✓ There is widespread understanding that adjustments are necessary for this client group, which is a big improvement in awareness over the last decade;
- ✓ adjustments are being adopted that are anecdotally useful and relevant;
- ✓ preliminary evidence shows that adjustments such as employer support and coaching are making a difference to performance and well-being;
- ✓ there is plenty of scope to improve provision of reasonable adjustments for this client group without adding to employer or public costs.

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*4 September 2015*



## **Bus Users UK South West – Written Evidence (EQD0070)**

### **Equalities Act 2010 – Call for evidence regarding public transport buses and rail**

My name is David Redgewell member of Bus Users UK in the South West region, I have been Director of Transport 2000 before it became a charity, a transport advisor to South West RDA and have extensively travelled the Stagecoach, First Group, National Express bus and rail networks in the South West of England and the rest of the UK. I am also a trustee of Bristol and Gloucestershire Disability Forum's.

My evidence is that 90% of the time where buses are accessible I have easy access to the service and Stagecoach West has a disabled helpline and will provide a taxi in Gloucestershire when I am unable to board a bus. First Group in the South West drivers are advised and ask customers to fold pushchairs and on a few occasions this has not happened and have refused. The modern buses in the South West have wheelchair and buggy space and talking bus facilities. There does need to be clarity of this space and for Parliament to make sure that buses are designed with wheelchair space and buggy space in all future bus designs and the adaptation of vehicles to full accessibility by 2017 for double-deckers and 2016 for single decks. All small buses should now be accessible and drivers, inspectors and customer assistants need more equalities training. In the South West, Stagecoach and First Group run equalities courses. Staff always ask mothers to fold pushchairs and buggies and 90% of the time they are successful but some young mothers refuse and this is why buses need to be redesigned to put in buggy spaces. Interchange points like Temple Meads, Taunton, Bristol Parkway, Bath and Weston-Super-Mare have good access and disabled assistance between bus and rail but Salisbury city centre has made no provision for disabled customers following the closure of Endless Street bus station with no castle kerbs and poorly sited bus shelters. On av bus journey from Bath to Salisbury the bus interchange is very poor.

Other issues include making all bus stations accessible for National Express and Mega Bus wheelchair accessible coaches. I travel as a wheelchair user following a stroke so this is very important to me that we have a fully accessible public transport network. For instance, whilst Bristol Marlborough Street bus station is fully accessible as is Bath, Glasgow Buchanan Street has only one wheelchair accessible bay, while the Stagecoach and First Group network are fully accessible as are the other bus stations in Strathclyde. The difficulty is that you have to book by phone 24 hours in advance on a 0845 premium rate phone line and you cannot book on-line. 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). Council's need to do more to support infrastructure for bus and coach facilities under the public equalities duty including talking bus stops, real time information and large print timetables. Some of the worst council's 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.

On rail, there are considerable difficulties on local stations in the Bristol area eg Parson Street, Lawrence Hill, Stapleton Road and Patchway where Network Rail need to be fully compliant with DDA/TSI. The Great Western Railway electrification project is in danger of leaving stations without disabled access especially at Lawrence Hill, Stapleton Road, Patchway (a railhead when Bristol Parkway is closed) and Pilning.

First Great Western and South West Trains have been very progressive in pushing for disabled access under the "Access for All" programme but the money is very limited and whilst we welcome the schemes for Weston Super Mare, Cheltenham, Nailsea and Backwell and St Erth many more stations need access for all funding including Dorchester West, Parson Street, Bruton, Bridgwater, Yeovil Junction, St Andrews Road money needs to be devolved to regional boards like the South West Peninsular Task Force, LEP's eg West of England, Heart of the West, Dorset, Wiltshire, Gloucestershire and Cornwall with a duty to provide access for all. There is an urgent need to create a combined transport authority in the Greater Bristol/Bath city region and with Wiltshire, Gloucestershire and Somerset. The recent demolition of Avonmouth station have left disabled passengers without a suitable alternative waiting area and will lead to additional cost of providing fully accessible stations at Henbury and Filton North Platform with prices ranging from £6-9 million. Network Rail needs to reduce the cost of building over engineered stations and the ORR should control costs and prevent Network Rail from seeking derrugation on cost grounds which is a breach of the Equalities Act 2010.

The lack of any cohesive body is causing rail schemes to be delayed or deferred and for disabled access projects to be held up with the exception of the Bristol-Portishead line. This is making it difficult to improve stations for all passengers including customers in need of assistance including waiting shelters, help points, modern ticket machines, real time information and CCTV to protect vulnerable users. Only 70% of the Greater Bristol Network is covered by CCTV funded by the local authorities jointly with the DFT and First Great Western although there is still a lack of British Transport Police to cover issues around community safety in the South West. The same applies to the bus network with Avon and Somerset Police and Devon and Cornwall Police with the bus network. The disabled community, BME and LGBT feel more vulnerable to hate crime on the public transport network.

Network Rail and Highways England do not appear to have employed any Equalities Officers to be able to carry through the Equalities Act 2010 and the eleven characteristics when it comes to planning schemes. Delays to the IEP project have been caused by local authorities asking for assurances that the Public Equalities duty at bridges, platforms and crossings are being carried out to fulfill their duties under the Equalities Act. Due to the lack of these

officers I have felt the need to join working parties with First Great Western and South West Trains to resolve some of these issues including the making of a training film with FGW.

Rail replacement buses need to be disabled accessible on the national rail network as has been the case on both the Reading and Bath rail closures.

There is an urgent need to make sure the DFT and Network Rail to comply with the 2020 deadline to make trains fully accessible to include seating and disabled toilets on both First Great Western and South West Trains. There are very few first class facilities available for disabled passengers and the removal of the buffet cars is a concern to disabled passengers because of the uncertainty in the provision of alternative trolley facilities and lack of buffets on stations (with early closures, uncertain opening hours and a lack of toilet facilities a frequent problem for disabled customers).

**The need to remove buses in the South West and Wessex** - This includes 90 vehicles in Somerset, Dorset and Cornwall (First Group) and 50 double deckers in the Wessex area of Stagecoach and a number of smaller operators (FARESAVER in Wiltshire, THIRDSECTOR in Cheltenham) have none DDA buses which need to be withdrawn by 2017. The traffic commissioner needs to take action with VOSA to enforce these regulations. The 2015 spending review needs to make provision for money to fund rural and urban services as well as funding for new buses as part of the devolution settlement for City regions and Rural regions to maintain bus and transport services including disabled people.

*3 September 2015*

## **Business Disability Forum – Written Evidence (EQD0093)**

### **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?**

1. Business Disability Forum (BDF) welcomes the House of Lords Select Committee inquiry. With more than 20 years of experience in mobilising the business community to deliver better for disabled customers, candidates and employees, we are proud of a membership that accounts for close to 20% of the UK workforce. Our membership comprises businesses, more than 120 of which are multinational, and public sector organisations from across the NHS, police and emergency services, central government departments and local authorities.
  
2. Through our work with business and the public sector, we know that to build disability competence within organisations requires a whole-organisation approach. For example, to have a recruitment process that offers disabled candidates the same opportunities as non-disabled candidates to demonstrate their skills and capabilities for a role, requires the involvement of the:
  - Information and community technology department to ensure that online application processes are wholly accessible;
  - Facilities Management to ensure that premises are accessible to candidates and employees with mobility and visual impairments and any specific adjustment needs have these met (e.g. for a personal emergency evacuation plan, access to a quiet space to take any medications etc.);
  - Learning and Development department to ensure that recruitment staff and hiring managers are skilled and confident at meeting the needs of a candidate and new hire with adjustment needs;
  - Human Resources department to enable new hires access to appropriate, timely adjustments and any other relevant support to enable the new hire to be productive (e.g. peer mentoring, coaching etc.);
  - Procurement department to ensure that any recruitment suppliers and partners, facilities management suppliers and partners and so on are disability confident and capable of making appropriate adjustments;
  - And so on.
  
3. To help our Members and Partners build their ‘whole-organisation’ capabilities, we established a Disability Standard, first launched in 2004. The Disability Standard is a management tool that enables organisations to improve their disability performance by measuring their progress in relation to ten functional areas within any organisation. This includes strategic commitment, know-how, recruitment, retention, adjustments,

products and services, premises, information and communication technology, suppliers and partners and communication.

4. This 'whole-organisation' approach to addressing technical requirements associated with disability is unique to the protected characteristics covered by the Equality Act 2010.
5. It is not the case that other protected characteristics require such technical knowledge in how one makes adjustments. For example, adjustments to information and communication technology or premises or communications (e.g. provision of information in alternative formats) won't need to be made because of gender, sexual orientation, race etc., but will need to be for disability.
6. Employers have welcomed the harmonising of discrimination law and bringing all the protected characteristics under one umbrella. However, our experience is that this has not furthered understanding of what organisations need to do to prevent disability discrimination and in particular, in how they fulfil obligations to make reasonable adjustments.
7. In our experience, diversity and inclusion departments typically work on all nine protected characteristics together. At the level of society generally, we welcome the appreciation that everyone irrespective of any protected characteristic should participate in social and economic life as equals, free from discrimination and victimisation. Diversity and inclusion departments are to be commended on helping their organisations understand more the benefits of a diverse workforce and about how they can reduce discrimination in workplaces and in access to goods and services.
8. Nonetheless, diversity and inclusion departments do not always understand how disability is different e.g. that there is a positive obligation to make reasonable adjustments to policies, criteria or practices to remove disabling barriers and that a whole organisation approach is necessary to building disability competence and capabilities to plan for, and provide appropriate adjustments.
9. We are all too well aware, for example, of how recruitment processes remain inaccessible to many disabled candidates. For example, in research BDF conducted of online recruitment processes amongst FTSE100 companies earlier in 2015, we found 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 (and is available to employees within hiring organisations).

10. Similarly, in procurement policies, the emphasis all too often is on whether the supplier has good equal opportunity or diversity policies themselves or on the extent to which supplier workforces are 'diverse'. What is almost always overlooked is that the supplier has an obligation to make their goods and services accessible for disabled people i.e. to make reasonable adjustments on behalf of the procurer.

**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?**

11. The 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. Efforts to do so risk creating a strong legal compliance focus to how organisations interact with disabled customers, candidates and employees. Disability becomes a 'problem' to address and manage, rather than an opportunity to engage on an equal basis with disabled customers, candidates and employees to make adjustments appropriate to the circumstances of the organisation.
12. That said, employers and service providers do struggle with the concept of reasonable adjustments and what is "reasonable". Recent cases have not helped in this regard by suggesting that if a policy, procedure or criteria applies to everyone it cannot place a disabled person at a substantial disadvantage.
13. It may be that on appeal more clarity will exist, but in *Griffiths v DWP* for example, the EAT found the claimant had suffered no substantial disadvantage by comparing her circumstances with those of a non-disabled person absent from work for the same period. The effect of the case is that, on the face of it, employers should not be concerned to adjust the trigger points for disciplinary action under absence management policies for disabled employees. However, absence related to disability will often constitute an entirely 'reasonable' adjustment appropriate to the needs and circumstances of the individual. It is a very unsafe legal position for an employer who followed an absence management policy without any adjustments at all for disability related absence. Such a process would be open to challenge on the basis that it constituted discrimination arising from a disability, seeing as the disciplinary and dismissal processes would be unfavourable treatment arising in consequence of disability related absence.
14. Rather, the concept of reasonable adjustments is intended to address precisely that situation, so that a policy, criteria or procedure that applies equally to everyone but

places a disabled person at a disadvantage (because they have a particular disability) should be adjusted for that person/s.

15. Transport is an area of particular concern. Accessible transport is at the heart of creating an inclusive society as without transport, many disabled people are unable to get to work, partake in leisure activities, access essential services and fulfil their role as citizens. Put simply, adjustments are necessary so that publicly available transport does not place a disabled person at a disadvantage because they have a particular disability.
16. Yet, the Court of Appeal found in *Paulley v First Bus Co.* that bus companies are not required to expect that passengers move out of a wheelchair space on a bus to enable a wheelchair user to travel. The Court decided that it was “a step too far” to compel other passengers to vacate a wheelchair user’s space on a bus. One judge said that he would “hope and expect” that drivers would do more than simply ask passengers to move but that the law did not require them to do so.
17. The case is being appealed and our submission is that the Court of Appeal’s decision is inconsistent with the duty to make reasonable adjustments. Mr Paulley has the right under the Equality Act to travel on a bus and the bus company has a duty to make reasonable adjustments for disabled passengers. To say that Mr Paulley’s ability to travel on a bus is dependent on the courtesy, unselfishness and niceness of other passengers is not the intention of the Equality Act and . The woman with the buggy didn’t have a legal right to occupy that space. She just chose to do so and chose not to move when asked and the driver and First Bus Co chose not to compel her to move.

**Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

18. As set out earlier, 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. Efforts to do so risk creating a strong legal compliance focus to how organisations interact with disabled customers, candidates and employees. Disability becomes a ‘problem’ to address and manage, rather than an opportunity to engage on an equal basis with disabled customers, candidates and employees to make adjustments appropriate to the circumstances of the organisation.
19. The law as set out in the Equality Act is as explicit as it needs to be but It may be that more statutory guidance is necessary to help understanding about how a policy, criteria or procedure that applies equally to everyone but places a disabled person at a disadvantage (because they have a particular disability) should be adjusted for that person/s. This would minimise the need for legal challenge while increasingly removing the barriers disabled people face to equal participation because of their disability.

**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?**

20. The public sector equality duty signals a legislative commitment to public sector policies, practices and programmes furthering the aims of Equality Act 2010. There remains much work to do in this respect.

21. We are conscious for example that the public sector is one of the most significant procurers of goods and services in the UK but rarely do service specifications and contracts set out requirements to make goods and services wholly accessible to disabled people or for organisations to demonstrate their own disability know-how.

22. Further in recent research the BDF published about the extent to which the good practices associated with retaining and developing employees with disabilities and long term health conditions, many public sector organisations identified significant challenges within their own organisations to retaining and developing their own disabled team members. 58 public sector organisations participated in the research with most reporting a lack of line manager skills and confidence in meeting the needs of disabled colleagues and a lack of consistency in how policy as it impacts disabled colleagues is implemented (e.g. treating disability related absence and sickness absence the same, even though a disability related absence may well be a reasonable adjustment). Public sector employers were also somewhat less likely than their colleagues in the private and third sectors to have in place the good practices associated with managing absences and return to work.

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**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?**

23. 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.

24. The EHRC has been far less effective. It is not an organisation to which either disabled people or employers or service providers routinely turn for help and advice. Its credibility is also negatively impacted by its perceived lack of enforcement capability. Similarly, the EHRC does not support or take claims in the way that the DRC did.

**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?**

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<sup>54</sup> <http://businessdisabilityforum.org.uk/about-us/news/state-of-the-nation-report-retaining-and-developing-employees-with-disabilities/>



25. Regulators such as OFCOM review how disabled customers experience services in line with specific rules that relate to communications service providers. This offers a good model. Organisations such as planning and licensing authorities could play a more significant role by refusing licences to organisations which do not demonstrate their commitment to disability and accessibility. For example, it could be that licensing bodies make explicit requirements for businesses to demonstrate competence as it concerns disability as a condition of their license.

**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?**

26. It has always been difficult for claimants to bring a claim in the County and High Courts. As a result, there have been relatively few goods, services and facilities cases. Most cases have related to public sector organisations or transport providers.

27. The introduction of a fee to bring a claim in the Employment Tribunal has had a detrimental impact on the number of employment cases being brought. Disability related claims fell by 63% from 1801 claims in April- June 2013 to 671 claims in April- June 2014.

28. We would recommend abolishing fees for claims of disability related discrimination to ensure that the disadvantages that the Equality Act 2010 seeks to overcome can be given the best opportunity to do so.

**Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

29. Section 60 of the Equality Act 2010 is not working as effectively as hoped. The section is a valuable addition and still necessary to address the difficulties some disabled people had in overcoming discrimination prior to interview when they told prospective employers about their past or current disability.

30. The wording of the section, however, potentially disadvantages some disabled candidates because it does not permit discussion about adjustments a candidate might need in post. This can result in a recruiter rejecting a candidate because of assumptions about what they can and cannot do because of their disability whereas if a constructive discussion about adjustments had been possible prior to job offer such concerns might have been allayed.

31. An amendment to Section 60 to allow candidates and recruiters to discuss adjustments would be helpful but employers should not be permitted to ask questions about a candidate's health, diagnosis or prognosis.

*3 September 2015*

Business Disability Forum, Trades Union Congress, Association of Convenience Stores,  
Barclays Bank – Oral Evidence (QQ 72-78)

**Business Disability Forum, Trades Union Congress, Association of  
Convenience Stores, Barclays Bank – Oral Evidence (QQ 72-78)**

[Transcript to be found under Association of Convenience Stores](#)

## **Cambridgeshire Hearing Help – Written Evidence (EQD0022)**

Hearing Loss

Oversight and Enforcement

The recognised way of making reasonable adjustments for people with hearing loss in public buildings is to provide a loop system. There are many problem with this that are not possible to resolve through legislation, to do with the use of hearing aids and the telecoil that enable the loop system to be used. However there is a great problem with organisations that advertise themselves as having a loop system, but it is not then possible to make use of it either because staff don't know how to use it or it hasn't been maintained in working condition.

The result is that the person with hearing loss often arrives for an event that revolves entirely around speech (the theatre or a lecture or conference) to find that the communication support system does not work. It takes a very brave person to incur the irritation of everyone at the venue by holding up the proceedings until the loop system works. There is probably no one at the event capable of getting the system going anyway. The result is that person cannot participate and will eventually stop going to events where speech is the key to understanding.

That lack of any effective means of enforcement means that there is no real incentive to the provider of the facility to install and maintain a loop system. We have instances where we have been involved in trying to get loop systems working where the response has been it must be the person with the hearing loss that has the problem. We are not able to take up cases for individuals and feel impotent to take the matter further.

There should be a simple cheap way to alert a public body like Trading standards that would take up the cases for the disabled person and persist in checking not just the installation but the continued maintenance of the loop system.

*17 August 2015*

## Care Quality Commission, Department of Health, NHS England – Oral Evidence (QQ 123-130)

### Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Campbell of Surbiton  
Lord Faulkner of Worcester  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord Northbrook  
Baroness Pitkeathley

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### Examination of Witnesses

**Flora Goldhill**, Director for Children, Families and Communities, Department of Health, **John Holden**, Director of Policy, Partnerships and Innovation, NHS England, and **Sally Warren**, Deputy Chief Inspector of Adult Social Care, Care Quality Commission

**Q123 The Chairman:** Good afternoon, everybody. Thank you very much for coming. We welcome this afternoon Flora Goldhill, Director for Children, Families and Maternity and Health Inequalities at the Department of Health. I should say right away that Flora and I worked together very closely for a number of years when we were both at the Human Fertilisation and Embryology Authority. We welcome John Holden, who is Director of Policy, Partnerships and Innovation at NHS England, and we welcome Sally Warren, Deputy Chief Inspector of Adult Social Care at the CQC. Thank you all very much for coming.

The session is open to the public and a webcast of the session goes out live and is subsequently accessible via the parliamentary website. One of our members is in hospital now and is able to watch on the website as we work. A verbatim transcript of the evidence will be taken and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections as soon as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence or you have any additional points to make, you are welcome to submit supplementary evidence to us. I say that because, as you know, we are rather pressed for time and you have to be rather concise. When you leave, I am sure you will think, “I wish I had submitted this or that other piece of evidence”, in which case, please do write in and send it to us and we will read it and take it on board.

Each of the questioners here will, before they question you, declare any interests they have that are relevant to this inquiry. To save time, I shall list the many interests of Baroness Campbell. She is a patron of Just Fair, a patron of the National Disability Arts Collection and Archive, founder and member of Not Dead Yet UK, and recipient of a social care personal budget, disability living allowance and access to work. She was a disability rights commissioner throughout the life of the Disability Rights Commission and was a

commissioner at the Equality and Human Rights Commission for three years. The first question comes from Lord Harrison.

**Q124 Lord Harrison:** The draft EHRC strategic plan cites evidence that disabled people, particularly those with a learning disability or mental health condition, are more likely to have significant health risks, major health problems and shortened life expectancy. They are also less likely to receive health checks, screening tests and treatment, and services can fail to investigate or treat physical ill health because it is viewed as part of a mental health condition or learning disability. How are government policy and the health and social care systems responding to such evidence of inequality?

**John Holden:** I do not think there is one magic bullet or one easy solution to the problem you describe. We accept that it is a recognised problem. There is good evidence, not just from the EHRC report but more generally, that patients presenting with a learning disability can be disadvantaged.

The way the health system works at the moment is that we rely on clinical commissioning groups, local doctors and clinicians working with partners locally to commission care on behalf of the populations they serve. One of the important aspects of this is an increased amount of personalisation of care. Working with partners in local government and elsewhere, they try to focus on the individual patient, which is difficult at a population level but not impossible. You can start to look at the different characteristics of different parts of the population. There are some very good examples where local clinical commissioning groups have identified precisely the problem you allude to: that patients with learning disabilities are not able to take advantage of the services on offer and that have been paid for by the taxpayer.

Screening is a very good example. One situation I am aware of is the Hardwick Clinical Commissioning Group in Derbyshire, which looked at the evidence and realised that patients with learning disabilities were probably about a third less likely to get the cancer screening they needed for bowel or cervical cancers and about a quarter less likely to get the screening they needed for breast cancers. It did this by examining the evidence and interpreting it. It then came in with a set of propositions for what to do about that and, to be honest with you, it sounds like common sense written down. It is taking some very practical steps to address the problem: making sure that communications are straightforward and intelligible, making appointments last a little longer to give more time for a reasoned discussion, and so on. It has implemented that, and that is one of the instances where lessons learnt from this can be replicated elsewhere. We know that screening levels across the country are not good enough. There is a practical example of one clinical commissioning group doing something about it.

**Lord Harrison:** Flora Goldhill, can you offer a similar practical example of a response to a problem identified? Sally Warren, I would be grateful if you could reflect on that, too.

**Flora Goldhill:** The example I would like to give to you is the establishment of the National Learning Disability Board, which is chaired by Jon Rouse, who is our director-general responsible for this area in the Department of Health, and Karen Flood, who is a person with learning disabilities. This is a cross-cutting group whose ambition is to create a plan that deals with the response to the issues of greatest concern to people with learning disabilities and their families. The aim is to identify the actions and the metrics that will show progress. It is a high-level group, with access to Ministers, feeding back information about the issues that really matter.

**Lord Harrison:** It came into creation. Give us a practical example of where it has then operated successfully.

**Flora Goldhill:** One of the areas it will look at is the annual checks. John has described one example. What the National Learning Disabilities Board would want to see is how that kind of good practice is being promulgated across the whole country: what steps are being taken, how we know it is happening, how quickly we can support it in happening, and so on. There will be challenge about the pace at which progress is made in order to make it go as fast as possible. That would be one example. Flu vaccines would be another example.

**Lord Harrison:** Very good. Sally Warren, could you give me a similar example to John and Flora?

**Sally Warren:** Yes. Before I go into the specific example, I will just give a little context about how we address these issues in our inspections so you understand how we go about finding this evidence. In our inspections of GP practices, we look at different population groups. “Mental health” is a population group we look at specifically and rate separately. “People in vulnerable circumstances” includes people with learning disabilities. There are separate ratings for those population groups so that we can see how well GPs support them. In hospitals, we already include specific key lines of inquiry and questions around how well hospitals can identify patients with learning disabilities and how they are making reasonable adjustments for those patients. From next year, we will start to include commentary in all our acute hospital reports on learning disabilities. We are looking at these population groups and recognising the challenges you set out.

In terms of a specific example, this is an example of an outstanding GP practice that has really gone above and beyond to try to meet the needs of its population. This is a practice in the north-east, in a deprived area with over 7,000 registered patients. It had twice as many patients with learning disabilities as its neighbouring practices, and it recognised this. To address the needs of those patients, it undertook staff training for all of their staff and invited in a local voluntary group that uses experts by experience to audit the practice for how well it was meeting the needs of people with learning disabilities. The audit was very positive and it identified further areas for improvement. The practice is implementing those areas. It did a very practical thing with health checks for this population group. It not only sent letters to patients to remind them of being invited but followed those up with a phone call to make sure the person with learning disabilities understood what they were being invited to and could try to facilitate that take-up. From my point of view, that really reflects a GP practice thinking very hard about the different needs of the population it is serving and how it can make very small changes, such as adding a phone call into the process, that mean it is more likely to get better take-up from people with learning disabilities and is then able to support them to manage their health better.

**Lord Harrison:** I have one last question, if I may: how do you replicate that shining example?

**Sally Warren:** From the Care Quality Commission’s point of view, we are really keen that to support improvement we need to share best practice. In primary medical services, earlier this year we published an “outstanding” toolkit. For all our five key questions and our key lines of inquiry, it uses real examples of practices we have inspected and rated “outstanding” to demonstrate really good and practical examples of what real GP practices are doing to improve outcomes and experience and to demonstrate outstanding practice to the CQC. That has been available and it is one of the most popular web pages on the CQC website, I believe. I do not have the exact figures of how often it is used, but it is used a lot. We are looking to replicate that in adult social care early next year as well so that we can do much

more in terms of sharing practice. Earlier this year, we published a document highlighting some of the outstanding practice we were seeing across all of our sectors in order to start to be able to show other services how they can make that improvement journey from “inadequate” to “requires improvement” and from “good” to “outstanding”.

**Q125 Baroness Brinton:** This question is for Flora Goldhill and John Holden, for reasons that will become obvious. How is the Equality Act applied to the commissioning of NHS and social care services? How is compliance by clinical commissioning groups and local authority social care commissioners with their obligations under the Equality Act monitored?

**John Holden:** NHS England is responsible for the support and assurance of clinical commissioning groups. The way that works in practice is that we have—forgive the jargon—an assurance framework with five different components. I probably will not remember all five now, but they include, “Is the organisation well led?”, “How is it doing on its finances?”, “Does it have a plan for a sustainable future?”, and, “How does it deal with its delegated responsibilities?”.

Under the “well led” domain, there are specific questions, one of which reminds clinical commissioning groups about their responsibility to fulfil their legal duties in respect of the Equality Act, but also the Health and Social Care Act, which makes specific reference to health inequalities. Over and above that, there is specific reference to the need to have regard to equality and health inequalities and, indeed, to other particular focus areas such as learning disability. In the assurance framework, which clinical commissioning groups know is the conversation that NHS England will be having with them, it is very explicit that there are these legal duties and areas of particular focus.

I do not want to give the impression to the Committee that this is all about some kind of top-down, very heavy-handed performance management. As I am sure your Lordships are aware, NHS England has a statutory duty of autonomy with respect to the clinical commissioning groups. We cannot direct them to do all sorts of things we just think would be a good idea. The whole object of the 2012 Act was to take that kind of micromanagement out of the day-to-day operation of the NHS. Clinical commissioning groups are clinically led and operationally independent. That was seen by Parliament, in enacting the Health and Social Care Act, as an important thing.

We have to strike a balance. That is the important point I want to make. We have to assure ourselves that the clinical commissioning groups are fulfilling those legal responsibilities, are providing continuing improvement and are seeking quality in the care of patients in the services they commission. At the same time, we have to recognise that they need the headroom to do that. If we try to micromanage them, it is self-fulfilling: it will never happen. Typically, what will happen is that through the course of the year there is a continual assessment conversation. To some extent, it is risk-adjusted. Those CCGs who have shown—perhaps as a legacy of the situation they inherited or perhaps because of their own situation—they are doing very well will have a more light-touch regime. Those CCGs who are struggling are more likely to have greater attention from NHS England. The regional teams of NHS England will have a dialogue with the clinical commissioning group about some of those individual areas, which, in the “well led” domain, include, “How are you doing on equalities and your health inequalities? What is the evidence to show that you are taking account of diversity? What is the evidence to show that you are assuring yourself that the services you commission from hospitals are meeting the requirement of the public sector equality duty and they are making reasonable adjustments?”. I can say more, but I am conscious of time. That is the kind of approach we take.



**The Chairman:** I am just a bit worried about the term “micromanagement”.

**Baroness Brinton:** I was going to come back on that, but I want to hear from Flora first. I have a specific example I want to use to draw that out.

**Flora Goldhill:** There are similarities between local authorities, but the relationship between DH and local authorities is an even further step back. We work through partnerships and relationships with the Local Government Association, which has created tools for local authorities to self-assess their performance. This recognises that local authorities are democratically elected bodies that make decisions for local areas. We work with local government, the Local Government Association and DCLG, in the same way as John has described, to get information that is as transparent, open and accessible as possible, to offer opportunities for benchmarking, to identify where things are happening well and to help local authorities that are doing less well with where they can get support to raise quality. We also have outcomes frameworks, particularly the adult social care outcomes framework, but these are quite slow-moving things. They are about delivering outcomes to populations. The steps that you need to take to deliver change deliver that change over such a long timescale that the changes are hard to see year on year, but, over time, we will have a very good set of outcome frameworks that show local population measures in terms of achieving for people with protected characteristics. We also work through Public Health England, which helps local authorities with good evidence on what works and provides data about how different areas are performing to enable benchmarking.

**Baroness Brinton:** That is very helpful. If I could go back to John Holden’s comment about not micromanaging, I think most people recognise that services for transition from young people to adult services, whether it is mental health or learning disabilities, can be very patchy. What would you do to ensure that there is a consistent service while not micromanaging? How far do you go in to a CCG to say, “Your figures show that most of the families are very unhappy with the service here” and what would you then do about it?

**John Holden:** It is interesting. I am not sure, with respect, if you were leading me there, but you said “most of the families”. That is precisely the kind of approach we would take. We do not just take one point of evidence or one data point. As far as possible, we try to get lots of different data sources and lots of different evidence. Some of that will be through a friends-and-family test or perhaps a focus group. NHS England would use its local offices to bring together local service users and ask them precisely that sort of question.

**Baroness Brinton:** How do you then use that to make the relevant CCG change what it is doing?

**John Holden:** I use the words “dialogue” and “conversation”. I am trying not to be mealy-mouthed, but this is very much about the way NHS England seeks assurance and says to the CCG, “It looks like there is a bit of an issue here. What is your plan for resolving it?”. It may be that the clinical commissioning group has inherited a long-standing problem and is some way along the trajectory to trying to solve it. It could be—this is hypothetical; I do not know—it is oblivious to the problem, in which case NHS England’s response would be, “That is not good enough”. In our assurance, we have a range of judgments that broadly mirror the CQC assessment of providers, and we would be very concerned that you are failing in one of the areas and we would not be able to say we were assured about you being well led if you did not have a grip on the problem.

In the case of transition, frankly, it is not just about mental health and learning disability, is it? This is right across the health service. Transition is a cliff edge. A lot of children are terrified of it. What do we do about it? This is precisely the kind of conversation my

colleagues who are responsible for this work in local teams are having with clinical commissioning groups, who are themselves, on the whole, not unaware. Many of them are practising clinicians and get patients and their families in the GP surgery every single day. The sort of conversation NHS England would have is, “What is your plan for improvement? What is the timescale? What is the evidence you are using? Does that accord with what we are hearing from service users? Does it accord with the evidence we see objectively and the numbers? If it is about providers, what does the CQC scrutiny show?”. We would triangulate the evidence. We would have the conversation. If necessary, we would ratchet it up. As you would expect, there are degrees of escalation. There is a nuclear option for an organisation that is manifestly failing in its legal responsibilities. We can go there; we have not gone there yet. Then there are stages along the way. There are powers of direction for a CCG that is failing. There are special measures we can take, and so on. In practice, if we are doing our job right, we should not be getting there very often, because this is not a once-a-year pass-or-fail test; this is a continual dialogue about constant improvement. That is how it works.

**Q126 Baroness Pitkeathley:** I have one interest to declare, which is that I am a vice-president of Carers UK. This is a question for you, Sally, at the CQC. How is the Equality Act applied to your regulation and inspection function? What sanctions are available for failure to meet the requirements of the Equality Act? What is the appropriate role of the CQC with regard to individual complainants?

**Sally Warren:** In the CQC, we were quite fortunate with the new regulations that were brought in this April, which gave us an opportunity to embed Equality Act considerations in our regulations. We have been able to reflect those requirements in our regulations. I will not read them out word for word, but the main ones were that we have applied Equality Act considerations are regulation 13(4)(b) around safeguarding, regulation 9(3)(h) on person-centred care, and regulation 10(2)(c), which is around dignity and respect. I can send these to the Committee afterwards if you would prefer. That allows us to be sure that, in our regulations, we are properly considering the Equality Act. 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. The regulations are the basis on which we can do that.

For the most part, the sanctions available are civil sanctions, examples of which include being able to suspend or cancel somebody’s registration. For the regulation relating to safeguarding, in some very specific, defined circumstances we can take criminal proceedings as well. Those are the sanctions available and how we have embedded the Equality Act in our regulations.

It is also worth saying that, as we have implemented our new approach to inspection across all three sectors, we have done an impact assessment on the new methodology so we can be confident that we are applying the regulations and applying our approach in a way that best supports CQC and the organisations we inspect to be able to meet the Equality Act. We have also been working on a programme to support the knowledge of our inspectors and our workforce as well, which we might come back to on one of the later questions.

As for the appropriate role for the CQC in regard to individual complainants under the Equality Act, we do not act on behalf of individual complainants. We are very keen to have information about people’s individual experiences. That allows us to assess whether there has been a breach of regulations, which allows us then to take action. Our memorandum of understanding with the EHRC allows us to share information, where the EHRC may have information that we should consider as part of our regulatory function. We also encourage

the public and people who work in the services to contact us directly with any concerns they may have. That allows us to build up a picture about a particular service and decide the right regulatory response.

I should also just add that, in terms of evaluating our approach, we are in the middle of procuring an evaluation of how our regulatory approach is supporting the equality and human rights of people who use services. That can help inform the future direction of our regulatory model.

**Baroness Pitkeathley:** When individuals contact you and you refer them on, do you find they are disappointed that you are unable to take up an individual complaint? How do you deal with that?

**Sally Warren:** Over the last few months, we have been doing quite a lot of work in CQC on this issue. It would be perfectly fair to say that the expectations of the CQC are not quite understood. People expect us to take on individual cases and resolve those for people. There is a key challenge in how we communicate more clearly what information we want from the public and why, and how we are going to use that information. It is extraordinarily valuable information for us to understand people's experiences and it makes us a much more effective regulator, but we need to be much clearer upfront about why we want that information, how we are going to use it and what feedback individuals can expect. That is not just about Equality Act complaints; that is about complaints about providers generally. What you should see starting early in the new year is much clearer communication from the CQC about the "why" and "what" of sharing information with us.

**Q127 Baroness Campbell of Surbiton:** My question is mostly for Flora Goldhill. What is your relationship with the Government Equalities Office and the Office for Disability Issues? Do you feel that you receive sufficient support from them in identifying and acting on the issues faced by disabled people? Historically, we all know that between the two departments there has been a little bit of standoff at times, shall we say. How is it going? What is it like now?

**Flora Goldhill:** I would say that relationships are positive. We have good links with the Government Equalities Office. It helps us to understand the nuances of the Equality Act. It has a much broader range of input and evidence than we do and it can often help us solve some difficult and particularly novel issues that come up. We know it is there to support us and advise us with that breadth. The most recent thing it helped us with was a Westminster Hall debate and the transgender equality inquiry, which is being conducted by the Women and Equalities Committee. Transgender issues are quite new for us and it has been very helpful to us in working our way through that. It has also helped us with gay-conversion therapy, which has been an issue recently; there has been debate about whether gay-conversion therapy ought to be legally banned. These are the sorts of questions. It has a very helpful perspective for us on that. It has also talked to us because they want to know how our arm's-length bodies do. It keeps close to us on that as well. Generally, we have a strong relationship through the Equality and Diversity Council, which is led by NHS England. We have a good understanding of where our arm's-length bodies are. We have less contact with the Office for Disability Issues, but it keeps tabs on what progress we are making.

**Baroness Campbell of Surbiton:** How does it do that?

**Flora Goldhill:** It invites us to contribute to their updates and progress reports. It has been interested to know exactly where we are going, for example, on the information standard we are introducing. It also likes to know how we are reporting on the Health and Social Care

Act 2012 health inequalities duty in respect of people with disabilities. It asks us for reports so that it knows what progress we are making.

**Baroness Campbell of Surbiton:** I am thinking more in terms of collaboration, not just you chucking all the reports at them, them reading the reports and then putting them on the shelf. Let us talk about collaboration. Are you working together? Let us take the transfer of the Independent Living Fund from the DWP to the DoH. Some would say that was not a very good collaboration, and a lot more could have been done to ensure that disabled people were not failed during that process in terms of their equality and their human rights. Let us talk about collaboration and not reports.

**Flora Goldhill:** I mentioned the National Learning Disability Board. The Office for Disability Issues is represented on that board. That board will identify the issues that are most important to people with learning disabilities. That is a starting point for us to collaborate on the issues that matter most to people with learning disabilities. I am sorry to hear about the transfer of the Independent Living Fund. I am not aware of the history on that, and I apologise for that. I am very sure we have learned lessons from that.

**Baroness Campbell of Surbiton:** It would be really nice to hear more about that, if you would not mind writing to us. That has become one of the most significant issues for disabled people. It is strange that you have not heard about it, given that it has been going on for two years and the relationship issue was brought up on countless occasions. More could have been done to have a smooth transition.

**Flora Goldhill:** I will undertake to write to you and give you more information about the lessons that we have learnt from that.

**Baroness Campbell of Surbiton:** You sit on a board together. What else do you do? What projects are you embarking on together?

**Flora Goldhill:** At the moment, we are not embarking on any, but I imagine that the starting point for new collaboration will come from the National Learning Disability Board. That would be a starting point.

**Baroness Campbell of Surbiton:** And on other equality and human rights issues?

**Flora Goldhill:** At the moment, there is no direct collaboration. I would be very happy if you were able to suggest areas where you think we ought to be collaborating and I will certainly make sure that is taken back to the department now.

**The Chairman:** In this age of austerity, when your department, the Department for Education and the DWP are all supposed to be cutting, how can you all reconcile that with your different responsibilities to the welfare of disabled people?

**Flora Goldhill:** I apologise for not being well briefed in this area. There are colleagues in the department who I am sure would be able to explain this to you very well if they were sitting here. The whole focus at the moment, certainly about how, in a time of austerity, we are looking at services, is very much based on outcomes rather than inputs. What are the outcomes that people are looking for from services? What are their needs? What are their aspirations? Rather than simply describing inputs—“We will give you this and we will give you that”—it is thinking about, “How do we shape the market differently so that we create new models that provide the kinds of services that people actually want?”. That is the methodology that permeates the thinking. There are challenges when benefits are involved, but that is at the heart of how we are trying to reconcile some of these challenges, so that we bring together the thinking in terms of working around the needs and aspirations of people with disabilities.

**Q128 Lord Faulkner of Worcester:** Mine is quite a simple question and it is also about relationships—with the Equality and Human Rights Commission. How does each of you view that relationship? May I particularly ask Sally whether you are members of the Regulators, Inspectorates and Ombudsmen Forum?

**Sally Warren:** We think we have a very good relationship with the EHRC. We have a memorandum of understanding with it that sets out the key areas of joint working. On the back of that MOU, we have been able to secure funding for our programme of learning on equality and human rights. That is the biggest programme of learning we are doing for all staff in CQC this year. It has been fantastic to roll that out to make sure all of our staff are aware of these issues.

We are indeed a member of the Regulators, Inspectorates and Ombudsmen Forum. We find it a very useful forum for discussing issues with other regulators and keeping up to date. Our human rights approach to regulation was cited as an example of good practice by that forum in terms of how far we have embedded that approach, which is really helpful. To give you some examples of how the MOU works in practice, where we have needed to get a particular opinion on particular equalities issues in our regulatory activity, EHRC have provided that to support our work in taking forward action with providers.

**Lord Faulkner of Worcester:** Would you say the balance is right between enforcement and collaboration?

**Sally Warren:** Like all regulators, the EHRC needs to think about what the balance is between the soft and the hard in terms of trying to achieve its objectives. They have a very significant objective in a big societal shift and a big shift in public services. They do need to make sure they have that balance right between where they collaborate, encourage and cajole and where, as regulators, they hit people over the head. It is a difficult balance.

**Flora Goldhill:** The Department of Health has a long relationship with the EHRC. Our most recent engagement with it was when it came to address our senior leadership group, which is led by the Permanent Secretary, the CMO and the most senior leaders in the department, to talk us through *Is Britain Fairer?*, the report it was working on and just about to publish at that time. It clearly engaged with colleagues in the department in thinking through the issues that ought to be reflected in that report. In my team, we have quarterly meetings with the EHRC when we each have the opportunity to keep each other informed and raise issues, and then we have a day-to-day relationship on issues that are topical and where we would welcome its advice.

**Baroness Campbell of Surbiton:** Have you met with the EHRC Disability Committee and the Disability Commissioner on issues they see as a priority to address within the next few years within the Department of Health?

**Flora Goldhill:** Certainly, that is something we should put on our agenda. Thank you.

**John Holden:** NHS England has a set of formal arrangements for managing its relationships with external partners. As you can imagine, they are legion; there are lots of them. In respect of EHRC, I am the nominated account director. I have regular appointed meetings with the EHRC. The person I usually meet is Tim Gunning, who is the policy director who looks after health. So much for the committees and the process—we do that. That is to make sure we understand not only the content but also the health of the relationship: “Is this working? Do we have this right? Is there something missing in this?”

On a more practical level, we have worked with the EHRC. For example, in 2014 and 2015, we co-designed and co-delivered a series of workshops for NHS England and CCGs around the country—about eight of them—talking about the public sector equality duty and the

EHRC's expectations. We were very practically asking them, "What does 'good' look like? What can we do? How do we measure up?". We are having a discussion with them now about, potentially, how we continue that process and run some more workshops, with a possible change of emphasis, but that is to play for.

My final observation is that, as Flora has already alluded to, NHS England and my boss, Simon Stevens, chairs the Equality and Diversity Council. That is a body made up of a number of national partners, including the department and the CQC. We have arranged for EHRC to attend the next meeting, which is in January, to talk to all the national leaders around the table about *Is Britain Fairer?* and the implications of that report for our collective and separate endeavours. We have a pretty good relationship, collectively and individually.

**Q129 The Chairman:** Are there any last questions from around the table? I still have something of a worry that there is no championing of the disabled across the departments, as is required by the Equality Act. It is not micromanagement; it should be filtering through everything that one does. I fear that the interests of disabled persons are being lost in the cracks somehow.

**Flora Goldhill:** We had an internal audit of our approach to these issues and a complete overhaul of how we responded. What we now have in the department is an assurance system that is led by the director-general, Jon Rouse. Each Directorate is represented at my level, with another senior civil servant as a back-up. They have quarterly meetings to give assurance that equality issues across the piece are being addressed in policy. We have taken the EHRC's guidance and tried to embed it in the department so that senior leaders across the department are taking responsibility and are fully accountable for the equality issues in their areas. I happen to have oversight of the Equality Act. It is not down to my team to make sure it happens; it is down to all the senior leaders in the department to make sure it is happening. We also have a division that deals specifically with disability. The reason the person who leads that is not here today is that, when we saw the title of the Committee, we thought it was about the Equality Act specifically. You have gone much wider, and it would have been helpful to have had my colleague here today to answer some of the questions that the noble Baroness has raised. I will get her to respond, too. I am sure she is on top of them in a way that I am not, but that is because she is the accountable person for those issues. Then we publish our report on how the Department has complied with the public sector equality duty. Clearly, we need to raise the profile of that with the Committee.

**Q130 Baroness Brinton:** We have heard a lot about the various groups that are talking to each other. It is great that there are disability champions, certainly in both your organisations. Is there a golden thread? If I asked my local CCG, "Is one of the directors on the CCG also a disability champion who will be looking at everything in that CCG?", what response would I get? It is great that it happens at a strategic level, but it is no use if it is not happening on the front line.

**Flora Goldhill:** The point you are making is a good one. How do we have that golden thread? It is something that, with the help of the Equality and Diversity Council, we ought to be looking at. It is not just a matter for the Department of Health or NHS England or one CCG; it is a matter for the whole system to be thinking about how we are doing that across the system.

**John Holden:** If I may, having champions is necessary but it is not sufficient. Just as important, if not more important, is changing the way that people are able to take responsibility for their own care. A lot of the work we are doing at the moment, collectively across all of our organisation and described in the five-year forward view, is about more

self-care, more personal health budgets, allowing people more directly to control the care they receive and empowering them. We have not talked today—there probably is not time—about the accessible information standard we have introduced, which allows people to play a greater part in understanding their care, controlling the care they receive, taking part in screenings and assessments and so on, and staying well. It is all of these things.

I am slightly nervous about the language of “champions”. I understood the point, and it is good and important, but it is not a panacea. We also need to work from the bottom up and make sure that individual patients feel sufficiently confident and informed to take responsibility, with their carers and the local professionals, for their care as well. It is “both/and”, rather than just having a champion who oversees.

**Baroness Brinton:** It is not just about care; it is about the entire structure. Forgive a personal anecdote, but, turning up at out-patients the other day, I discovered that the maintenance department had allowed asbestos-removal people to block the only dropped kerb that a wheelchair could use to access that particular road into out-patients. I could not have done anything about that with my care providers. It is about making sure that everybody in the organisation thinks through those issues. Quite often, you need somebody in the organisation who has the responsibility—somebody I could complain to. It is no good saying, “Write to PALS”. That is no good—I could not get into flipping out-patients. It is a very practical example. I am sure Lady Campbell would have many other ones about care and things like that. I am concerned, because I am hearing a lot of talking going on at the top level but my experience on the ground level is different.

**Baroness Campbell of Surbiton:** Actually, you do need champions when you are empowering people to take care of their own services. Having been a champion of direct payments, you needed the champion to get the people to do the strategic work, for that to feed down to a local level, and then to empower the people at the bottom to take that up. They feel so much more positive about taking care of their own circumstances when they know they have a champion on their side. I disagree that champions are not that necessary; they are vital to the empowerment process.

**John Holden:** I agree: it is “both/and”, not “either/or”.

**The Chairman:** We understand what a difficult job the Department of Health and the CQC have, not just for disabled people but nationally. Thank you very much for your time. Thank you for answering our questions so frankly. If there is anything else you would like to send us, as I said, please do. Thank you very much for confronting all the difficulties we have put before you and for helping us think about what the solutions might be, if solutions are needed. I am very grateful.

*17 November 2015*

**Care Quality Commission – Supplementary Written Evidence (EQD0177)**

**Lords Committee on the Equality Act 2010 and Disability**

Thank you for the opportunity to give evidence to the above Committee on Tuesday. I wanted to write to you to provide the relevant links to the different publications and toolkits that I mentioned during the session.

As I said to the Committee, the Government updated the regulations that set out the standards which all providers registered with the Care Quality Commission (CQC) are expected to meet and these came into force in April 2015. These can be found at: <http://www.legislation.gov.uk/uksi/2014/2936/contents/made>.

The specific regulations which have reference to the Equality Act 2010 are:

Regulation	Link to Equality Act	Types of sanction possible
13 –(4) (b) Safeguarding	<i>Care or treatment for service users must not be provided in a way that includes discrimination against a service user on grounds of any protected characteristic (as defined in section 4 of the Equality Act 2010) of the service user</i>	Civil  Criminal, provided has resulted in avoidable harm or significant risk of harm
9 (3) (h) Person centred care	<i>The care and treatment of service users must include making reasonable adjustments to enable the service user to receive their care or treatment</i>	Civil
10 (2) (c) Dignity and respect	<i>Service users must be treated with dignity and respect. Including in particular—... (c) having due regard to any relevant protected characteristics (as defined in section 149(7) of the Equality Act 2010) of the service user</i>	Civil

As I explained on Tuesday, we have a range of civil and criminal sanctions available to us where providers breach these regulations. You can find more information about our enforcement powers and the sanctions available to us in our Enforcement Policy at: <http://www.cqc.org.uk/content/enforcement-policy>.

In the context of how we help share best practice across health and care, I



mentioned two publications – *Celebrating Good Care, Championing Outstanding Care*, which highlights examples of good and outstanding care across our inspections, and the ‘outstanding toolkit’ which brings together examples of outstanding care from our GP inspections. These can be found at:

<http://www.cqc.org.uk/content/celebrating-good-care-championing-outstanding-care-1>;  
<http://www.cqc.org.uk/content/examples-outstanding-practice-gps>

Since the evidence session, we have also published a toolkit highlighting the examples of inadequate practice we have seen in our GP practice inspections. This is part of our commitment to share learning from our inspections to support improvement in health and care:

<http://www.cqc.org.uk/content/what-does-inadequate-practice-look-examples-our-gp-inspections>

In response to Baroness Pitkeathley’s questions about our role with regard to individual complainants, I explained that we have a programme of work looking at how we can better use, and explain to people how we use, their information about health and care services. At their October meeting, the CQC Board considered a paper which outlines our approach to improving how we handle concerns and concerning information, both from people using services and from people working in those services. The paper can be found at:

<http://www.cqc.org.uk/sites/default/files/CM101506%20Item%206%20Responding%20to%20Concerns.pdf>

Whilst we have no role in the resolution of complaints, other than for complaints made under the Mental Health Act 1983, the information people give us is invaluable in giving us more information about people’s experience of care. This paper outlines our revised approach and how we are trying to ensure better understanding of why people can share their experiences with us.

In relation to our relationship with the Equality and Human Rights Commission (EHRC), I mentioned the Regulator, Inspectorate and Ombudsman Forum publication "Human Rights in Action" which cites the CQC human rights approach: <http://www.equalityhumanrights.com/publication/human-rights-action-case-studies-regulators-inspectorates-and-ombudsmen>. The CQC approach is on page 14 - under "Using human rights in practice at the heart of an organisation".

Finally, I also mentioned our equality objective that covers quality of care for people with a learning disability in acute hospitals. This is outlined in Objective 3 of our equality objectives: <http://www.cqc.org.uk/content/equality-objectives>. Objective 4 is also relevant in terms of transition of children and young people, which was covered by the Committee yesterday - and people with a sensory impairment in care homes. The full equality objectives download gives more detail on each objective - our aim, actions and measures of success.

I hope you find the signposting to supporting information useful.

Yours sincerely,

Sally Warren  
Deputy Chief Inspector of Adult Social Care

*19 November 2015*

## **Carers UK – Written Evidence (EQD0060)**

### **Summary**

#### **Recommendations:**

1. Refreshed guidance around discrimination by association is needed, in order to understand how carers' rights should be understood in this context.
2. There needs to be a review of the right to reasonable adjustments in the workplace for carers and this could be part of the Government's new Strategy on Carers, and a piece of work led by BIS jointly with the Government Equalities Office and the Equality and Human Rights Commission (EHRC).
3. There needs to be a review of the right to a period of paid care leave of around 5-10 days in order to arrange or provide care – which would benefit both disabled people and family members.
4. Greater consideration needs to be given to the impact of harassment and discrimination in relation to a disabled person in terms of the family i.e. that the impact of discrimination goes beyond disabled people.

#### **Introduction and About Carers UK**

##### **Introduction:**

1.1 Carers UK welcomes the call for evidence by the Committee and we are delighted to respond to look at the implementation of the Equality Act 2010 and its provisions in relation to people with disability.

1.2 The rationale for this work is not just critical from an equalities point of view, but also from a demographic and economic standpoint. With a rapidly ageing population and more people living longer with disabilities, these issues will affect an increasing number of people. Ensuring that disabled people can live an equal and independent life as possible can also have a beneficial impact on carers – improved quality of life and, in some circumstances, less care needs to be provided.

##### **About Carers UK**

1.3 Carers UK is a charity set up to help the 6.5 million people who care for family or friends. At some point in our lives every one of us will either need care or be involved in looking after an older relative, a sick friend or a disabled family member. Whilst caring is part and parcel of life, without the right support the personal costs can be high. It can affect your job, your health and your finances.

1.4 Carers UK is a membership organisation of carers, run by carers, for carers. We have 17,000 members and a reach of many more. We provide information and advice about caring alongside practical and emotional support for carers. Carers UK also campaigns to make life better for carers and influences policy makers, employers and service providers, to help them improve carers' lives.

1.5 Carers UK's advice and information services answer around 20,000 queries from carers and professionals every year. Our website is viewed by over 100,000 people every month, 27,000 subscribe to our monthly email newsletters, and the combined reach of our online communities and social networks exceeds 38,000. We're in regular contact with around 1,500 local organisations, including many run by carers, who are in touch with around 950,000 carers. Carers UK has offices in Wales, Scotland and Northern Ireland.

##### **Carers and the Equality Act 2010**

2.1 The relationship between carers and the Equality Act 2010 in terms of their rights is not a straightforward and obvious one. Carers UK published a paper on carers' rights in relation to

the Act which was written by leading community care and human rights lawyer, Professor Luke Clements.

2.2 Carers rights under the Act, unless they are directly covered by a protected characteristic, are primarily in relation to Section 13 and discrimination by association with disability i.e., they are discriminated against because they are related in some way to a person with a disability.

2.3 The inclusion of this provision was precipitated by the successful European Court case taken by Sharon Coleman (Coleman v. Attridge Law) who suffered discrimination and harassment by her employer because she had a disabled son. She proved that she was treated less favourably and negatively compared with other parents, because her son was disabled.

2.4 How discrimination by association works in practice is, however, harder to explain in some respects.

### **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 the nine protected characteristics?**

3.1 The Equality Act 2010 has strengthened carers' rights under the Act in relation to discrimination by association, but their rights are still poorly understood and there is more to do in this regard. There is the first hurdle of understanding the basic concepts of the legislation and then understanding discrimination by association.

3.2 Carers UK has always argued for clearer rights and clearer laws in relation to carers supporting disabled people.

3.3 Earlier research by Carers UK found 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.

### **Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

There are two major areas where there are clear gaps in carers' rights: reasonable adjustments and care leave.

#### **Reasonable adjustments**

4.1 The first gap which some lawyers argue is the logical step after the equality duty and preventing discrimination by association is to look at a right to reasonable adjustments in the workplace. If a person is caring for someone with a disability, are there reasonable adjustments that could be put in place; as with disabled people's rights to reasonable adjustments, whether the adjustment is reasonable is weighted against whether it imposes disproportionate costs to an employer or disadvantage to other groups. This might be to explore a short period of flexible working, or equipment to work from home for a limited period etc., or it might be payment to cover alternative care so that the carer is able to carry out training. If childcare costs are covered, then it would be discrimination not to cover carers' alternative care costs through Section 13.

4.2 When looking at what reasonable adjustments might be necessary, 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.

#### **Right to Care Leave**

4.3 Carers UK welcomes the Government's aspirations for full employment and, in particular, increasing the labour market participation rate for disabled people. This, in turn, will also help other family members. Around 2.3 million people have given up work to care, the

principle reason being a lack of suitable alternative care and secondly a lack of flexibility in the workplace .

4.4 In order to increase the labour market participation for carers, so that it is equal to other groups, a variety of measures need to be in place to either prevent carers from leaving the labour market unnecessarily early or enabling them to return. The public expenditure costs of carers feeling unable to continue to work is estimated at £1.3 billion a year so the goal is to enable carers to juggle work and caring for family and friends for as long as possible.

4.5 The Government has recently announced that it will be reviewing the Carers Strategy and looking at the economic arguments of supporting carers, particularly around work. This is where Carers UK feels that the rights of carers, and the Government's aspiration, could be met by additional measures like a right to care leave.

4.6 Carers UK has written two major publications on a right to care leave. In these, we envisage the ability, not just for carers, to take up to 5-10 days paid care leave, but also for disabled people to have those same rights to be able to arrange care, etc.

4.7 Carers already have a right to take unpaid leave for domestic emergencies involving a "dependent" but this does not go far enough. Carers UK has identified a gap whereby families quite often need a slightly longer block of leave or planned leave in order to make care arrangements.

4.8 This leave could be to help make new living arrangements for a person needing care – an adult moving in supported living arrangements, needing extra support to do so. It might be when a relative, living hundreds of miles away, needs to move house to an appropriate setting – a smaller apartment in a sheltered housing block – or residential care if no alternative can be found. It might be to set up a complex arrangement of care assistants to enable a family member to continue living at home. These tasks are impossible to complete at a distance and if taken as annual leave often leave the carer exhausted, with no other time for other family members. Three quarters (75%) of carers said it was hard to maintain relationships and social networks with 49% of carers saying that they have experienced difficulties in their relationships with their partners because of their caring role . Two in five (42%) carers have had a breakdown in a relationship with a family member, and over half (57%) of those carers surveyed also said they had lost touch with friends or family .

4.9 Carers UK has carried out an in-depth piece of work on the right to care leave, including the costs of care leave. The research evidence shows that the UK is lagging far behind carers' rights to paid leave whilst in work. The other countries like Japan, Canada, the US, Australia, have all introduced the legislation to enable workers to balance paid employment and caring for older and disabled relatives. One of the earliest countries to do so, Japan, has the fastest ageing population in the world and has had to introduce different solutions far earlier than others. A similar argument is equally relevant for disabled people and paid leave to arrange care.

4.10 The evidence from employers is that a few have introduced these clear policies with defined benefits. But there is a clear need to codify this in law – giving broader coverage. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others how had duties under them? How does this apply in the specific cases of public transport, taxis, education, and access to sports grounds?

4.11 Research carried out for Carers Week 2015 looking at how carer friendly communities asked nearly 5000 carers to what extent they thought public and community services gave them the recognition and support they need and whether the services work well for them as a carer.

- Almost half (45%) of carers said the high street excluded them as it was inaccessible. It was also rated the second least carer-friendly service (21%) behind care and support services.
- Only 3% of carers found public transport to be very carer friendly; 24% of carers found public transport to be not carer friendly at all/ nearly half (48%) of carers found public transport to be not very or not at all carer friendly .
- Nearly a third (29%) of carers found leisure services (e.g. swimming pool or library) to be not very or not at all carer friendly.
- 21% of carers thought their local high street was the least carer friendly part of their community whilst 11% thought it was public transport.

4.12 These findings suggest that carers and their families are still encountering considerable difficulties in using public services like transport and leisure facilities.

**Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way.**

4.13 More explicit legislation would help carers because, in helping disabled people access more things independently, it means less stress and more equality for the whole family. For example, the family can go out for meals, swim, and enjoy leisure activities that families without a disabled family member do without difficulty. It would be good to have a clear minimum standard but it is also important that a definition is not exhaustive or restrictive in case this is used as reasoning not to make an adjustment.

*2 September 2015*

Carers UK, Andrew and Michèle Brenton, David and Jeanine Blamires – Oral Evidence (QQ 166-173)

**Carers UK, Andrew and Michèle Brenton, David and Jeanine Blamires – Oral Evidence (QQ 166-173)**

[Transcript to be found under David and Jeanine Blamires](#)

## **Carers UK – Supplementary Written Evidence (EQD0193)**

This is supplementary evidence supplied to the Committee following an oral evidence session attended by Emily Holzhausen, Director of Policy and Public Affairs at Carers UK on 8 December 2015.

Baroness Campbell asked specifically if Carers UK had any evidence of carers being discriminated against at work and whether Carers UK had any specific statistics.

While there are no publically available statistics specifically detailing discrimination of carers in the workplace, Carers UK's State of Caring Survey of over 3,500 current carers showed that 8% of carers who gave up work, did so because of difficulties or disputes with their employer. A number of carers shared their experience of being discriminated against at work. Describing their situation one carer said;

*“Employers are very unsympathetic to carer's needs. It's fit in with us or leave - or worse be subjected to disciplinary procedures. Humiliating.”*

Another carer said:

*“Promotion opportunities were closed or withdrawn despite being told I was a valued member! I felt demoralised and depressed and tired as I had had the same battles for 35 years. I loved my job and the people I worked with but the system does not respect carers or the contribution that we make to society”*

In giving evidence, Carers UK stated that carers faced different types of discrimination at work, some of which are covered by the Equality Act 2010, some of which are not.

Discrimination by association as covered by s. 13 includes the following areas that carers have raised:

- Interviews for a promotion review where things seemed to be going well until the carer mentioned she was caring for her mother and then they decided that she would not be able to manage the new role.
- Interview for a job asking the candidate to return when his caring responsibilities had reduced.
- Comments/harassment at work very similar to the Coleman case that established the principles at work – with time off being “on holiday” or “slacking off” or even carers being accused of making things up.

### **Indirect discrimination:**

This is different to discrimination by association. The wording of s. 18 of the Act ensures that protection is only extended to disabled people themselves. Section 18 states that a practice is discriminatory “in relation to a relevant protected characteristic of B's (i.e. the disabled person)”.

This 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 – for example, there are no services available at that time of day) and no allowance is made of those needs, then they have no recourse to the law.

In areas of good practice, Carers UK has seen leading employers with carer friendly practices take caring into account when looking at shift patterns, particularly more fixed shift patterns. Other areas of good practice, carers need flexibility in shifts/timings, etc.

Examples, however, from carers show that there are circumstances when they have no recourse to the law in terms of indirect discrimination.

### **A right to reasonable adjustments**

Although it might seem logical that reasonable adjustments might arise to ensure that carers are not discriminated against by association with a disabled person, in law, no such direct right exists. The earlier evidence supplied by Carers UK goes into more depth around these arguments. A right to reasonable adjustments has been recommended by both the Work and Pensions Select Committee and the Joint Committee on Human Rights in the past regarding reasonable adjustments in the workplace.

### **A duty to promote equality of opportunity between persons with caring responsibilities and those who do not have caring responsibilities**

A duty on public bodies to promote equality of opportunity, as above, is not present in the legislation but could be a positive step forward in driving forward good practice in relation to public bodies. Carers now have stronger rights in legislation as individuals to assessments and, in theory, a right to support through local authorities as the statutory public body.

This provision could be regarded as a strategic driver for local authorities to help boost local carers' strategies, help look at full employment strategies locally setting up schemes to help carers remain in and return to employment, training and learning opportunities, etc. by focussing on removing the specific barriers that carers face to all of these opportunities. It could also be used as a driver to combat loneliness and isolation.

Strictly speaking, in law, public bodies have a duty to promote the equality of opportunity between persons with protected characteristics and those without. Although the public sector duty to promote equality of opportunity under s. 149 does not mention carers *per se*, it does cover them in relation to associative discrimination. Ref to Professor Luke Clements book, forthcoming.

Whilst the explanation might seem clear when set out by Luke Clements and other Carers UK publications, Equality Impact Assessments of public bodies don't always take account of carers in the way that they should and this could be down to poorly understood application of the law as well as less knowledge about caring. Certainly greater awareness of how public bodies could use the duties under s. 149 positively would be a benefit.

*15 December 2015*

## **Challenging Behaviour Foundation – Written Evidence (EQD0153)**

### **The Challenging Behaviour Foundation**

1. The Challenging Behaviour Foundation (CBF) is a charity which exists to demonstrate that individuals with severe learning disabilities who are described as having challenging behaviour can enjoy ordinary life opportunities when their behaviour is properly understood and appropriately supported.
2. The CBF supports families across the UK caring for individuals with severe learning disabilities. Information and support around understanding challenging behaviour and supporting behaviour change is provided through a range of written and DVD resources, email networks, family linking scheme, and through individual telephone support.

### **What is challenging behaviour?**

3. “Behaviour can be described as challenging when it is of such an intensity, frequency, or duration as to threaten the quality of life and/or the physical safety of the individual or others and it is likely to lead to responses that are restrictive, aversive or result in exclusion.” (Challenging behaviour – a unified approach; RCPsych, BPS, RCSLT, 2007)
4. Challenging behaviour is things like hitting your own head against a wall, pulling curtains down or pulling someone’s hair. Often people do this because they cannot communicate with words and they have little or no choice and control over what is happening to them.

### **What are the issues?**

5. Challenging behaviour is often perceived as a ‘problem’ or ‘illness’ to be ‘treated’, ‘cured’ or ‘stopped’. The problem is seen as being part of the person rather than the focussing on what needs to change around the person, such as their environment or how people support them. This is unhelpful and potentially damaging for these individuals. We need to look beyond the behaviour and provide appropriate person centred, holistic support to enable them to achieve their full potential.
6. Children and adults with severe learning disabilities are amongst the most disadvantaged members of our society. They can expect to achieve less than other people, to face more barriers and discrimination and to struggle to become socially integrated. The addition of severe challenging behaviour greatly increases the obstacles to their development and integration. Children with the most severe challenging behaviour often carry this behaviour into adulthood and face a lifetime of social exclusion and poor quality of life.
7. People with learning disabilities and behaviour perceived as challenging are likely to:

- Live in places/with people they don't like, often a long way from their family home<sup>55</sup>  
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- Be given too much medication, or inappropriate medication<sup>57</sup>
- Be subjected to restraint<sup>58</sup>
- Be secluded and have their movement restricted<sup>59</sup>

**Background:**

8. The purpose of the legislation is to reduce/eliminate discriminatory practice. Children, young people and adults with learning disabilities who display behaviour described as challenging and their families are an extremely marginalised and vulnerable group- there is a vast amount of evidence of how society and services treat them poorly, and there is a great deal of research data that supports this. As a small but national charity supporting this group the equality legislation should be a powerful tool to address the inequalities and discrimination. However, there are embedded cultural and attitudinal issues throughout society and systems which this legislation has not had an impact on for this particular group of people.
9. The reasonable adjustments outlined in the Equality Act are particularly important for this group of individuals as their needs can be complex. It is the standard that reasonable adjustments are not routinely made by public bodies including healthcare and education institutions, or by employers and other service providers. Families and carers often have to expressly request that adjustments are made in order to be able to access services. Not everyone is aware that they, or the person they care for, are entitled to these adjustments, so do not request them. Therefore, many people with severe learning disabilities and behaviour that can be seen as challenging are simply unable to access the services they need and are entitled to.
10. Access to information and support, including legal support, is not widely available for this group of people. Local Authorities, residential homes and numerous other bodies and organisations often make decisions regarding the wellbeing, care and support of people with severe learning disabilities that are not in their best interest. In order for a family to be able to challenge these decisions there must be access to specialised information and services but this is not the reality. As one dad told the CBF, "Knowing your rights is not much use if you can't make it happen."

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<sup>55</sup> Care Quality Commission, *Review of Learning Disability Services* (2014)

<sup>56</sup> Transforming Care and Commissioning Steering Group, *Winterbourne View – Time for Change: Transforming the commissioning of services for people with learning disabilities and/or autism* (2014)

<sup>57</sup> Public Health England, *Prescribing of psychotropic drugs to people with learning disabilities and/or autism by general practitioners in England* (2015)

<sup>58</sup> Care Quality Commission, *Review of Learning Disability Services* (2014)

<sup>59</sup> Care Quality Commission, *Review of Learning Disability Services* (2014)

11. Discrimination is still a regular occurrence for people with severe learning disabilities who display challenging behaviour. There are a lack of opportunities for people to progress – they are often “contained”<sup>60</sup> instead of receiving the appropriate support and care to allow them to live happy and fulfilling lives. There is a distinct lack of housing and employment opportunities; we see little ‘positive action’ being taken by the public sector. People with severe learning disabilities and by association their carers are frequently disadvantaged and discriminated against; we are told of many instances of carers experiencing direct discrimination and harassment. (see appendix)
12. The Challenging Behaviour Foundation would like to state that we only became aware of this consultation at a late stage, so our response has had to be compiled quickly. We have made the Learning Disability Professional Senate members aware of it, as they were also unaware, but hopefully their members will respond too.
13. Please note that we have not responded to questions 1 and 6 as we are not in a position to give an informed response to these questions.

***2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?***

14. Our experience is that areas are covered- but it is the lack of effective implementation that is the issue.

***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?***

15. Our experience is that many people know very little about reasonable adjustments and what settings they apply to; for example a family carer may know that reasonable adjustments can be requested at their son’s school, but does not know that the same principle applies to healthcare, using local businesses and their own employment. Knowledge about what reasonable adjustments can encompass is low for families of people with severe learning disabilities and how to put the law into practice is even less well understood.
16. Service providers tend to be aware of more common adjustments they may be asked to make, such as those for physical disability, however their general awareness of the

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<sup>60</sup> Mencap, *Out of sight* (2012)

reasonable needs of people with severe learning disabilities is poor. Service providers such as leisure facilities and public transport are unlikely to understand the need for a family where one member has a severe learning disability to sit in a particular place or to jump a queue for example. As well as services for the general public, specific disability services can also discriminate and fail to make reasonable adjustments; examples include a playscheme for disabled children excluding a child with severe learning disabilities because they display self-injurious behaviour, or a taxi/minibus service commissioned as school transport not allowing for a child who displays challenging behaviour at home in the morning to have more time before they are picked up (by changing the route of the bus). We hear from families that the children with most complex needs can be excluded the most, which is against the ideology of the Equality Act, because they are the people who are most isolated, struggling and in need of the services.

17. Healthcare is an area that we would like to see prioritised in this consultation, as it is the area that could have the most positive impact on the lives of people with severe learning disabilities if the legislation was followed consistently. Families tell us that their relatives with severe learning disabilities find it difficult to access health appointments, due to low understanding and anxiety about what will happen to them. They may need a range of reasonable adjustments in order to make the whole process of going to the GP surgery or hospital possible for them and less stressful for them (and those around them).
18. Making reasonable adjustments for disability involves taking into account the individual's specific disability related needs and a commitment to remove any barriers which might otherwise make it difficult or even impossible for a disabled person to use a service. Making reasonable adjustments requires an NHS service to provide a different type or level of support to patients with learning disabilities. Indeed it may be necessary to offer more favourable treatment to patients with disabilities to ensure equality of health outcomes.
19. Individuals with severe learning disabilities and behaviour that challenges are likely to require a range of adjustment. Given these complexities, the reality is that service providers either find these adjustments too difficult to coordinate, are unaware of how to make them appropriately or simply do not know that they are bound by law to do so. Families are often left feeling overwhelmed and ignored while their loved one goes without adequate care or treatment. This can result in severe but often avoidable health problems (see appendix) and even premature death.<sup>616263</sup>

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<sup>61</sup> See: Healthcare Quality Improvement Partnership's *Learning Disability Mortality Review Programme* (2015)

<sup>62</sup> Mencap, *Death by Indifference* (2007)

<sup>63</sup> Department of Health, *Closing the Gap: Priorities for essential change in mental health* (2014)

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

20. The CBF view is not that the law needs to be more explicit regarding what constitutes a reasonable adjustment. Rather, we believe there should be a range of guidance to assist the implementation of these adjustments.
21. For example, these are some reasonable adjustments that could be made by a healthcare provider:
- Offering a choice of appointment times
  - Allowing a patient to be seen as soon as they arrive in the clinic if they have difficulties sitting in waiting areas
  - Considering alternative investigations or treatments that may be less invasive or which the person may accept more easily
  - Where possible ensuring that appointments are carried out by the same professional(s)
  - Arranging for more than one procedure to be carried out whilst a patient is under general anaesthetic (e.g. blood tests). Note that there must be a referral for each procedure being proposed
  - Meeting with clinical teams prior to investigations or treatment
  - Providing easy read information

**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?**

22. The CBF view is:
- In order to make public sector equality duty effective you must firstly be very well informed, and secondly, be very determined and forceful to make it happen.
  - Health and social care have low aspirations and expectations for people with severe learning disabilities whose behaviours can challenge, leading to a lack of parity. This is an attitudinal and cultural issue that needs to be addressed. There is a widely held view that “that will do for them...”.
23. Evidence of this can be seen in the undercover footage filmed by Panorama at the Winterbourne View hospital, which detailed a catalogue of abuse against individuals with a range of learning disabilities and support needs. This exposed the extent to which there is systemic discrimination across private and public bodies.
24. Four years on from the Panorama investigation and this issue is still not being addressed. People with learning disabilities who display challenging behaviour are consistently treated

differently to other people. They are channelled into in-patient provision, over medicated, forced into out of area placements, and are unable get out.<sup>6465 666768</sup>

25. People with learning disabilities who display challenging behaviour are more likely to be given medication they do not need, including psychotropic medication without a diagnosis of a mental health illness.<sup>697071</sup> Instead of receiving evidence based support and care, they are given anti-psychotic drugs that to control behaviour that services find challenging, the side-effects of which are wide ranging and often ignored.
26. There are also problems with funding as this group of people often have their care and support needs funded by the Department of Health. This means that there can be disputes regarding who is responsible for covering costs of care that do not necessarily fall under 'health' criteria i.e. integration into local community through opportunities for employment, appropriate access to housing, access to public services and leisure activities, short breaks and respite.
27. Access to a Learning Disability Liaison Nurse has been a partially successful proactive provision for people with learning disabilities to access healthcare. Where they have been available in hospitals they have played a vital role in making hospital visits easier for people and assisting them to arrange reasonable adjustments. However, the cover of LD Liaison Nurses around the country is patchy and many people are not able to access their help.

***7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?***

28. Families report that there are multiple divisions in the support their relatives require, with different funding responsibilities for various elements of support. This includes education, health and social care- children and adults – all of these divisions of responsibility add to the complexities they have to deal with.
29. Being informed about how the systems are organised and negotiating these is significantly challenging as they are not co-ordinated. Multiple fragmented parts of the system increase

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<sup>64</sup> See NHS England's Transforming Care for People with Learning Disabilities publications (2012-2015)

<sup>65</sup> See Health and Social Care Information Centre's Learning Disability Services Monthly and Quarterly Statistics (February 2015- July 2015)

<sup>66</sup> The Health and Social Care Information Centre, *Learning Disability Census* (2014)

<sup>67</sup> Care Quality Commission, *Learning disability services: inspection programme* (2012)

<sup>68</sup> The Challenging Behaviour Foundation, *CQC Learning Disability Review*(2012)

<sup>69</sup> NHS Improving Quality, *Winterbourne Medicine Programme: Improving the use of medicines in people with learning disabilities*(2015)

<sup>70</sup> Public Health England, *Prescribing of psychotropic drugs to people with learning disabilities and/or autism by general practitioners*(2015)

<sup>71</sup> BMJ, *Mental illness, challenging behaviour, and psychotropic drug prescribing in people with intellectual disability* (2015)

the likelihood that things will not co-ordinate and there will be problems. “Multiple accountabilities mean that ultimately no one is accountable”.

**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?**

30. As a national charity supporting families caring for children and adults with severe learning disabilities our view is that the Commission has a low profile in terms of addressing the issue the families we support face. This low profile reflects its impact on the lives of the people we support.
31. What is it enforcing? It is making little difference to this group of people. We see no evidence at all that it is delivering any outcomes for this group of people.

**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?**

32. As stated in question 7, families report that there are multiple divisions in the support their relatives require, with different funding responsibilities for various elements of support. Because systems are not co-ordinated and difficult to navigate there are increased risks of service breakdowns and no-one is held accountable for this.
33. Due to the reasons stated above and elsewhere in this document, a number of families and carers of people with learning disabilities that the CBF support have made complaints to the Ombudsmen. The process is lengthy and bureaucratic meaning that a great deal of time and perseverance has to be dedicated to pursue this option. The outcomes are often ineffective and disappointing to people who have had their human rights infringed upon. Issuing an apology or a warning somehow doesn't seem to stand up to the scale of discrimination suffered by this group.
34. The point should also be made that the Care Quality Commission and Ofsted should integrate the Equality Act duties into their inspections of health, social care and education services.

**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?**



35. Because of the scale of discrimination this group of people are exposed to, this is not an area that families are likely to prioritise. Their focus is on getting the right support for their relative to participate in ordinary daily activities. Priorities include getting them out of inappropriate and/or out of area provision, or preventing them from being over medicated. Employment is not usually considered an option for this group of people.

***11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?***

36. There needs to be a better implementation strategy:
- What should be happening?
  - What is your recourse if it is not happening?
  - What is the process?
37. It is also essential that the right legal services with enough specific, professional experience for this group of people is made immediately accessible when is sought. The Disability Law Service provides these services but, due to budget constraints, is often understaffed for the volume of cases. The Citizen’s Advice Bureau could step in here if given a specific remit to do so.
38. We believe more awareness of the Equality Act is needed so the policy is fully embraced and translated in practice. We believe a public awareness campaign would help to achieve this aim.
39. The Equality Act by itself cannot achieve equality. It is reliant on principles of equality underpinning all legislation and becoming the golden thread that runs through all policy. CBF would therefore like to see a mechanism during the passage of every Bill, and during the process of every policy being developed, that helps ensure the equality act is embedded within it.

**Please see appendix below for other supporting evidence**

**Appendix**

The following articles are case studies from family carers illustrating points made in this consultation.

My daughter, Katie, has Tuberous Sclerosis, a genetic condition which has produced growths in her heart, kidneys and brain.

In 2003 Katie suffered severe gastritis which was not correctly diagnosed. It was assumed that her doubling over and terrible discomfort was due to a change in seizure activity. Katie had brain surgery in 2004 to remove two of the largest growths in her brain. This was successful but she woke very quickly after the surgery and, since no one was expecting this, tore off her bandage and got off the bed.

Katie is wary and weary of hospitals. All she knows is that people in pinafores try to make her accept things she doesn't like and look at her without seeing her. We went through endless appointments which seemed to yield nothing, going through the same questions again and again every time we saw a new registrar. Katie is unable to communicate verbally, and when she feels fed-up can display very challenging behaviour. This behaviour always seemed to come as a shock whenever we had an appointment, and often resulted in procedures not being carried out.

In 2011 we achieved two procedures under one General Anaesthetic; an ultrasound scan of her kidneys and an MRI of her brain. This was successful because we were able to plan ahead:

- We carefully coordinated everything.
- Katie's school gave us 3 carers for the day.
- We played all the games Katie chose, and every time she let us know she wanted to go home we diverted her attention.
- Her slot was brought forward so she didn't have to wait for too long.
- She was given Midazolam to calm her before going down to X-ray.
- The trolley bed made her anxious, so the anaesthetist wheeled the trolley out and placed a large sheet on the floor. That meant we could all sit on the floor and distract her while the anaesthesia team did their thing.

Although all this may seem easy, it was actually a military operation, which required input from lots of people all working together to ensure Katie got the treatment she needed.

My son Adam has a severe learning disability, epilepsy, autism, and sometimes displays challenging behaviour. In his early 20s, Adam suffered from stomach pain for a long period of time. His GP would not examine him because he had previously been slapped by Adam. A consultant he saw was loathe to put Adam through intrusive tests as the outcome would probably not lead to any significant findings.

After moving into residential care, Adam continued to be in pain and discomfort. The wonderful staff tried to get him diagnosed and treated without much success either. His doctor seemed to have the view that she couldn't do much because Adam wouldn't let her examine him.

I sought legal assistance and became Adam's Deputy so I could provide consent to treatment. After a Court Order, a multi-disciplinary team was set up to take things forward. Adam finally had a much needed blood test, CT scan and gastroscopy, which revealed a faecal compaction in his bowel over 12cm in diameter. 2 months on strong laxatives, an emergency hospital admission, and a manual evacuation under General Anaesthetic later, and Adam's bowel was finally clear. During our time in hospital, I found that the majority of hospital staff didn't seem to understand our needs or make reasonable adjustments. My overwhelming main observation has been that everything takes far too long, and Adam being in pain and discomfort didn't really make a difference. I am furious at the length of time that Adam had to suffer because no one would do anything, and I feel that the NHS has been responsible for sustained and substantial abuse as a result of their neglect.

**Ian P, Adam's father**

Every time I take C out, which is every day, we face being stared at, laughed at, taunted and verbally abused and insulted. We have been surrounded by gangs of youths on several

occasions. C has had dog biscuits thrown at him, kids mimicking him, and teenagers have filmed him on their mobiles. Once he was even punched by a passer-by.

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.

A couple of years ago C and I were walking down the road, when suddenly out of nowhere we were surrounded by police. One policeman very aggressively started asking C why he wasn't at school. C started head banging - they backed off. I was then able to explain that C attends a special school and they have different terms. We didn't get an apology for our distress.

Another time, I was in a café talking with my PA, and C was minding his own business and in a very good mood. By this I mean he was laughing, squealing with delight, and vigorously shaking his head. But my delight in his delight didn't last long, as the manager came over to us and said there had been a complaint – my son was frightening some children. I think the father must have been the frightened one, as he didn't come over to talk to us himself.

**C's mother**

*11 September 2015*

## **Changing Faces – Written Evidence (EQD0131)**

### **House of Lords Select Committee on the Equality Act 2010 and Disability: Call for Evidence**

1. The UK's only disfigurement charity, Changing Faces is pleased to offer evidence to the House of Lords' Select Committee's post-legislative scrutiny during the autumn of 2015 of the Equality Act 2010 particularly concerning 'the impact of people with disabilities'.
2. We welcomed the inclusion of 'severe disfigurement' as a legal ground for discrimination under the Equality Act 2010, as in the Disability Discrimination Act (DDA) 1995. It reflected then and continues to reflect the need to respect, protect and promote the rights of the many people living with disfigurements in Britain.
3. However we have strong reservations, set out below, about how well it works in practice and whether vulnerable individuals are able to seek and secure effectively the legal protection they need.

## **Background**

### **Who are people with disfigurements and what is their experience?**

4. Changing Faces works with and for people with disfigurements from any cause (see Annex for more detail). There are many causes for disfigurements some of which are present at birth but most are acquired during life. Disfigurement can affect anyone from any demographic group and at any time in life.
5. Although modern medicine and surgery is increasingly sophisticated, the reality is that it can rarely remove a disfigurement completely. And because the face is at the centre of every human being's self-image and the social canvas on which they portray and share their personality and signal their moods and intentions, facial disfigurement can greatly affect a person's self-worth and how others perceive them. Disfigurements to other parts of their body can also affect their self-image and how others react.
6. At least 1.3 million children, young people and adults in the UK are estimated to have significant disfigurements, including 569,000 with facial disfigurements, one in 111 in the population. They all have to live with a face or body that attracts intrusive attention and the stigma our culture associates with disfigurement<sup>72</sup>. They report feeling self-conscious, isolated and friendless, facing teasing, ridicule and staring in public, low expectations in school, problems getting work, and stereotyping in the media because of the way they look.

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<sup>72</sup> Garland-Thompson, R. (2009). *Staring: How we look*. Oxford: Oxford University Press

7. We believe that children and adults with disfigurements are not treated fairly in Britain's looks-obsessed culture. Their opportunities are restricted and their risk of low self-esteem and poor mental health is much higher than that of the general population.
8. How does the unfairness manifest itself in everyday life? According to our users and independent research, it comes in many forms:
9. In public: unfair treatment is apparent in many settings. People with disfigurements are much more vulnerable than others to be subject to intrusive questions, ridicule, staring, harassment and physical attack. A YouGov survey ('Attitudes to Disability', 16-20 October 2003) found that 85% of the British public thought that people with facial disfigurements were likely to be discriminated against. *Result: many people avoid public situations and can become socially isolated and house-bound.*
10. In the media: people with unusual looks are rarely portrayed as 'ordinary' people on TV being instead either heroes, the subject of medical documentaries (often with stigmatising titles like 'The Ugly Face of...') or typecast as odd or villainous<sup>73</sup>. This perpetuates stereotyping and allows humour to be deemed acceptable when it is actually offensive. The lack of positive portrayals reinforces low expectations about people with disfigurements. *Result: people's self-esteem and self-image can be very damaged and negative.*
11. In commerce, films and retail: disfigurements are still used as a lazy way of characterising villains and unpleasant people in retail offerings and the cinema. Recent examples include the 'Glumps family' in Moshi Monsters toys (the subject of an [Early Day Motion in 2014](#)) and *The Lone Ranger* film with its accompanying Lego toy of 'a ruthless outlaw whose terribly scarred face is a perfect reflection of the bottomless pit that passes for his soul' – a description changed only after our intervention. *Result: people of all ages are vulnerable to out-dated stigma.*
12. In school: children are more likely to be bullied, subjected to name-calling and ostracised by their peers and teachers can under-estimate their potential. Despite our work in schools and with Ofsted, 90% of the children and young people who contact us say they have been bullied. Many schools still lack the expertise for preventing appearance-related bullying. *Result: under-achievement, unhappiness, isolation, self-exclusion and truanting; suicide and self-harm on occasion.*
13. At work: interview panels have been shown to discriminate against people who have unusual features<sup>74</sup>. A small survey conducted by Changing Faces in 2014 showed that 60% of unemployed respondents believed their appearance was the main reason they were out of work, whilst 50% felt colleagues treated them differently because of

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<sup>73</sup> Wardle, C. and Boyce, T. (2009). Media coverage and audience reception of disfigurement on television. Cardiff University research project for The Healing Foundation. Full report available at [www.thehealingfoundation.org/thf2008/images08/media/WORDFullReport.pdf](http://www.thehealingfoundation.org/thf2008/images08/media/WORDFullReport.pdf)

<sup>74</sup> Madera, J.M. and Hebl, M.R. (2011) Discrimination against facially stigmatized applicants in interviews: an eye-tracking and face-to-face investigation *Journal of applied psychology* doi: 10.1037/a0025799

the way they looked and 30% experienced outright hostility and bullying. In addition, evidence from case study research suggests that many people who have disfigurements do not have the same opportunities in the workplace compared to people without disfigurements. At work and as consumers, there is also a greater chance that people will be harassed or poorly served: a [survey](#) by *Personnel Today* in 2007 found that more than eight out of 10 respondents in society believe it's acceptable to tease people with ginger hair, while more than 70% said that blonde hair, regional accents, baldness, dress sense and shortness were also fair game. More than half said that being overweight, tall, having an unusual name, wearing glasses or having large body parts - be it breasts, ears or nose - made it acceptable to poke fun, while those with dandruff, acne, a speech impediment, bad teeth, body odour, small breasts or who were underweight were also regarded as being fine to tease. Many companies know that their workforce does not reflect Britain's diverse population and that staff need more sensitising to customers with unusual looks. *Result: unemployment, under-employment, low expectations and poor customer service.*

14. Why does this happen? Our analysis is that facial prejudice (which causes disfigurement discrimination) is deeply rooted in the public mind. In 2008, an [independent study](#) of public attitudes commissioned by Changing Faces showed that whilst claiming not to treat people with facial disfigurements unfairly, nine out of 10 people found it very difficult to associate positive characteristics to them. They were seen as less attractive and could not expect as much from life, less likely to be successful and less easy to be with in social encounters.
15. Unwitting prejudice allows and legitimates negativity, unfairness and low expectations towards people with disfigurements in the media and many other settings. There is some evidence that unfamiliarity is at the heart of such prejudice. When people have undertaken the same public attitude test after exposure to the Changing Faces website, the extent of the bias was somewhat reduced.
16. The negative beliefs include but are not limited to low expectations in terms of intelligence, ambitions, intimate relationships and social skills and presumed depression and anxiety. There also appears to be a widespread but erroneous belief that employing someone with a disfigurement, especially in a customer- or client-facing role will make people feel uncomfortable and therefore be bad for business. Research shows that people who have a disfigurement and good social skills are viewed more positively than people with good social skills whose appearance is in the normal range.<sup>75</sup>

### **Current provision and its limitations**

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<sup>75</sup> Bull, R. and Rumsey, N. (1988) *The Social Psychology of Facial Appearance* New York: Springer-Verlag

17. The Equality Act 2010 protects people who have a ‘severe disfigurement’ from discrimination. It specifically states that ‘an impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.’ Its main scope is direct discrimination and harassment.

18. Within the Act there is little guidance on what constitutes a ‘severe’ disfigurement, neither the severe nor disfigurement. The guidance accompanying the Act states:

*Examples of disfigurements include scars, birthmarks, limb or postural deformation (including restricted bodily development), or diseases of the skin. Assessing severity will be mainly a matter of the degree of the disfigurement. However, it may be necessary to take account of where the disfigurement in question is (e.g. on the back as opposed to the face).*

19. In practice, this is very limited advice for what is a very complicated issue: ‘disfigurement’ as a collective word referring to the effect that any trauma or medical condition or their treatment can have on the appearance of a face or body, making it look different, unusual, scarred or asymmetrical, or causing it not to function normally. It covers all the different causes of unusual-looking faces and bodies: birthmarks, clefts and cranio-facial syndromes, scarring from accidents, burns, violence, self-harm and warfare, cancer and its treatment, eye or skin conditions, and facial paralysis. For example, research has revealed painful discrimination against small children who have a squint.<sup>76</sup>

20. The term “severe disfigurement” inaccurately creates a need to quantify the disfigurement, and wrongly puts single emphasis on the physical aspects of a disfigurement. There is evidence that objective severity of disfigurement is not what determines whether, and the extent to which, if someone is being discriminated against and to what extent. Research<sup>5</sup> shows that a disfigurement does not have to be large in its size or scale to be psychologically and/or socially distressing.

21. All disfigurements, however ‘small’ in size (eg. a cleft lip/palate) can be ‘significant’ in terms of impact, especially those in the ‘communication triangle’ (between the eyes and chin) where others focus their gaze. Furthermore, as previously mentioned, it is the bias and response of the general public that influence the treatment of individuals with a disfigurement rather than the objective size or shape of the disfigurement. This creates a huge challenge to employers, schools and universities and service providers to ensure fair and equal treatment.

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<sup>76</sup> Mojon et al (2010) Strabismus and discrimination in children: are children with strabismus invited to fewer birthday parties? *British Journal of Ophthalmology* Published online August 2010 <http://bjo.bmj.com/content/early/2010/07/30/bjo.2010.185793>

<sup>6</sup> The Bullying Interventions Group biennial survey found that 78% of children targeted were so because of how they looked.

22. It should be noted however that the Equality and Human Rights Commission guidance to the Act explains that a person who is seen to have a severe or significant disfigurement has the same rights in employment, and equality of opportunity as people who do not have disfigurements. This was included after discussions with Changing Faces in 2009-10 in preparation for enactment of the bill. However it is not reflected in the Act itself.
23. There is also currently no requirement in potential cases to demonstrate the substantial adverse effects on one's ability to carry out normal day-to-day activities. The degree and the positioning of the disfigurement may be taken into account, which indeed affect the way a disfigurement is perceived. However, the effect it has on one's daily life is not taken into account when considering whether a person with a disfigurement is 'disabled.'
24. This, again, wrongly puts emphasis on the physical aspects of a disfigurement and what reasonable adjustment is required leaving the decision of whether a disfigurement is disabling enough to qualify as a disability to tribunals and/or medical professionals, who consider this question in mere isolation.
25. Though often disfigurements to the face, body or hands do not cause functional impairments, structural negative prejudices towards people with disfigurements can significantly adversely affect their opportunities in all aspects of life. In school for example the vast majority of bullying targets appearance<sup>6</sup>.

## **Consultation Response**

### **Are the current enforcement mechanisms available to private individuals accessible and effective for people with disfigurement, employers and providers of goods and services? (Q.10)**

26. To our knowledge and that of Charley Russell Speechlys LLP, there have been no cases relating to disfigurement brought under the Equality Act 2010, and in fact there were very few under the previous legislation, the DDA 1995 (Riam Dean v Abercrombie & Fitch, Jenkins v Legoland Windsor Park Ltd being notable exceptions).
27. This lack of legal action strongly suggests that people with disfigurements who have experienced discrimination and/or harassment do not know how or where to bring cases forward or cannot be confident that this will result in protection of their rights.
28. The EHRC can take on a limited number of test cases providing they are aligned with their strategic priorities. According to the website, 'the Commission is interested in hearing from solicitors, advisers, NGOs and others who are bringing cases that might be of strategic importance.'
29. In August 2015 Changing Faces conducted a survey to establish what knowledge and experience our supporters had of the protections offered to people with



disfigurements by the Equality Act. A total of 159 valid and completed surveys were received producing the following key findings:

- Only a quarter of respondents knew that the law protects someone with a disfigurement from discrimination
- Only a third of respondents said they *had not* experienced discrimination because of disfigurement in the last five years
- Two thirds of respondents said they did not know which authority to turn to if they experienced discrimination
- Just two respondents (1.5%) knew that the Equality and Human Rights Commission are the key agency responsible for tackling such discrimination.

### Examples of poor treatment

30. Changing Faces has collected many examples of discrimination and harassment since 2010 including the following:

- A woman with scarring/burns was bullied at work: she was called names, teased and ostracised. Despite reporting it to both her line manager and HR, the matter was not dealt with satisfactorily leaving her feeling she had no right to feel safe or happy at work and eventually being signed off work with stress for over a year. She contacted Changing Faces to find out if she had any rights at all at work, and whether her rights were protected by the Equality Act. She also asked us: 'How is severe disfigurement defined? When is it severe and when is it not?'
- A child born with a cranio-facial condition was called 'scarface', and 'Paula [not her real name] with the face' at school and another child even said that they would kill themselves if they had to look at her. The mother contacted the charity seeking support.
- A young qualified experienced nursery nurse born with a cranio-facial condition had been looking for work for more than a year. Whilst being invited to many interviews, she has not been successful in getting employment. Once she was invited to interview but upon arrival was told that the criteria had changed and she no longer met them. She believes that she is being discriminated against but has no proof. She would not know where to find help even if she did.
- A man in his 40s with a congenital syndrome including a facial palsy was recently refused service at a pub on the grounds of being drunk although he was not. The customer did not know his rights or who to turn to. A man with acne was regularly teased by his colleagues. He complained to his manager about the constant bullying and his manager told him to ignore the teasing.

The teasing continued and the man approached his manager again. The manager was sympathetic but explained there was nothing he could really do as they were not really doing any harm. He contacted the charity unaware that he could seek legal protection.

31. It should be noted that it is not simply the individuals themselves who are unfamiliar with the legislation. We recently conducted a survey of 12 randomly selected police forces across Britain to establish how they responded to a claim of disfigurement discrimination and what advice they would give the victim. Only Wiltshire Police referred them to the EHRC and just three suggested Citizens Advice Bureaux. (NB: on the Citizen's Advice UK website, it states that 'severe disfigurement' is automatically treated as a disability under the Equality Act but there is no absolute definition of 'severe').

**Could other regulatory bodies with a role in the effective implementation of the Equality Act 2010, such as inspectorates or ombudsmen play a more significant part? (Q.9)**

32. In addition to individuals' experiences of discrimination and harassment, there continues to be poor handling of disfigurement complaints by some regulatory bodies. Below are some examples of journalists, broadcasters and producers perpetuating negative stereotypes. In some cases the regulatory bodies in charge have deemed the material acceptable. We believe that as public bodies that are there to work for, and demonstrate progress towards 'elimination of discrimination, harassment and victimisation, advancement of equality of opportunity and fostering of good relations', they should show more consideration for the regressive impact on such material on societal attitudes and in turn on people who live with disfiguring conditions:

- Quentin Letts: 'Self-appointed busybodies'. In June 2015, the Daily Mail published a review of the new West End production of *The Elephant Man*, in which critic Quentin Letts used a number of offensive and pejorative terms to describe the 'Elephant Man's' disfigurement. Changing Faces emailed Mr Letts to draw his attention to their guidelines for journalists. Mr Letts replied: 'Linguistic political correctness by self-appointed busybodies is ... more offensive than any adjective I have used.'
- Daily Express: 'The World's Worst Mugshots'. In April 2015, the Daily Express published an online gallery of almost forty people, described as 'the world's worst mugshots'. Many of the people depicted had medical conditions, or marks or scars that were affecting their appearance. Changing Faces complained to the Daily Express and to the new regulator, the Independent Press Standards Organisation. After four months, the Express issued an apology for the gallery which they accepted was 'tasteless' and 'offensive'. The IPSO claim to exist to serve the public by holding publications to account

for their actions. It is our belief that they could play an important part in encouraging the press to challenge social taboos and ensure positive portrayals of disfigurement are promoted.

- Powwownow: ‘Avoid the Horror’. In January 2015, telecoms company Powwownow launched a campaign called ‘Avoid the Horror’, encouraging people to ‘avoid the horror’ of commuting by using their conference call system. One of the advertisements depicted passengers on a tube train wearing what appeared to be burns compression masks. Changing Faces complained to Powwownow and the Advertising Standards Authority. Powwownow initially withdrew the advertisement but then reinstated it. The ASA ruled that the advertisement was not in breach of its taste and decency guidelines, despite a number of complaints.
- Moshi Monsters. In 2013, Changing Faces complained to Mind Candy, the company behind the online children’s game phenomenon, ‘Moshi Monsters’, about the ‘villains’ in the game being given names such as ‘Freak Face’. The charity was concerned that these could legitimise bullying and name-calling amongst children. Changing Faces asked Mind Candy on several occasions to meet and to discuss the issue. Mind Candy never responded, even after several MPs signed an Early Day Motion criticising the company. The Video Standards Council concentrates only on setting age restrictions and does not regulate material that might perpetuate hate or violence against groups of people. It states: ‘we will supply detailed content information (the amount and type of violence, bad language, sex etc in a game), so that you can be absolutely certain you are making the correct purchasing decision.’ More attempt needs to be made to regulate content and promote positive attitudes towards disfigurement, especially in children.
- Betty Productions. Betty is an independent television production company which often works for Channel 4 and BBC Three. Over recent years they have produced a number of programmes with pejorative and unhelpful titles, including ‘The Undateables’, ‘The Beauty and the Beast’, and ‘The Ugly Face of Disability Hate Crime’. We believe that Betty are well intentioned, but lacking understanding of the impact that seemingly "flippant" or "harmless" titles can have in legitimising prejudice, name calling and bullying for those people who might be seen as ‘undateable’, ‘beasts’ or ‘ugly’. This is something that Ofcom should be able to step in and assist with.
- The Bullying Interventions Group’s biennial survey asked children about the reasons they thought they were bullied. The responses reveal that children with a different appearance are likely to be especially vulnerable. This supports our client data that 90% of the children who contact the charity have been bullied.

### **How effective has the Public Sector Equality Duty (PSED) been in practice? (Q.5)**

33. By way of context, it should be noted that since the Coalition Government made Equality Duty reporting voluntary, there has been a significant decrease in awareness and consideration of the issue. It can only be surmised that there has been a knock on effect on the amount of reporting taking place.

The effectiveness of the Public Sector Equality Duty regarding equality at school for children with disfiguring conditions, injuries, illnesses etc requires their experiences of bullying that targets appearance to be properly monitored over time. This requires data collection to be a statutory requirement, standardised across all schools.

34. The PSED could and should be the means for changing the way each new cohort of children understands and reacts to people whose appearance is disfigured. It should be a force for good but without accurate, standardised data collection across time, its usefulness cannot be measured. It is recommended that real expertise in this field can be found from public health professionals who have great experience in collecting and understanding all manner of data concerning the population as a whole.
35. Public sector organisations should collect demographic monitoring data to enable them to assess progress against targets. However, they may struggle with getting people to disclose disabilities. This could be partly because there is rarely a definition of what this includes.

### **Summary**

36. We believe that it is clear that the current definition and provision for people with disfigurements is inadequate for the following reasons:
- Lack of clarity around the definition of disfigurement
  - Lack of clarity around the definition of 'severe'
  - The current focus on reasonable adjustment and indirect discrimination
  - Individuals and agencies' lack of knowledge about how the Equality Act protects their rights
  - The confusion caused by placing disfigurement within the disability protected characteristic; people with disfigurements often do not have functional impairments but are disabled by other people's negative associations
  - People who have been discriminated against not reporting cases coming forward means the legislation cannot be tested effectively
  - Ineffective implementation by inspectorate and ombudsman

**37. This is clearly inadequate leading to many people with disfigurements in the UK being treated unfairly and unequally.**

**Recommendations**

38. Changing Faces proposes the following::

- a) 'severe disfigurement' should be separated from disability and a new protected characteristic of 'facial disfigurement' should be created. This would enable individuals to seek legal protection like other characteristics where immediate judgements are made about others such as age, race and gender based on appearance.
- b) the Equalities and Human Rights Commission should produce an annual review paper on specific activity on disfigurement including detailed statistics on numbers of enquiries etc.
- c) funding to be allocated to develop and deliver a multi-agency awareness campaign to inform people of their rights under the Equality Act.

Changing Faces would be pleased to present oral evidence should this be helpful to the Select Committee. A number of champions and former clients, all with lived experience of disfigurement, would also be willing to contribute to the Inquiry.

**ANNEX: What is Changing Faces doing about the problem?**

Changing Faces exists because we don't believe people with disfigurements are fairly treated nor provided with effective support in the UK today. We believe that it doesn't have to be like this: with the right support and a fairer society, everyone could live happy fulfilling lives.

We aim to bring about change: empowering confidence in children, young people and adults, advocating for better health care and tackling prejudice and discrimination wherever we find it. We want an inclusive and caring society in which everyone can fulfil their hopes and dreams.

Changing Faces' vision is a world in which people with disfigurements are confident, valued and included as citizens, customers, students and employees, and receive comprehensive health and social care that fully addresses their psychological, social and practical needs.

Our mission is to demonstrate what help should be provided, to argue for its widespread availability, to raise awareness of disfigurement prejudice and to campaign for a fair society.

Underpinned by users' views, positive role models and academic evidence, we aim to tackle the prevailing unfairness from both angles, helping individuals '**Changing Lives**' and challenging society '**Changing Minds**' at both national and regional levels.

**CHANGING LIVES** aims to improve the confidence and independence of people of all ages with conditions that affect their appearance (and their families) by:

- offering practical and emotional support and advice one-to-one, in groups and online
- offering advice and training for professionals who help people with disfiguring conditions
- training Changing Faces Practitioners to work in the NHS to deliver our package of help
- advocating for better health and social services for people with disfigurements

**CHANGING MINDS** aims to promote fair treatment and equal opportunities for all irrespective of their appearance by

- creatively raising public awareness of the stigma around disfigurements
- promoting examples of people leading successful, fulfilled lives with unusual looks
- working with the media to turn around the unfamiliarity and stigma head on
- actively seeking to counter public examples of facial prejudice, ridicule and stigma
- influencing the education sector and employers to create inclusive environments
- lobbying at all levels for sound anti-discrimination protection and enforcement.

*4 September 2015*

### **Comet Group – Written Evidence (EQD0077)**

1. Yes.

Things have improved because the law is simpler.

2. We don't think there are gaps in the law.

3. Yes people do know.

But it hasn't worked as well as it should because of lack of money.

4. Yes it would be good to give examples so that businesses and organisations would understand what they need to do without us having to tell them.

There should be lists of reasonable adjustments on government websites.

5. They could do a lot better. They haven't got enough money to do things properly any more.

Our county council has a website for people to find support services. None of it is in easy read. This is shocking.

7. and 8. We hope your records will show how well the government and the Equality and Human rights Commission has been working.

9. We wonder if there is any point doing more checking when there isn't enough money in services even to keep vulnerable people safe from abuse.

10. Courts and Tribunals are hard for people to use

11. The only way for the Equality Act 2010 to work properly is to have it backed up by money that councils could apply for to make information, transport and services fully accessible.

*3 September 2015*

Confederation of Passenger Transport and Association of Train Operating Companies – Oral Evidence (QQ 91-96)

**Confederation of Passenger Transport and Association of Train Operating Companies – Oral Evidence (QQ 91-96)**

[Transcript to be found under Association of Train Operating Companies](#)



## **Crawley Town Access Group – Written Evidence (EQD0026)**

In principle the Equality Act 2010, sounds good, and says the right things.

The problems arise when an individual or group of people sees an organisation breaching the equality act, there is little that we can do about it. We are unclear who to contact to address the issue.

If an organisation (after we have fed our concerns back), has not addressed the issue, we cannot afford to get legal help. This seems to be end of the route for us.

An additional issue is that disabled people are not clear on what their rights are in terms of service delivery and employment. There is an expectation of sub-standard service delivery and fewer employment opportunities, as many disabled people do not know how to challenge without causing distress, embarrassment or financial hardship.

When the DDA first came in, TAG fielded many questions from local organisations who were concerned to obey the law, however people now seem to know that nothing will happen, so they are not concerned anymore about being in breach of the Equality Act 2010.

*19 August 2015*

## Neil Crowther and Nick O'Brien – Oral Evidence (QQ 157-165)

Members present

Baroness Deech (Chair)  
Baroness Brinton  
Baroness Campbell of Surbiton  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### Examination of Witnesses

**Neil Crowther**, Independent Consultant, former Director of Disability and Human Rights Programmes at the Equality and Human Rights Commission, and **Nick O'Brien**, Independent Consultant, former Director of Legal Operations at the Disability Rights Commission and expert in ombudsmen

**Q157 The Chairman:** Good afternoon, Mr Crowther and Mr O'Brien; we meet again. As I expect you know, this session is open to the public. A webcast will go out live and is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript for correction. If you have any corrections, we would be very grateful to receive them as soon as possible. If, after this session, there is anything extra you would like to tell us or anything you wish to clarify, please write in, because as you know our time is fairly limited and it may well be that you think of things afterwards that you wish you had told us. If a bell goes, that means there is a vote and we will have to adjourn for 10 minutes or so while we go downstairs to vote and then come up again. Would you like to introduce yourselves to us? Then we will move on to the questions.

**Neil Crowther:** I am Neil Crowther. I am an independent consultant with a particular focus on human rights, equality and disability rights. I was previously a Director of the Disability Programme at the Equality and Human Rights Commission and, before that, Head of Policy at the Disability Rights Commission.

**Nick O'Brien:** I am Nick O'Brien. I am a judge in the mental health tribunal and an honorary research fellow at Liverpool University. I was formerly Legal Director at the Disability Rights Commission and at one time Director of Policy and Public Affairs at the office of the Parliamentary and Health Service Ombudsman.

**The Chairman:** Thank you. If any of us have relevant interests to declare, we will do so before putting a question. To save time, I will just refer to the interests of Lady Campbell, who has so many. She is a patron of Just Fair; a patron of the National Disability Archive; founder and member of Not Dead Yet UK; recipient of a social care personal budget, disability living allowance and Access to Work. She was a Disability Rights Commissioner

throughout the life of the Disability Rights Commission and she was a Commissioner, for three years, of the Equality and Human Rights Commission. The first question is going to come from Baroness Thomas.

**Q158 Baroness Thomas of Winchester:** Good afternoon. I receive DLA, am a trustee and Vice-President of Muscular Dystrophy UK, a patron of Thrive and a member of the disability access committee at Lord's. A number of our witnesses have regretted the incorporation of the Disability Rights Commission into the EHRC. Is there any way of making the EHRC more effective in relation to disability, short of recreating the DRC? Would it help, for example, to put the disability committee of the EHRC on a permanent statutory basis? I do not mind which of you starts, but I expect you both have views.

**Neil Crowther:** If I can answer your question in reverse, I do not think putting the disability committee of the EHRC on a permanent statutory basis of itself would make the commission more effective. It might help prevent things from getting worse. My experience from my time there was that, on a number of occasions, the committee as a body of experts intervened to ensure that issues were addressed that might otherwise not have been, for example in relation to features of the Equality Act and the position that the EHRC took on them.

Many of the issues that people regret about that transition are to do with the overall focus and operation of the commission. For example, a perception that it is not doing sufficient enforcement work is not of itself a factor to do with the committee. It would not be a magic bullet because, whatever its statutory remit, its operating context is the commission as a whole.

The major issue is the commission's depleted resources. For equality and human rights as a whole, it has fewer resources than the Disability Rights Commission had in its last full year of operation, nine years ago. That means that, 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, in competition with, say, stop and search or maternity rights and so on. It is a different beast.

Not only does that mean the overall quantum of resources devoted to disability rights is vastly reduced; it also means that the commission has become more of a bit player than a strategic leader on disability rights issues. The committee's status in the EHRC is more akin to that of the older and disabled people committee in Ofcom than it is the board of the Disability Rights Commission within its operation.

There is one case to put it on a statutory footing, though, and it is slightly different from where it began. Since the EHRC came into being, it has become the recognised independent mechanism for the United Nations Convention on the Rights of Persons with Disabilities within the UK. Central to that convention is the principle of involvement. Internationally, the committee stands out as pretty good practice among national human rights institutions as a mode of involving disabled people in a meaningful way.

Were the committee to be renewed on a statutory basis, explicit reference to the commission's role in relation to the convention would be extremely valuable. The other benefit is that it would give the committee a role again in relation to that broader strategic leadership on disability rights, rather than just on an issue-by-issue basis.

**Nick O'Brien:** I agree with that. Making it statutory and long term would be a desirable step, but not sufficient. The key factor is hardwiring the place of disability within the overall strategy of the commission. The big thing that has changed since the EHRC was set up is the arrival of the UN convention. The rationale, therefore, for the committee has changed. The

acceptance of that rather deeper rationale is probably one of the key changes in mentality that needs to be accepted within the commission's general outlook, to enable disability to be hardwired in the way that is needed.

**Baroness Thomas of Winchester:** What can anyone do about that hardwiring of disability in the EHRC?

**Nick O'Brien:** It comes down to persuasion, winning the intellectual argument for the distinctive features of disability, but that is very much aided now by the arrival of the convention and the distinctive role the commission has, as an independent mechanism for monitoring that convention. It does not really have, as I understand it, a similar role in respect of other strands. There is something distinctive about the role that has to be played internationally by the commission. That is in turn based upon good intellectual reasons relating to the distinctiveness of disability. If that argument can be won and accepted more generally at a strategic level, then that could filter down into daily practice. Making the committee statutory is probably an important signal to send out, and a necessary but not sufficient step.

**Baroness Thomas of Winchester:** How much do you think cutting the budget right down, and the fact they have far less money than the DRC ever had, has made a difference?

**Neil Crowther:** I cannot see a rational argument as to why it could not have made a huge difference. The budget now is less than a third of what it was when it opened its doors. Its staff resource is much, much smaller. In some ways, that has meant it has had to be more creative in the work that it has done. Some of the key projects it has delivered on disability rights are often overlooked. There have been some important developments: its work on disability-related harassment; its work to date on the UN convention; and its work on home care for older people. That is a series of really important outputs, but its scope to act has reduced significantly because of its available budget.

The process by which that budget is set is a dialogue with Government. It is important, if the Committee does not recognise it, to recognise that process, in the sense that the commission puts forward budget proposals to Government and they are or are not accepted. For example, I believe the commission was keen to do work around the UN Convention on the Rights of Persons with Disabilities and to support civil society to engage with it. It sought a budget for that, but that was declined. There is the influence of Government on the agenda of the EHRC as well, which is important to acknowledge.

**Q159 Baroness Pitkeathley:** I want to ask you about reasonable adjustment. Some witnesses believe that the law should be more detailed on what constitutes a reasonable adjustment, and in particular on the weight that should be given to the cost of making that adjustment. Others think that the current flexibility should be retained. What do you think?

**Nick O'Brien:** I would be inclined towards the arguments in favour of retaining the current flexibility, in large measure because the variables that will impact on any particular situation are so considerable, particularly in the provision of goods, facilities and services, where the environment can be so completely various and different. I would be slightly nervous about trying to be more prescriptive.

It partly depends on the mischief we are trying to remedy. I can see that further definition might make it easier for goods and service providers and employers to satisfy themselves that they have done what is necessary, but, if the objective is to try to find creative solutions that produce substantive equality of delivery and experience, then that sort of approach is not what we are looking for, and I cannot help feeling that more prescription would be counterproductive.

**Baroness Pitkeathley:** Could you elaborate a little more on why that prescriptive role would be counterproductive?

**Nick O'Brien:** Unfortunately, the tendency where there is a prescriptive list is for that to serve as the lowest common denominator. When people are busy, it can lead to a tick-box approach and so on.

**Baroness Pitkeathley:** The flexibility perhaps enables you to go deeper into it.

**Nick O'Brien:** I think so. Also, the objective has to be the engagement of people's minds and hearts with the actual situation, and that requires the difficult task of thinking about difficult choices and what is required to achieve substantive equality, not what complies strictly with the letter of the list.

**Baroness Pitkeathley:** Have you anything to add, Mr Crowther?

**Neil Crowther:** I agree with the principle of flexibility, not just because of the various situations or scenarios that the law might engage with but because it is better to have the law as a living instrument that can adapt to technological change, changing social expectations and evidence of what works. That does not mean you just leave things the way they are.

What can be done is threefold. First, it is important that there is a constant restatement of the principle that reasonable adjustments are about removing the barriers that impede equality of access and opportunity, not about meeting special needs as something separate, so constantly reminding people what the role of reasonable adjustments is.

There has been an absence, perhaps, of expert guidance and the promulgation of that guidance, and of promoting and celebrating best practices, which is a gap the Equality and Human Rights Commission could fulfil, but it does not presently. It is something that requires quite a sound and detailed technical knowledge. There is a gap there.

The other issue, which I am sure has come up and will come up later, is seeking remedy, which has always been notoriously difficult in relation to goods and services claims, but has become so in relation to employment now as well. That is the other factor.

**Q160 Baroness Campbell of Surbiton:** Who do you think should be doing the constant reminding? One of the criticisms we have been hearing of the EHRC is their lack of promotion: promoting the Act, promoting the idea of inclusion and equality for all. Who should be doing it?

**Neil Crowther:** Ideally, I would like to see the Equality and Human Rights Commission doing it. We have already mentioned the United Nations Convention on the Rights of Persons with Disabilities, which it is the obligation of Government to promote, ultimately, even if some of those tasks are assigned to the EHRC. We still have an Office for Disability Issues. There are various actors who can perform that function or arrange for those tasks to be carried out.

**Baroness Campbell of Surbiton:** How are they doing, in your view—the Government in its obligation, and the EHRC in its promotion?

**Neil Crowther:** If I am honest, I do not really sense there has been any major promotion behind disability discrimination since the demise of the Disability Rights Commission. The next stage after that was the introduction of the Equality Act. There was basic guidance across the whole Act. But we have not seen anything like the kinds of campaigns and efforts that were put behind the DDA at its introduction for almost a decade now.

**The Chairman:** Do you think it is a question of resources or a failure of strategy?

**Neil Crowther:** It is a bit of both. As we have discussed, resources are certainly an impedance. The sort of advertising campaigns that the Disability Rights Commission ran are probably unthinkable now, but, in the same time period, we have had the rise of social

media, which was not available to us in anything like the same way there. There are still very creative ways through which these ideas could be promoted to business and other duty-bearers. Yes, it is partly resources, but it is also a lack of strategic prioritisation.

**Baroness Pitkeathley:** When those promotions and campaigns—and we should rightly call them campaigns—were taking place, they were done not only by the organisation but by people with disabilities. The two came together. Have you any explanation for why that is not happening now?

**Neil Crowther:** I would add to that. Importantly, they also involved duty-bearers. Organisations like the CBI, the Federation of Small Businesses, chambers of commerce and others were very much engaged in those promotional campaigns. The focus of disability organisations, for the past five or six years, has been very much on trying to challenge and defeat welfare reforms. The degree to which there is a focus on this particular agenda has therefore ebbed away, which is why I so much welcome this inquiry bringing these issues back. People's focus has been elsewhere. In the last month, there have been celebrations of 20 years of the Disability Discrimination Act. Compare the response to that here with what happened in the USA last year, when it was the 25th anniversary of the Americans with Disabilities Act. One would not expect quite a US-style response, but it was very different in terms of how people were responding and not celebrating it, really.

**Baroness Pitkeathley:** I am sorry; I omitted to declare my interest, which is as Vice-President of Carers UK.

**Q161 Lord Harrison:** The problems with enforcement through the courts have been raised with us throughout this inquiry and, indeed, by the previous witnesses this afternoon. Do you see there being effective alternatives? Could, for instance, a disability ombudsman work and what powers would he or she use? Are there existing regulators that could be given enhanced powers and could local authorities make more use of their powers under planning and building regulations, as we have indeed heard earlier this afternoon? I am going to ask Neil Crowther to answer, and then Nick. Then I want to come back to Nick O'Brien on a completely different question.

**Neil Crowther:** I have to say that Nick is by far and away the expert on this question, compared to me. As a quick answer, I do not see an immediate and obvious sensible case for a specific disability ombudsman, particularly not when the direction of travel is merging the various existing ombudsmen, and given the fact that, in many instances, people's complaints may include a discrimination component but are likely to include other factors as well. The bigger task is to make sure the ombudsmen work effectively for disability rights.

**Nick O'Brien:** The answer to the question of whether or not there are other ways of giving enforcement is yes. Perhaps more importantly, there are ways of giving force to the Equality Act other than strict legal enforcement. Once that distinction is drawn, it then opens up the way to softer law mechanisms such as ombudsmen, regulators and inspectorates. The EHRC has, from its inception, tried to co-ordinate, to some extent, regulators, inspectorates and ombudsmen, and to infuse the idea that they have powers to take forward the human rights and equality agenda. That has been done in a very informal way.

As to the question of the specific disability-specialist ombudsman, we have heard from the Parliamentary and Health Service Ombudsman's office, which, after all, is only one of very many ombudsmen in this country—and it is important to remember there are a whole plethora of public and private ombudsmen—that the landscape is already quite cluttered. My own feeling would be that that is correct. The challenge is to make sure that the existing

ombudsmen more self-consciously use the powers they already have to embed equality and human rights in what they do.

Over almost the last decade in the public service ombudsman sector, there has been, at the prompting of the Council of Europe, an attempt to raise the profile of human rights in ombudsman work. There is still a lack of confidence on the part of ombudsmen in recognising that it is their remit to do that, and a lack of awareness among citizens that they can turn to ombudsmen with these sorts of issues. I tend to agree that, while the ombudsman institution has a lot to offer, a disability-specialist ombudsman is not the answer. Rather, the infusion of disability rights as a key priority in their existing mandates is to the fore.

**Lord Harrison:** What about local authorities?

**Nick O'Brien:** As we have heard, planning and licensing authorities can do a lot. In other spheres, if you look at the role of Ofsted, for example, their new inspection framework gives a more prominent place to equality issues. The CQC, again, has periodically focused on these sorts of issues.

**Lord Harrison:** Nick O'Brien, you mentioned a familiarity with Liverpool and presumably Merseyside. I used to represent both Merseyside and Cheshire many years ago, in the last century, in the European Parliament. Is there a postcode lottery in this domain? Might you be treated differently in Liverpool from sunny Chester?

**Nick O'Brien:** I should certainly hope so. Is there a postcode lottery in respect of the extent to which you will get protection from regulators and inspectorates?

**Lord Harrison:** Exactly so.

**Nick O'Brien:** I do not think there is, to any great extent, at the moment. One thing that is sometimes said about the ombudsman service as a whole is that it does not tap into local experience very much. Some people have said, for example, that ombudsmen would be much more effective if they were regionally based and could have a reciprocal relationship with local service deliverers that would generate a relationship over a period of time. Even the Local Government Ombudsman, which has had three sites and has, to some extent, split the country up, has not developed the local presence that makes it very visible to most citizens.

I do not think that is the problem at the moment. The problem is battling your way through the system to get heard and knowing that the ombudsman institution can do a lot for you. That is not properly recognised. There is partly an educational role of building up the confidence of ombudsmen and others to feel that this is their business, but there is also this reciprocal job of trying to alert people to the fact that ombudsmen can do what you need them to do.

**Lord Harrison:** Mr Crowther, do you detect any difference in practice between somewhere like Cheshire and Merseyside? Is there sometimes disequilibrium in the use, application and knowledge of the law?

**Neil Crowther:** It certainly seems to be the case that some areas have taken a more progressive approach to accessibility than others, for example. That has come from local authority leadership and so on. That is one of the difficulties. To the question of whether councils could do more in relation to planning and building regulations, the answer is yes, of course. The question is: why would they, and what would make them do so? To a degree, it is a political decision, driven by a range of factors that are hard to police at a national level. The power of comparison is interesting and useful to explore. Again, you need an organisation to make that comparison across different areas. The whole issue of

transparency could be incredibly helpful, whether that is a piece of research or some form of monitoring. That would be a useful exercise.

**Q162 Lord Foster of Bishop Auckland:** I have no relevant interest to declare. Can we focus, for a moment, on the public sector equality duty? As you know, it requires public authorities to have due regard to the implications of the proposals on disabled people, but, ultimately, authorities can ignore the effects of their proposals. Should the PSED be stronger? How could this be done without unduly fettering the decision-making powers of authorities?

**Nick O'Brien:** We now know that the due regard requirement has proven to be a little weak. The suggestions put to you by the Discrimination Law Association, for example a clause requiring steps to be taken rather than simply the process requirement of having due regard and passing on, could be one way round the difficulty. That would not, in itself, unduly fetter the discretion of public authorities; it would still give them considerable room for manoeuvre.

The other thing that has diminished the duty to a large extent is the lack of a requirement to engage disabled people particularly, which was there under the disability duty. The empowerment and engagement of people in things that matter to them is probably the best way, if you can pull it off, of achieving universal vigilance. Without that, it seems that the duty is diminished. Those two provisions might go some way to addressing it.

In connection with the previous question, ombudsmen, and public sector ombudsmen in particular, could have a very clear role in reinforcing the monitoring and use of the public sector equality duty. Any complaint referred to them that has an equality dimension to it could easily prompt the question about what has been done in respect of the public sector equality duty. That would not entail them stepping into the position of the courts in trying to make fine distinctions about whether or not there had been discrimination in an individual case. It could be a very systemic probing inquiry. That would be a particular role that ombudsman could play.

**Q163 Baroness Campbell of Surbiton:** Would you agree that the PSED has now become a process-driven activity, rather than one that is active in trying to find a remedy? I am thinking of the recent independent living fund judicial review. It seemed that the Government simply went through the process again and it was then, the second time, confirmed, but nothing was gained at all. How do you see this situation? Do you agree with me, and how do you see this exercise in process, but nothing else?

**Nick O'Brien:** I am sure Neil has things to add. Yes, I agree. Familiarity can breed contempt, and people have become familiar with the process and found ways of dealing with it. It has become meaningless, perhaps, in many situations. There is a need for something that, as I said before, engages minds and hearts in the process of thinking about the implications of these decisions.

**Baroness Campbell of Surbiton:** If we were to make a recommendation, what do you think that could look like? I am not asking you to write it.

**Nick O'Brien:** That is a shame. I believe in the provision for engagement of disabled people. That was such an important thing, and very much consistent with the whole spirit of the UN convention. This is not a little local anomaly; it has international backing. Ultimately, if disabled people themselves are not empowered and engaged in these activities, then I fear whatever processes there are will become bureaucratic and wither on the vine. Reinstating, in effect, the provision in the disability duty on engagement would be the most significant step that could be taken.



**Neil Crowther:** I agree with that completely. Efforts should also be made to enhance transparency and accountability through the process. You mentioned the independent living fund judgment and so on. It is important to recognise that the disability equality duty and, to some degree, the public sector equality duty were introduced at a very different moment in time economically, politically and otherwise. Since 2010, we have very often seen the duties used as a way to challenge spending cuts, whereas, when they were introduced, they were a way of directing quite a surfeit of public resources towards better ends. It is shifting in effect. Public bodies could be required to state much more clearly than is required now how they have considered mitigating negative impacts. In a case like the independent living fund, where they have gone through the process and decided to make that decision in any case, there should be more transparency regarding how they came to that conclusion and the mitigations they might put in place. Those things would be useful and avoid fettering the discretion of Government.

**The Chairman:** Do you think this needs to change in the statutes, with amendments to the Equality Act to make the PSED more positive and more proactive?

**Neil Crowther:** The Equality Act itself is possibly okay. The issue is with the specific duties, the secondary legislation. I am not sure if the Committee has heard from witnesses from Scotland and Wales, because both Scotland and Wales have gone in slightly different directions, in terms of the level of prescription in the specific duties, than we have in England, so it would be an interesting comparison to draw in terms of how they have performed. I am afraid I do not have an answer to that right now.

The public sector equality duty was always a mode of enforced self-regulation. The law was there as a catalyst for public bodies to do something. What has been debated since is the degree to which the law should prescribe precisely how they go about it. In the absence of that 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.

In the face of the duty being used mainly to challenge spending cuts, it seems to me it has become more and more a matter of public bodies post-rationalising what they have done, rather than the duty being used to make better decisions. There needs to be a debate about the best mode of embedding equality within public bodies. In law, the opportunity to do that will be in the secondary legislation, not the primary legislation. But there may also be improvements to guidance we could make within the scope of the existing Act.

**The Chairman:** We have had more favourable evidence about how it works in Scotland and Wales. It is a shame if England lags behind.

**Q164 Baroness Jenkin of Kennington:** I have no relevant interest to declare. This question follows on. When Governments put forward complex proposals for changes to the law or practice relating to disabled people, how useful are cumulative impact assessments? If a Government fail to provide an assessment of the cumulative impact, should the EHRC insist on one by using its statutory power to enforce compliance with the PSED?

**Neil Crowther:** There is a policy answer and then a complicated legal answer, which I am probably not going to try to give you. From the policy point of view, if Government are considering introducing a policy or making a decision, they are not doing it in a vacuum. That decision may well have knock-on impacts on a whole range of other things. They might be direct. For example, the transition from disability living allowance to the personal independence payment means a high number of people will lose their entitlement to a mobility vehicle, will lose their independence and will not be able to go out, which will probably impact on their health and well-being.

Policy always has effects beyond the immediate policy that is there. It would seem reasonable to expect, in equality analysis, public bodies to think about the wider context, rather than just narrowly about the specifics of the policy that they are going to introduce. I think that would be reasonable.

When it comes to cumulative impact, it becomes slightly more complicated. Unless a whole series of decisions have been made at exactly the same time and by the same body or department of government, how can one expect that department or body to be somehow responsible for all of those decisions and how they all tie together? It is a lot more complex. We should expect equality analysis to look at and be mindful of wider context and to think about potential unintended consequences and wider impacts.

One thing we have seen in the last five years, which is slightly outside the law itself, is the depletion of bodies, within government and outside, that have strategic oversight and can see where those links are and the potential risks. The Office for Disability Issues, for example, was specifically conceived to achieve cumulative impact. The idea was to co-ordinate across government policy so that it was more effective; to tie different strands of activity together; to create some kind of coherence. I feel that coherence has gone. We do not have that level of direction. Similarly, outside, we had the Disability Rights Commission. We do not have a body that is monitoring in quite that kind of way. Yes, it is a factor of the law, but it is also a factor of how disability policy is being or not being directed strategically.

**Baroness Thomas of Winchester:** You say the coherence has gone. Was it ever there? Was anybody ever going to say to the DWP, “If you make these policy changes, you are going to make life much worse for disabled people”? Was that ever going to be a job the ODI, the Office for Disability Issues, or the Government Equalities Office should have done? Was anybody ever looking at that?

**Neil Crowther:** At the risk of over-politicising, the Office for Disability Issues was born of the report by the Prime Minister’s Strategy Unit on the life chances of disabled people in 2005 and specifically tasked with bringing coherence to government policy. All of that policy was expansive; it was moving things forward. We have been in a very different place for a number of years now and a primary objective of all government departments is to find savings. The objective of coherence is perhaps not as strong, unless, of course— and this is important—a saving made over here leads to a cost over there. That is a very big risk we are currently facing in terms of the number of cuts that have been made.

**Q165 The Chairman:** This is the \$64,000 question. Our recommendations can be far-reaching, but we know that, if they are disproportionately expensive, they are very unlikely to be adopted. What two recommendations would you each most like to see this Committee make?

**Nick O'Brien:** The first one I would go for is linked to this question of giving force without having to enforce. 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. It seems to me a power, indeed an obligation, on the EHRC to establish and/or co-ordinate the arrangement of proportionate dispute resolution mechanisms, including engaging with existing institutions such as ombudsmen, regulators and inspectorates, might at least go some way towards redressing the increasingly emerging gap. That would be my first one.

In respect of the second one, I would like to cite some words of a former colleague and friend of many of us here, the much-missed Caroline Gooding, who wrote in 1991 that the

most important attribute of the rights ethos is its ability to stimulate the collective self-organisation of disabled people, upon which ultimately the potential for progress depends. In the spirit of that observation, which I think remains as acutely accurate nearly 25 years later, the reinstatement of the obligation to engage with disabled people in respect of the PSED would be my second. In fact, it would be my first, but I put it second.

**Neil Crowther:** That was one of my two, so I am going to choose an extra one. I absolutely agree with that. My first one is about signalling. There is something welcome at the moment, in that the Government have committed to halving the disability employment gap. Doing so is a tacit acknowledgement of discrimination and disadvantage; yet, to date, the focus of policy has not really addressed discrimination. It has very much focused on the employability and motivations of the individual. I was heartened recently to see David Cameron make a major speech about equality and talk about the importance of tackling race discrimination. We have seen the Government do stuff on LGBT equality and work around maternity discrimination. It being the 20th anniversary of the Disability Discrimination Act, which was introduced under a Conservative Government, a strong signal from Government as to the importance of addressing discrimination in the employment field and beyond—just that simple act—would be very powerful. There is a vehicle to do that in the specific policy objective of halving the disability employment gap. It is a pretty cost-free recommendation, but one that would make a high degree of difference.

Yesterday evening, I did a Jeremy Corbyn-esque survey via Twitter, to ask people what they would like me to say. There is unanimity, in that the big gap people identify is the question of remedy: the cost of going to employment tribunals, the cost that has always been there of going to the small claims court. 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.

**Baroness Campbell of Surbiton:** Nick, do you think access to justice has got a lot harder for disabled people since the Criminal Justice and Courts Act, for instance, when judicial review was a primary focus?

**Nick O'Brien:** There are a number of things. There is that and the diminishment of legal aid. Also very important are the impact of various cuts to advice services, so that specialist advice is much diminished, and the fees in employment tribunals. There are a number of things that, in a pincer movement, have begun to impact upon disabled people particularly, and access to justice is more difficult now than it was 10 or 15 years ago.

**Baroness Campbell of Surbiton:** Not trying to put words in your mouth, but, if you were to make a recommendation on pure access for disabled people to realise their rights under the Equality Act, what would it be?

**Nick O'Brien:** There needs to be a reinstatement of the level of dedicated and specialist advice services, free of charge, that was formerly there in the community. Those need to return and be signalled and identified. Without that, people are effectively disfranchised of their rights.

**The Chairman:** Your Corbyn-istic sampling will fall on less deaf ears than his did. That was interesting. This has been very useful, stimulating and comprehensive. Thank you for your time.

*1 December 2015*

## Deaf Ex-Mainstreamers Group – Written Evidence (EQD0150)

### ***Aims and background***

The Deaf Ex-Mainstreamers Group / DEXperience (DEX) refers to the Collins English dictionary's definition of the word "deaf" as "being wholly or partially without hearing".

DEX was established in 1994 because the deaf co-founders recognised a common need and problems amongst deaf people who had attended mainstream education, and to support deaf children in mainstream schools, extending later to deaf education generally. Pring (2008), the leading philosopher in education, in his keynote essay mentions that DEX is an example of where the current education system is not ideal, and users are essential to raise the level of awareness: "Disabled people speak with many voices...(Another noteworthy example is DEX, the Deaf Ex-Mainstreamers Group)". This volume invites consideration of the most fundamental issues concerning future educational provision and includes cutting-edge research by internationally renowned contributors in philosophy and education, for whom these issues have been particular points of concern

Since DEX found it was hard to reach deaf people who by virtue of the fact they had been normalised in mainstream schools, were not members of the sign language using Deaf community, it moved from providing social events to gathering evidence from ex-mainstreamers and informing the Deaf community. Following the publication of a book of experiences and papers (2004) DEX conducted a Best Value Review (BVR) of good practice in deaf mainstream education with the support of the Local Government Organisation, the Office of the Deputy Prime Minister and the Audit Commission. The Review utilised BVR guidelines and included visits to eight educational services for deaf children, and four Deaf schools in the UK, in addition to Sweden and Norway's Deaf schools and services (a total of 34 schools). The *Deaf Toolkit: Best Value Review of Deaf Children in Education from Users' Perspective* report was published and launched in 2004.

A recent publication refers to the Deaf Toolkit (Boyle, Breul and Dahler-Larsen, 2008) and gives the BVR as an example of how DEX, as "a group of Deaf evaluators reviewing best value and optimal teaching methods for Deaf children" reinforces how "the Deaf view is excluded and struggles to gain credibility and legitimacy within policy, evaluation and research fora" against hearing researchers' findings. This publication considers forces that make the information produced in evaluations increasing "open to the public" provides insights into the many factors that influence evaluation and its use in the public arena.

This was followed up by further research with deaf young people and parents of deaf children, with DEX's main findings being that all deaf children benefit from being bilingual in English and other spoken languages, and British Sign Language (BSL) and should be placed in resourced mainstream schools together (confirmed by the UNESCO Salamanca Statement – 1.2.)

Bilingualism is a broad issue, but is defined by David Crystal as: "said of an individual or a community that regularly uses two languages". Congenitally deaf and early deafened people should have the benefit of having competency in both English and BSL, and to have the opportunity to become tri-lingual or multilingual in other sign and spoken languages. The benefits of bilingualism in any languages is well researched, and it is proven that two languages are better than one in terms of, amongst other benefits, cognitive development, problem solving abilities, dual identities and biculturalism, and wider employment potential. Colin Baker, renowned academic expert in this field (2002, 1998 etc), wrote the foreword of DEX's edited book (2004) and has since written about the needs of deaf children to be

bilingual (2010). Grosjean, 2008, stated that deaf children should be bilingual in spoken and sign languages.

More recently DEX has conducted market research in delivering mapping and strategic services to local authorities and focused on central government. It was largely instrumental in the release of funding by the then Department for Children, Schools and Families (DCSF) for the raising of the status of BSL in education, and to DEX's membership of the former DCSF's (now the Department for Education) BSL status project Steering Group; then to the BSL Coalition from 2013 to 2015, working with the DfE via the National Sensory Impairment Partnership.

In 2013 NatSIP commissioned DEX to establish a deaf young people's Focus Group to participate on the Children and Families Act 2014 and the changes to SEND; this resulted in the DEX Deaf Youth Council being formed as a participation group on the Local Offer and local education services.

**DEX's policy fit to the relevant UK legislation:**

- Children and Families Act 2014
- Equality Act 2010
- Children Act 2004
- Human Rights Act 1998
- UNESCO Salamanca Statement 1994.

**UN regulations:**

**1) UN Convention on the Rights of Persons with Disability on 3 June 2009:**

Article 2 - includes sign languages in its definition of "language";

Article 9 - linguistic access.

Article 21 (b) (Freedom of expression and opinion, and right to information) states signatory governments must take action in "*Accepting and facilitating the use of sign languages*" and (e) "*Recognizing and promoting the use of sign languages*".

Article 21, (b) *requires states to assist this by "accepting and facilitating the use of sign languages, ... by persons with disabilities in official interactions"*.

States must "*ensure disabled people have the right to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention.*"

Article 24 (b) (Education) states : "*Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community*";

Clause 3 stipulates that inclusive education should be offered at all levels, requiring states to facilitate: (b) *..."the learning of sign language and the promotion of the linguistic identity of the deaf community"*; and, ensure that education (c) *..."is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development"*.

Clause 4 requires states to employ teacher, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education.

Article 30: participation in cultural life, recreation, leisure and sport (4) further states: *“Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign language and deaf culture.”*

2) The UN Convention on the Rights of the Child 1989 stated that children should have the language and culture of their choice.

3) The UNESCO Salamanca Statement and Framework for Action on Special Educational Needs, 1994 (21), which was ratified by the British government, states:

*“Educational policies should take full account of individual differences and situations. The importance of sign language as the medium of communication among the deaf, for example, should be recognized and provision made to ensure that all deaf persons have access to education in their national sign language. Owing to the particular communication needs of deaf and deaf/blind persons, their education may be more suitably provided in special schools or special classes and units in mainstream schools”.*

**Local agreements:**

- Local Offer
- Children and Young People’s Plan
- Equality Duty
- Local Area Agreement
- Local Authorities’ Strategic Plan.

**Response to 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?**

With respect to deaf and disabled people there appears to be noticeably less understanding of discrimination law amongst service providers, employers, the general public and even amongst deaf and disabled people themselves since the change to the Equality Act 2010.

This is due to the fact that the Disability Discrimination Act 1995 was initially publicised by the EHRC and the aims of the legislation was clearer from its title.

**2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

***The need for additional BSL legislation to supplement the Equality Act 2010***

For deaf people whose first or preferred language is British Sign Language (BSL) or who are bilingual in BSL and English there is a massive gap. The Deaf Ex-Mainstreamers Group Ltd (DEX) undertook research into the need for a BSL Language Plan in 2014 and presented the paper at the 36th LAUD Symposium on “Endangerment of Languages across the Planet: The Dynamics of Linguistic Diversity and Globalization” in March 2014, discussing the methodology for measuring and treating spoken languages and applying these to BSL, and other sign languages.

The research study has been accepted by LAUD, the internationally renowned linguistic organisation, and which will be published shortly by LAUD in its books on language planning. The research uses linguistic measurements devised to ascertain minority languages’ levels of sustainability and maintenance, and is used by governments and UNESCO. It found that BSL is a severely endangered language. Language planning includes methodology to treat endangered languages and from this DEX has identified ways of reviving and maintaining BSL - deaf people’s natural language in the UK.

DEX’s research identified that BSL is used as a **tool** in order that deaf people can access goods and services, employment, education, housing, public services and transport, i.e. by the use of BSL/English interpreters. The Equality Act 2010 legislates for interpretation to be provided for deaf people as a reasonable adjustment or for a direct service in BSL from providers if available.

The concept of “**tool**” is a vitally important one with respect to access for deaf people who use BSL. For other disabled people, such “tools” can be a stick, wheelchair, ramp, and other equipment which enable disabled people to live an improved quality of life. BSL is another form or medium by which deaf people can be supported in the hearing community for work, in retail outlets, banks, religious centres, etc. To continue the analogy of use of a wheelchair, if the wheelchair is not functioning properly, then providers cannot offer reasonable adjustment until it is repaired, or have to offer an alternative which may not be as satisfactory. In the case of BSL, as a language it is in a vulnerable state and cannot be deemed to be an effective tool for the purposes of the Equality Act 2010. This state of ineffectiveness is largely due to the neglect of standards in education as a qualitative issue, but also DEX’s research has found that BSL is severely endangered as there is an extremely low take up of learning BSL amongst the deaf child population (approximately 3,000 in the UK). This means that this “tool” will not be available for the majority of the 45,000 deaf children (approximate figure) as they become adults so they will not have the same means of access as deaf adult BSL users have now. To attempt to make reasonable adjustments providers will need to rely on English which many deaf young people will not fully understand, and there will be significantly less opportunity for full access to public and private services.

Relying solely on the Equality Act 2010 as a policy to improve the quality of life of deaf children now and in the future, will be insufficient now and in forthcoming years. Unless the numbers of deaf children learning BSL urgently increases to a healthy size, the situation in Finland is likely to be replicated here in the foreseeable future, “*with just 5,300 users the*

*endangered status of Finnish Sign Language has been acknowledged by the Language Policy Programme and a Memorandum in 2011 by the Ministry of Justice” (Jones, DEX, 2014).*

The Deaf community has been calling for a UK-wide BSL Act (not just for Scotland) but has not yet been clear about the reasons for this except to state that the Equality Act 2010 is not effective for them. DEX is stating that the Equality Act 2010 does have a major current gap. DEX emphasises the urgent need for a BSL Act, in order to provide a bone fide language plan for BSL to ensure its survival.

The British Deaf Association’s (BDA) Submission to the House of Lords Select Committee states:

*“1.7 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”.*

Whilst DEX has not yet published its research (which is probably why the research has not been referenced), it is the first of its kind to identify that BSL is under threat, it has not made the findings public so the statement *“interrupted intergenerational transmission”* is not correct. BSL, as with all sign languages, does not have a natural intergenerational transmission, so cannot be "interrupted". Research states that any language requires intergenerational transmission in order that they can be passed on from parents to child for perpetuity (Fishman, 1991 and 2001).

Approximately 95% of parents of deaf children are hearing so do not know sign language. This means that there can be no natural intergenerational transmission of sign languages except for the 5% of deaf parents of deaf children who may be able to transmit sign language (as not all deaf people use it). DEX’s research demonstrates that sign language is the motherese of deaf people (Skutnabb-Kangas, 2000, 1995) *“redefines the concept of mother tongue, depending on four criteria:*

- *Origin – the language learnt first*
- *Identification (internal and external) – the language one identifies with or is identified by others as a native user*
- *Competence – the language one knows best*
- *Function – the language one uses most.*

Skutnabb-Kangas states sign languages are the motherese of deaf people, *“Deaf people who grow up in hearing families can claim a sign language as their mother tongue... especially with regards to internal identification and function” (2000).* She also claimed it was possible to identify with a language one does not know, or have a mother tongue without competence. Skutnabb-Kangas’ theory of Linguistic Human Rights, she states, apply to sign languages (2008) just as with spoken languages (Jones, DEX 2014).

DEX has campaigned to the Scottish Parliament since 2010 on the need for BSL legislation to include the promotion of BSL to parents of deaf children regardless of their level of hearing loss, since the Cross Parliamentary Group of Deafness had not recognised that BSL's survival is under threat. Since then, the Consortium on Research in Deaf Education (CRIDE) has undertaken several annual surveys in education so that there is an improvement in the



statistics on the numbers of deaf children and their communication methods, which led to DEX's research study, and evidence of the need for a language plan.

DEX has also sent its paper to the UNCRPD Committee as an Alternative Report to its previous Shadow Report to ensure that its scientifically based paper adds weight to its original statement.

The section above has addressed the quantitative aspect of BSL's survival by a marked increase in numbers of deaf children using it.

### ***Gaps in the Equality Act 2010***

We also need to consider the qualitative factors, which fall under the remit of the Equality Act 2010. The British Deaf Association, and probably other deaf organisations, has outlined the need for access for deaf adults whose first or preferred language is BSL. DEX, in keeping with its aims, is focusing here on deaf children and the future of the Deaf community.

There are two major contributors to the gaps in the Act, with need for:

- greater promotion of the Act, with ongoing information about it to wider audience, including parents of deaf and disabled children
- improved understanding of deaf people's diverse needs (ie deafened people do not require BSL interpretation but amplification methods, speech-to-text or lipspeaking skills etc) in addition to BSL users' needs.

Qualitative access and support for deaf children and young people should be available in education and family and social life, extra-curricula activities such as careers advice, and other general support at all times and all stages during the deaf child's life. This will range from ensuring good quality residual hearing support in English via hearing aids, cochlear and titanium implants and loop systems, with written English **as well** as the teaching of, and provision of BSL-medium education.

Information about BSL at present is currently usually only given to parents with profoundly deaf children. For those tiny minority of deaf children whose assessment and parental decision has led to access to BSL, (9%) the level of teaching of BSL is both patchy and inconsistent from one area to another as not all BSL tutors are Deaf BSL users, or have not been taught how to teach BSL lexicon. Schools and local authority Support Services need to apply the principles of the Equality Act 2010 to ensure that deaf pupils and students receive good quality BSL teaching.

Furthermore, the situation with respect to BSL-medium national curriculum/ further and higher education syllabii each school, college and university has differing standards of communication support, ranging from fully qualified BSL/English interpreters in higher education (though they may be timetabled inadequately due to shortage of Disabled Student Allowance or other funding) to low level Communication Support Workers (CSW) in state education (NVQ Level 1, which is equivalent to first year basic conversational French). The maximum standard applied by hearing professionals for CSWs in statutory education is Level 3, which is equivalent to an A level, but which is inadequate competency to support deaf children, and does not include interpreting training (Level 6). This means that even with Level 3 the CSW is unable to translate English fully to BSL and the deaf child misses out a great deal of face-to-face information from the CSW, in addition to the mass of lost information - the unwritten curriculum, which research has found to be 11 times that of the information learnt in school for hearing children, but which is significantly more for deaf children (Garretson, 2001).

Teachers of deaf children are only expected by the DfE to have Level 1, and many do not have additional qualifications in BSL, or do not have a broad knowledge of Deaf culture, identity development, services etc, which means that deaf children are not receiving the appropriate support in education and leave mainstream schools with little understanding of their needs.

This is too complex a situation to simplify in this Response, but in addition to the factors outlined above, there is a linguistic spectrum from BSL and English, which has resulted in BSL being used in English order in education, (Sign Supported English) as many teachers of deaf children and CSWs lack the necessary skills in BSL. Whilst this is useful for teaching English, deaf children are unable to utilise BSL appropriately and many BSL/English interpreters are reporting that they are unable to communicate effectively with deaf young people when interpreting for them in the community.

The Equality Act 2010, therefore, is not being used to make reasonable adjustments by Support Services and schools to accommodate the needs of deaf children.

***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?**

The reasonable adjustment duties should be made known to every parent of deaf and disabled children in order that they understand their child's needs and to ensure their deaf and disabled child has the correct access.

In the specific case of education, DEX's BVR from users' perspective (2001 to 2004) found that all deaf children benefit from learning BSL and spoken language(s) and should be encouraged to learn it from as early an age as possible. In addition to the BVR, the feasibility study, mapping and language planning research, DEX undertook a literary review of research on hard of hearing children, updated to 2015, finding at least 39 studies, including Meadow-Orlans, Mertens & Sass-Lehrer, 2003, to confirm that hard of hearing children are generally failing academically compared to their hearing peers, and are suffering from institutionalised neglect due to the lack of understanding of their needs in education. A further literary review by Xie, Potmėšil and Peters (2014) came to similar conclusions.

61% of deaf children in the UK have moderate and mild losses, (CRIDE, 2012) with traditional practice being to exclude deaf children who fall into these categories from learning sign language on the basis that they can speak and receive some speech sounds via technical aids or residual hearing. There is a blanket refusal by policy makers and educationalists to address the reality that deaf people are unable to hear all speech sounds with technical aids in group situations, even with adjustments to digital aids and auditory classroom loop systems to try to eliminate the background "cocktail party" effect. One company manufacturing loop systems claims that "*deaf children can hear every word*" even in open plan classrooms. There is lack of acceptance of reality at government level about the fact that that all deaf children in education spend most of their days in group situations, whilst having to learn via spoken language. Furthermore, classroom loop systems to amplify sounds only enable communication between the teacher and deaf pupil and not the deaf child's hearing peers so a great deal of activity is missed by the deaf child; not all areas are looped, i.e. assembly halls, gymnasiums, changing rooms, corridors, playing fields and so on, where the school environment is a learning and social experience for deaf children.

The impact of not being able to hear sufficiently well in the school environment can have long term implications on the wellbeing and the safeguarding of deaf children. DEX's findings are that the majority of deaf children are institutionally neglected as a hidden group whose needs are not being addressed appropriately. Not being able to hear what is being said in and outside the classroom, and the resulting fatigue, can domino-effect into behaviour problems, lack of concentration, feelings of inadequacy, acute fear due to lack of control over one's environment. This impacts on self-esteem, confidence and mental health. *"Always calculate"* is a major factor especially for English-using monolingual deaf children. DEX coined this concept to describe the daily struggle deaf children face in order to understand via lipreading, and listening via technical aids. It is akin to doing a mental crossword without a pen or paper, and having to try and work out what *will* be said in addition to what is being said in order to calculate and guess sounds or lip patterns that are unclear or missing.

Vesey & Wilson, 2003, state, *"The person with the hearing loss is the worst judge of what he or she heard,"* and *"Our biggest problem is not what we don't hear, but what we think we heard"*.

DEX's edited personal accounts of being mainstreamed in education (2004) demonstrates the problems deaf children have in accessing the national curriculum and the wider school curriculum and environment. Furthermore, not being able to access sign languages, this larger group of deaf children lose out on the benefits of having a motherese language which confers the linguistic identity, culture and sense of belonging and community that a language naturally provides.

There is, in addition, a vast plethora of research into the benefits of sign language as part of bilingualism, mostly focussing on profoundly deaf children since they traditionally are given access to learn BSL, rather than their deaf counterparts with lower levels of deafness.

All this research is currently being ignored by the government, and thus it is not enabling local authorities and schools to comply with the Equality Act by making reasonable adjustments for individual deaf children and young people to attend BSL-medium resourced mainstream or Deaf schools with deaf peers, as recommended by the Salamanca Statement (see page 4) and many research studies, including DEX's.

Employers are not aware of their duty to ensure access to deaf people (including school leavers or university graduates) during the recruitment and selection procedure so that they can apply for work on the same level playing field as hearing peers. For some deaf people, the application form filling, phoning and other methods of inviting to interviews and support in the interviews themselves may be obstacles, similarly with post-interview arrangements before starting work, which are often not addressed by prospective employers. Access to Work funding may be available to fund these stages, but most employers do not know of this scheme, or may only know of its availability after the appointment of the candidate. Also, the time it takes to arrange funding may not be factored into the recruitment process time scale.

Disability Equality Advisors in Job Centres Plus need to make reasonable adjustments, but do not appear to understand deaf unemployed people's needs, and deaf young people are particularly vulnerable, often not being aware of what is available and being unsupported in finding work.

Since there are many unemployed deaf people due to the economic situation, exacerbated by the difficulties in gaining employment, there is an urgent need for the Equality Act 2010's disability equality duties to be strengthened and promoted across every service in the UK.

As stated above in response to Q2, there needs to be a wide publicity drive amongst deaf and disabled people and the general public at large about the public duties required by the Act in the same way as some largely successful public health promotions, i.e. the no smoking campaign.

There also needs to be enforcement where there is a breach of this legislation, and a more effective appeal system at no costs to the deaf and disabled person.

#### **4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

The term "reasonable adjustment" currently seems to be more applicable to the provider, as it may not necessarily be reasonable for the deaf or disabled person. For example, providers may consider that they do not have the funds to pay for a BSL/English interpreter or a BSL teacher, and so will only provide access via English to the service user. Since most deaf children are learning English with extreme difficulty via using residual hearing if any, and lipreading if they are old and competent enough in this tasking and extremely difficult skill, this is an extremely tall order, and does not constitute reasonableness for the deaf child or young person. The requirements in other legislation to ensure the wellbeing and safeguarding of children is not being applied to deaf children in general terms, and this is probably the most alarming aspect of all.

Therefore, it is not just a case of being more explicit about the term "reasonable adjustment" but also requires a shift in concept to ensure that it is a two way arrangement so that both parties are equally satisfied with the adjustment. The Act is for the benefit of deaf and disabled people, not for non-disabled people after all.

The Disability Discrimination Act 1993 stated that an organisation should employ a certain number of staff before it had a duty to comply with the act. This is not now clear in the Equality Act 2010, as to how many staff a company or charitable organisation, for example, should have. Deaf and disabled people, therefore, may not be benefiting fully from the legislation as it may be viewed by the provider that they do not have an onus to provide a reasonable adjustment. New regulations or legal enforcement should stipulate that all providers named in the current Act must comply. Funding should be made available for companies that can ill afford means of access, to apply for financial support. Deaf and disabled people should not have to cope without certain services because of this gap in the law.

#### ***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?**

See responses to Q1 to 4 in terms of the public sector duty in practice. The Local Government's Equality Framework for local authorities states :

- Knowing your communities
- Leadership, partnership and organisational commitment
- Involving your communities
- Responsive services and customer care
- A skilled and committed workforce.

[http://www.local.gov.uk/equality-frameworks/-journal\\_content/56/10180/3476575/ARTICLE#sthash.Gv27HVSA.dpuf](http://www.local.gov.uk/equality-frameworks/-journal_content/56/10180/3476575/ARTICLE#sthash.Gv27HVSA.dpuf)

Participation with deaf children and young people is not common practice and DEX has a track record in supporting the enablement of deaf young people to have a "voice" in their lives. The local authorities involved with the DEX Deaf Youth Council need support in understanding their legal duties to participate, as this requires facilitation. A universal approach is needed for local authorities to outreach for and listen effectively to deaf young people in order to shape their education, children and youth services to become more appropriate as outlined above. This is not happening at all at any level or in any services for deaf children.

**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?**

The different approaches can make it more problematic to develop a universal service. Service providers require standard training packages on the general public sector equality duty in order to cascade national guidelines. Regular monitoring and updating by the Equality and Human Rights Commission (EHRC) and the Department for Works and Pensions (DWP) is essential to cater for staff turn around.

***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?**

Whilst the DWP should have overall responsibility for the enactment of the Equality Act 2010, there has to be a cross-departmental networking and higher level management of the Act within each department, reporting to the DWP.

**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?**

The Equality Act 2010 requires amendment to give the EHRC powers to enforce the act where public and private organisations have not complied with it, and for the EHRC to monitor and evaluate the development of the new act's implementation.

**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?**

There is a role for inspectorates and ombudsmen to provide a front line appeals and

**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?**

Since Legal Aid has been cut, there is often no recourse to the appeal system for disabled and deaf individuals due to the escalating costs of solicitors' fees. It also appears that there is a shortage of lawyers who are skilled in Equality law, since many firms, for example do not provide BSL/English interpreters, or indeed speech-to-text operators and other forms of communication support for deaf people, for their deaf clients to access their legal service.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

There should be further legislation to strengthen the Equality Act 2010, to give it increased powers: this would include ensuring that all providers are penalised for non-compliance of the Act

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10 September 2015

## **Natalya Dell – Written Evidence (EQD0005)**

I am a disabled cisgender woman in my mid-30s. I am one of the 17% of people born with my impairments. I am partially deaf and I have physical impairments. I sign a bit but I only learned as an adult. I work as a disabled students' adviser in a university in England.

I am honestly not sure the Equality Act has achieved much more than the Disability Discrimination Acts (DDA) did. I would argue that 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. There is no evaluation of organisations to show they have been working on anticipation. They act like disability rights are new and we are constantly told to be patient. The first DDA came in in 1995, why are we still dealing with basic issues which should have been resolved by then? Why are we still building inaccessible buildings, inaccessible websites, inaccessible policies practices and procedures?

Gaps are around things like sickness in employment due to disability - employers do not have to demonstrate that the sickness is unreasonable they just have to have their usual policies. It still leaves disability discrimination as a civil issue that has to be enforced by the discriminated-against individual which takes time/energy/education/capacity which many of us don't have due to disability in society making our lives more difficult. When copyright breach is a criminal offence with potentially huge fines it is an insult to see real human beings been seen as less important.

I think the term reasonable adjustment is reasonably well understood, but I think it is very inconsistently implemented. One way of avoiding implementation is stonewalling which is very common. It is known that most disabled people will not (cannot?) complain so there is not usually a significant penalty for non implementation. If a complaint is received there is usually a load of excuse-making alongside blaming the disabled people for being So Unreasonable for complaining "can't you just ask nicely?" while failing to realise asking-nicely hasn't worked. We need more case law showing that delaying is just as unlawful and we need to educate disabled people about that being unlawful.

There is poor understanding of whose duty it is to make reasonable adjustments. I am routinely asked "can't a hearing person call for you?" "Can't I call a hearing person to give you a message" when I tell organisations I do not use telephony (for disability reasons).

Even when I sued HMRC and they settled in my favour they wrote letters telling me and my law team that I could have got a third party to use phones - despite being told I did not have a third party, liability of said third party if mistakes happened was unclear, and that the duty to make adjustments was theirs! Nothing got this through to them! This was lawyers in one



of the largest UK government departments.

I don't notice the PSED achieving anything. In fact I would say government organisations and public sector are often the most discriminatory against deaf people. I do not use telephones for voice. I've had to fight HMRC, DWP, NHS on all of these. Your own form requires a phone number! Asking deaf people to use the phone is like asking a wheelchair user to crawl up steps! I don't feel public sector or government organisations as a whole work to foster good relations, promote equality of opportunity or reduce discrimination at all. It's a meaningless pile of twaddle. It's intent not implementation and practice.

Responsibilities of government departments, well it's damning that the last time I looked, the Government's Equality Office had inaccessible documents for raising disability discrimination complaint issues. The DWP has not made PIP application process accessible - I am complaining to their ministerial address now because I happen to have 2 impairments which mean I can't access the process in 2 ways. It shouldn't be acceptable for disability-related anything to be inaccessible at release. Access to Work is also inaccessible, again DWP, it isn't a joke when they ask deaf people to phone and send blind people print information!!! The minister for disabled people is no better, his job is to create a victim blame culture and the role doesn't seem to be about "about us with us" it's all without us.

The ERHC is a waste of time. I wrote to them for help with HMRC who discriminated against me for 6 years. They merely told me what I already knew and had been trying. They will only take on a TINY percentage of cases and they won't take deaf ones because it's not "obvious" or visible enough. Their website is good, their content and guidance is good, but they are too broad. I would prefer a disability specific organisation. Deaf people are especially disadvantaged because of language impairment issues caused by lack of access to suitable language at a young age. Deaf people are even less likely to be able to take a legal case because of this.

I am also concerned about the lack of support for people needing to use the Equality Act to make a complaint. My case against HMRC started in early 2013 before cuts were made to legal aid and before changes to the law around compensation covering disbursement insurance came in. I wouldn't be able to risk that case now. My legal fees came to £12,500. My disbursement insurance was about £13,000. When HMRC settled they paid me compensation and covered my legal costs including the disbursement insurance. All in all it cost them over £32,000 in pay out + whatever their legal fees were. Hardly a good use of citizen's taxes! Without disbursement insurance I would have to take personal legal liability for costs and if I had not managed to settle I'd have potentially been liable for my own legal fees of £12,500 + HMRC's legal fees... Scary stuff!

I worry that a lot of the government changes make things lone-individual against a huge bureaucratic system. I very rarely meet people who have taken a disability discrimination complaint even though I know discrimination is still rife.

*11 July 2015*

**Department for Communities and Local Government, Housing Law Practitioners Association, Local Government Association, Rachel Smalley – Oral Evidence (QQ 131-140)**

Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley

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**Examination of Witnesses**

**Bob Ledsome**, Deputy Director, Building Regulations and Energy Performance, Department for Communities and Local Government, **Justin Bates**, Vice-Chair, Housing Law Practitioners Association, **Rachel Smalley**, expert in inclusive design and access for disabled people, and **Councillor Jonathan McShane**, Cabinet Member for Health, Social Care and Culture, Local Government Association.

**Q131 The Chairman:** Good afternoon to our witnesses. We are very pleased you are here to share your expertise with us. Thank you for coming. I should tell you, as you probably know, that this session is open to the public and that a webcast will go out live and is subsequently accessible via the parliamentary website. A verbatim transcript of today's evidence will also go on the website. A few days after this session, you will be sent a copy of the transcript to check it for accuracy. We would be very grateful if you could check it and let us know about any corrections as soon as you can. If, after this evidence session, you want to clarify or amplify any points made or have something extra you wish to tell us, do please send in any supplementary evidence because, as you are aware, we are rather pressed for time here and have to be concise. If, after you have left, you realise there was something else you wanted to add, please feel free to send it in as extra written evidence. We are going to put some questions to you, but may I ask each of you to introduce yourselves very briefly before we get going? Mr Ledsome.

**Bob Ledsome:** Good afternoon. My name is Bob Ledsome. I head the building regulations and standards division at the Department for Communities and Local Government.

**Councillor Jonathan McShane:** I am a councillor in the London Borough of Hackney, where I am responsible for health and social care and I am on the Local Government Association's community well-being board.

**Justin Bates:** I am here on behalf of the Housing Law Practitioners Association, of which I am the vice-chair, and I am the deputy editor of the Encyclopaedia of Housing Law and Practice.

**Rachel Smalley:** I am Rachel Smalley. I am the president of the Access Association, which is a national-membership organisation for people working in, or with an interest in, inclusive design and access.

**Q132 The Chairman:** Thank you very much. I will put the first question to you. Why have the provisions of the Equality Act on common parts not been brought into force? Has this created significant problems in practice? That question is to whichever one of you feels most expert. You do not all have to answer every question, just if you have something to add. Who would like to take this one?

**Justin Bates:** I will dive in. As a result of a statement in May 2012 from Theresa May and Baroness Verma on the Red Tape Challenge, it never came into force. I think it is in force in Scotland, though. There was a consultation in Scotland in 2011 about bringing it into force, and I have seen some draft regulations but confess I cannot find the final ones. It may be that it is only in England that it is not in force. The problem it causes is very easily identified by a case in which I have 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. Unless you bring the common parts duty into force, on the face of it that is perfectly lawful. Being a lawyer, I can think of ways to cause trouble and to try and advance her position, but, on the face of it, the freeholder has done nothing wrong in those circumstances. Without bringing the common parts duty into force, that case does not have an obvious answer. I would not say that I or other members come across that factual scenario every day, but it is not an uncommon factual scenario. If you do not bring it into force, there is no obvious answer.

**The Chairman:** So it really is urgent to bring it into force. There has been mention of Scotland, but, as I understand it, the Scottish regulations are still in draft, so the Government do not really seem to me to have an excuse to be waiting for evidence from Scotland. Does anyone know why the Government are refraining from bringing this into force?

**Bob Ledsome:** My understanding of the position—I think this was put out on the Red Tape Challenge website earlier this year—is that the Government wanted to wait, see and learn from the Scottish experience of bringing into force the regulations that have been referred to. That was the position which the Government took at the time. I do not know the detail of the Scottish regulations, but I understand there were some complex issues that the Scottish Government are having to work through, which is why those regulations are not yet published.

**The Chairman:** Is that not rather a circular argument? If the Scottish regulations have not come into force, one can hardly wait for them and I do not see how it is red tape.

**Bob Ledsome:** The Government took the view in the Red Tape Challenge that there were issues of potential burdens on landlords, and so on, and therefore took the view that they did not at that point want to commence the relevant parts of Section 36. Since then, the Government have taken the view they want to learn from the Scottish experience.

**Justin Bates:** Interposing for a minute, 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—I think they are probably the same ones that I have seen—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.

**The Chairman:** Yes, so it is not a good excuse. As far as red tape and burden goes, is it not for the tenant, as is planned, to pay for these changes rather than the landlord? I do not understand why the red-tape argument comes in. Can you enlighten us?

**Bob Ledsoe:** I was not around at the time of the Red Tape Challenge and that was obviously being run by colleagues from the Government Equalities Office, so I do not have the details of the thinking that went into the Minister's decision at the time. All I am aware of is that there were concerns about the costs of implementing those provisions and that is why the decision was taken in 2012 not to proceed with the commencement.

**The Chairman:** I think we must conclude that there is some obfuscation here, because my understanding is that the tenant would have to pay. The burden is, if anything, on the tenant. Does anyone else have anything to add on this one?

**Baroness Campbell of Surbiton:** Do you have figures to give evidence to the fact that it would be burdensome? The Government should have run through the figures as to whether this was creating a burden or not. Where would these figures be?

**Bob Ledsoe:** I do not have access to the information. I would have to take that away and see what information can be provided.

**Baroness Campbell of Surbiton:** If you can do that, please, and bring it back to the Committee, that would be good. Thank you.

**Q133 Lord Northbrook:** I have no relevant interests to declare. Has the requirement to request reasonable adjustment in relation to housing created any problems? Could an anticipatory duty, such as exists for services, work in relation to housing?

**Justin Bates:** At the risk of giving too lawyerly an answer, it depends on the meaning of the word “problem” in your question. In the cases that have come before the higher courts it has all come about in the context of possession proceedings. The landlord has gone for possession, generally on the basis of a tenant's anti-social behaviour. The tenant then says, “The reason I am behaving anti-socially is related to my disability”, at which stage, in the defence that is put forward, he requests a reasonable adjustment. The request is being made, albeit at quite a late stage in the litigation. Is that a problem? Yes, it is, because it comes too late in the process to make much of an improvement. There are not, as far as I am aware, statistics or any kind of evidence on people asking for it and it being accepted or refused outside the litigation context. My members would not come across that. We only come across it once it has reached litigation.

Would anticipatory duty help? Yes, it would help landlords—particularly social landlords—in formulating policies to ensure they get the relevant information about their tenants before the possession proceedings are issued. You may think they should have that information already, but, in particular with some of the big housing associations and the size of their stock, they do not know their tenants on that basis. A relevant disability only tends to be found out about—and it is primarily disability that is relevant—when a claim has been issued. Certainly in the cases that have made it up to the higher courts, that has been the factual scenario: the landlord does not know about it until during the claim. If you had some way of forcing them to redraft their possession proceedings policies, redraft their vulnerable

adult support policies so as to have a more expressed, focused requirement to think about the implications for their disabled tenants, that would go a long way towards making sure they would have the relevant information before it ever gets near a court and before anyone like me.

**Rachel Smalley:** Can I add to that one? In terms of an anticipatory duty, if we are talking about buildings and physical barriers, rather than an anticipatory duty in that field, if the Equality Act could require local planning departments to plan for their populations and the housing that is needed in the local authority, via the recent housing standards review and the optional building regulations, that could be a solution. If there was more of a stick to get local planning authorities to do that, it would help and possibly serve the same purpose as an anticipatory duty. At the moment, we have had a housing standards review and we have optional building regulations. But to switch those optional building regulations on, a local planning authority needs to pass policy that requires developers to provide accessible housing to M4(2), which is Lifetime Homes, or M4(3), which is wheelchair housing, standards. Could a duty be written in that is a bit more of a stick to get local authority planning departments to do that rather than wait for their next core strategy review, which could be five or seven years off from now? There is a need there.

**Baroness Browning:** You have just had this housing standards review. Could you confirm for us, please, that the standards are the same for social housing as well as for commercial housing? Is there any obvious difference between the two types of build?

**Rachel Smalley:** No.

**Bob Ledsome:** The building regulations would apply across all tenures, so they are tenure-neutral. The building regulation requirements that Rachel has referred to would apply to social housing as much as to private housing.

**Rachel Smalley:** The only slight difference—and it is not a social housing split—is that M4(3), which is wheelchair accessible housing, is split into two: there is wheelchair adaptable housing, housing that is designed to be large enough for a wheelchair user to use but can be kitted out later to suit the individual wheelchair user; then there is wheelchair accessible housing which is kitted out as wheelchair-accessible from the outset. It is written into the building regulations that wheelchair accessible housing can only be required by a local planning authority if an end user is identified. That is the only slight difference.

**Baroness Browning:** But not at the time of building.

**Rachel Smalley:** If the end user is identified at the time of planning consent being granted, yes, otherwise it could be wheelchair-adaptable rather than wheelchair-accessible.

**The Chairman:** I should have pointed out to you that if any of our Committee members has relevant interests they will declare them to you before they put a question. In order to save time, I will read out the long list of interests of Baroness Campbell. She is a patron of Just Fair, a patron of the National Disability Arts Collection and Archive, founder and member of Not Dead Yet UK, and a recipient of a social care personal budget, disability living allowance and access to work. She was a disability rights commissioner throughout the life of the Disability Rights Commission and was a commissioner at the Equality and Human Rights Commission for three years. Thank you. The next question is from Lord McColl.

**Q134 Lord McColl of Dulwich:** The only interest I should declare is that I am the author of the McColl report. How effective are current building regulations in ensuring that new-build properties and those undergoing significant refurbishment or renovations are accessible?

What mechanisms are in place to ensure accessibility in public spaces during and after major regeneration programming?

**Bob Ledsome:** Shall I start by briefly explaining the requirements of the building regulations as they apply in relation to access? The building regulations set out what we call functional requirements. They set out performance standards or goals to be achieved. They do not prescribe specifically how legal requirements should be met. In the building regulations, there is a schedule that sets out a series of requirements related to particular topics or items. The one that relates to access is Part M. No doubt the Committee is aware of Part M. The building regulations themselves are supported by detailed guidance, which the Government publish in what is called an approved document, and there are two approved documents relevant to Part M, one which relates to dwellings and one to non-domestic buildings.

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.

As Rachel said in the answers to the previous questions, there have been changes to building regulations Part M that were introduced in spring 2015 and came into force on 1 October. These were to introduce two new standards within the suite of the building regulations, the Part M requirements. We call them in our jargon “optional requirements”, because these are requirements that a local authority can call upon where it has identified a particular need in its housing needs in its area and it does not compromise the viability of development. The first of these, as Rachel said, is what we call requirement M4(2). That is for accessible and adaptable buildings. In very broad terms—not absolutely—that is equivalent to the standards that were in the Lifetime Homes standard, which the Committee has no doubt heard of. Then requirement M4(3), as Rachel says, is for adaptable and accessible wheelchair dwellings. This is the first time these higher standards have been enshrined in building regulations. Therefore, the Government think it is a very significant step in strengthening the corpus of legislation that allows for accessibility into buildings.

As to impacts and effectiveness of Part M, there are some data in the English housing survey around accessibility features for dwellings. There are four features in the EHS—level access, flush threshold, sufficiently wide doors and circulation space, and a WC on the entrance floor—which are taken as demonstrating that the dwelling is accessible. The numbers of dwellings that demonstrated those features rose from 3% of the total housing stock in 2007 to 6% in 2015. In very broad terms, as you would expect, that equates to the build rate during that period of time. It demonstrates that Part M has been having some impact. However, I can also report that the department has commissioned some further research into Part M in looking at the benefits of accessible housing and to evaluate the effectiveness of the approved document guidance in relation to non-domestic dwellings. That is some research that is under way at the moment, and we expect to report by next spring.

**Lord McColl of Dulwich:** Thank you very much. Presumably they inspect the buildings during the building as well as after, do they?

**Bob Ledsome:** There are a number of routes of demonstrating compliance and it will depend, to an extent, on whether the building control body is a local authority building control body or a private sector building control body—what we call an approved inspector. If it is a local authority-controlled building control body, the developer would either need to give notice of the build work that is being undertaken or submit the plans of the building. The local authority could then look at the plans and there would be dialogue to try and get things sorted out if they had a problem or issues with the plans. That is the first stage of the compliance-checking process. Then the local authority or the approved inspector would undertake inspections during the course of the build. A lot of those inspections are not prescribed: there is no set number of inspections or set points at which inspections should occur during the build process. That is something that the building control body would work out, perhaps on the basis of an assessment of risk, an assessment of the complexity of the development, the topography or any issues they may have had with the builder in previous experience or their track record. So there is a process of ongoing compliance-checking that starts with looking at what the plans are and then goes on through.

**The Chairman:** I think Ms Smalley wants to add something, and then we will turn to Lady Campbell.

**Rachel Smalley:** As to building regulations and the question that you asked, it is also worth bearing in mind what we call the limits of application of the building regulations and with, say, new housing, Part M would only apply to new-build housing. Your question mentioned significant refurbishment or renovation works. In general, Part M of the building regulations would not apply to housing that was created via refurbishment or change of use processes. On the non-commercial side of things, the building regulations are a very effective tool in creating an accessible environment, but one thing that Bob touched on then was the competitive environment that the building regulations operate in. That is quite unusual, in a way, because you would not have another regulatory body—for example, the Border Agency, the HSE or a police force—with a private sector version and a local authority version. That affects or influences the effectiveness of the building regulations and how they are applied, because you have a competitive environment. Often, access for disabled people is seen as a soft or negotiable option in the building regulations. It is not seen as life or death, as Part B (Fire Safety) would be. A lot of Access Association members have cited cases where access for disabled people has been negotiated out of a scheme with a building control body in order to gain a contract and a job. Personally, I do not think the competitive environment of a building control system helps the enforcement, I am afraid. I am sorry to jump in, Bob.

**Q135 Baroness Campbell of Surbiton:** My question is for Mr McShane. Over several years, local authorities came to see that access officers within the departments where they were planning new environments and within building regulations departments were a very good and helpful thing. However, I have noticed that the job of access officers is specifically to make sure that the local authority environment is as accessible as possible in complying with the Equality Act. Could you tell me a little bit about what the strategy is of the Local Government Association and local governments themselves for retaining access officers and, indeed, ensuring that the local authorities that do not have them think again? Obviously you need that expertise within the council. In addition to that, many of these access officers were disabled people themselves with very high-quality planning experience, but it seems to me that this is on the wane. Perhaps you could fill us in.



**Councillor Jonathan McShane:** Yes. Rachel probably has much more up-to-date figures on the numbers of access officers.

**Baroness Campbell of Surbiton:** I am sure, but I am more interested in local government strategy.

**Councillor Jonathan McShane:** Clearly, we take our duties under the Equality Act very seriously, and accessibility is very important, particularly in a borough like my own where there is a lot of regeneration activity going on and we are creating new spaces. I know one of the things you want to touch upon, for example, is shared space and the implications of that. The really important thing, in a context of very constrained resources for local government, which I am sure you all appreciate, is that we do not lose sight of the fact that we need that sort of expertise at a very early stage in the planning of any regeneration schemes to ensure that we arrive at a scheme that suits the needs of everyone in the relevant community. But, being honest, 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. But as to the numbers of access officers working in local government, Rachel probably has a better handle on that.

**Baroness Campbell of Surbiton:** But it would be far more cost-effective, surely, to have these access officers in place. There are occasions where I know that some buildings perhaps come down again because they do not meet the various requirements under the building regulations, so they tear them down and start again. If you had an access officer there in the beginning, that cost-saving would be enormous. I do not wholeheartedly accept the “We are all strapped for cash and this is something that needs to go” argument, because it seems to me a very cost-effective way of ensuring compliance.

**Councillor Jonathan McShane:** I would agree. It is not only fairly extreme examples where an entire development has to be rebuilt. Particularly in relation to the street scene or the public realm around a major redevelopment, it is not only about cost; with a bit of really insightful advice at the beginning of the process, you can end up with what is going to be a public realm for decades, if not perhaps a century, that really does serve the needs of everyone in that community. It is hard to put too high a price on that. But again, in a context of really deep cuts, inevitably some decisions will have to be made in the short term that may not make financial sense in the long term. Everyone would accept that the central government public health cuts will save money this year but will cost in the future. Yet people make these decisions because they have to balance the books in-year. Recognising that that is not necessarily wise is acknowledging the problem.

**Baroness Campbell of Surbiton:** If you have any access officer strategy within the LGA, perhaps you could send it to the Committee.

**Councillor Jonathan McShane:** Yes. I will look into that.

**Baroness Campbell of Surbiton:** That would be very helpful.

**Rachel Smalley:** Many members of the Access Association are access officers who work in local government and this point relates back to the question and the mechanisms that are in place to ensure accessibility in public spaces this being just one example of where access officers sitting in local government can influence the development process to ensure that an accessible and inclusive environment is created for everyone. Yes, all the roles within the development process should have some background knowledge and training in inclusive

design, and DCLG are part-funding Design Council CABE [Commission for Architecture and the Built Environment] in producing a freely available CPD training module, at the moment on inclusive design, which hopefully all built environment professionals will be able to access and get a basic knowledge of. 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.

Going back to the building regulations—and this is only a really quick point—Part M of the building regulations, the commercial part, does cover access for disabled people, and it is absolutely brilliant that it does. It is still possible to create a building that complies with Part M of the building regulations, but it is not as inclusive as it could be. One example of this is that Part M of the building regulations allows revolving doors at a principal entrance and you have to have a side pass door. That is dividing people out, segregating people who can use a revolving door and people who cannot. I cannot think of any other equality group or strand whom it would be acceptable to separate out in such a way. So there are parts of the approved documents within the building regulations that could be improved to create a more inclusive environment for everyone, including disabled people.

**Baroness Brinton:** It may not be strictly described as a commercial building, but Portcullis House, the new building here, has exactly that problem of revolving doors, and those of us in wheelchairs have to exit a different way. But there are other problems with the building: for example, the architect has specified extremely heavy doors, which I cannot open, so I always require a carer to take me round. What bit of Part M needs to be changed to make architects think about the whole environment, not just about width of doors and other things?

**Bob Ledsome:** There are a number of points there. The first point is that when it comes down to the planning of the location the architect should be thinking about the building, its location and the whole environment, and looking at what that means for access. Clearly, I would not know the background as to why the architect particularly chose the heavy doors, or whether—

**Baroness Brinton:** It was because they looked nice, I suspect.

**Bob Ledsome:** Okay. The thought strikes me as to whether there were any security issues with that.

**Baroness Brinton:** Yes, I am guessing security.

**Bob Ledsome:** I do not know. That raises an interesting point, of course, about getting the balance between where you have one imperative that might suggest this design solution, but there might be unintended consequence, absolutely what you have just described there. As I mentioned, we are undertaking some research into Part M for non-domestic/commercial buildings, so these are all good points that can be fed into that process.

**The Chairman:** I am left with the anxiety that austerity and cuts are being used as an excuse not to hold on to access officers and that they are not getting the priority that they should, and it is, as Lady Campbell said, a false economy. Did you want to intervene, Lady Browning? No. Lady Brinton, it is your question now.

**Q136 Baroness Brinton:** During the course of this Select Committee, we have heard examples of where local authorities have used their existing powers, such as in taxi licensing, to ensure that services are accessible for disabled people. Could more use be made of these powers? Are there other local authority powers, such as planning, that should be used to

compel service providers to meet their reasonable adjustment duties? Could local authorities do more for disabled people with additional powers? Councillor McShane?

**Councillor Jonathan McShane:** Yes, particularly in relation to taxis, the Equality Act sets out obligations for public bodies to advance equality of opportunity among people to eliminate discrimination, and that includes some specific clauses relating to taxis, including carrying passengers in wheelchairs and the carrying of assistance dogs. The remaining taxi-related clauses—I think Section 165 is one—have not been commenced despite commitments from successive Governments. We believe there is real potential in those clauses to make a substantial difference to the accessibility of taxis, but the argument that has been given for not bringing these into force up until now is that there could be unintended consequences due to the substantial additional cost of accessible vehicles. While in London, for example, the taxi market is incredibly buoyant and that is not felt to be a problem, in some rural areas there is felt to be a risk that having to invest in accessible vehicles could mean some people dropping out of providing taxi services altogether. That is the concern that has been raised as one of the reasons for not implementing those clauses, but we feel those clauses could be really helpful.

**Baroness Brinton:** Could I come back specifically on the taxi issues? It is not just a rural issue. Where local authorities have said that vehicles have to be less than a certain number of years old, the local authority is piling the pressure on the taxi drivers. There are plenty of older vehicles that are easy to adapt for wheelchairs. I do not know if that is a constraint only on emissions, but there are other ways of dealing with it. For anyone in a wheelchair, travelling anywhere outside London, Manchester and Glasgow is virtually impossible.

**Councillor Jonathan McShane:** Is that because of the use of black cabs?

**Baroness Brinton:** It is the percentage of taxis that are truly accessible.

**Councillor Jonathan McShane:** I do have some figures of the percentage of taxis: 61% of councils require wheelchair-accessible vehicles in all or part of their fleet. This is the key. It is good that 61% are requiring this, but it is the level within the fleet that is important. That obviously varies from council to council and we would want to see that increase, but there are other issues as well as accessibility, around training, for example, for drivers, and again there is a mixed picture across the country of councils using their licensing powers to force up standards in that way. The Law Commission has obviously tried to pool together the various rules and regulations on taxis, which I think stem from the 1850s, and in its tidying-up exercise a lot of the things it has looked at relate to how you make complaints about taxi services. My sense would be that technology may be superseding some of those efforts. If you look at Uber, for example, the fact that you can give instant feedback on drivers is a motivation to drivers—

**Baroness Brinton:** I am sorry, but Uber is no use for anyone in a wheelchair because you cannot guarantee that you are going to get—

**Councillor Jonathan McShane:** I was referring to the technology. By mentioning Uber, I just meant that by the time the Law Commission gets to putting this into regulation, the only way anyone books a private hire vehicle may be through some sort of application, so feedback would be easier to achieve. My understanding is that Uber has a new service called uberASSIST, but I do not know what that relates to as to accessibility.

**Baroness Brinton:** Let us perhaps not go there.

**Rachel Smalley:** This is not particularly about taxi licensing, but the last part of your question was whether local authorities could do more for disabled people if they had additional

powers. For me, the answer is absolutely yes, they should be given those additional powers. One of the foundations of the Equality Act is disabled people taking action against service providers. For me, that is the wrong approach. Society should be providing a barrier-free environment for disabled people. Saying, “Disabled people should be taking action and enforcing the legislation”, is saying, “You are a disabled person. It is your fault you are disabled. Therefore, you should do something about it”. It is a very medical-model approach—a very dated approach—and this Government and society should be providing the legislation to allow an inclusive environment to be created for the population as a whole including disabled people.

A lot of Access Association members, as I said, work in local authorities and they get phone calls on a weekly and sometimes daily basis from disabled people saying they cannot access this café or use the toilet in that restaurant and they expect local authorities to be able to do something about it under the Equality Act. Those local authority access professionals have to say, “It is up to you. You are going to have to take action. You need to do it yourself”. That is the wrong way round. Legislation should be providing additional powers to local authorities: it could be via existing functions, for example, licensing—alcohol, entertainment and marriage licensing—and trading standards, for officers who are out visiting services anyway as part of their daily job. If they were given responsibility to ensure those buildings were accessible, it would be a massive leap forwards.

**Baroness Campbell of Surbiton:** Is there any way in which local authorities can refuse to give a licence unless they make their facilities accessible?

**Rachel Smalley:** Currently under the Licensing Act, no, there is not.

**Baroness Campbell of Surbiton:** Has it been done, though, with local authorities saying, “We need you to do this. It is not lawful, but we would like you to do it because this provider says they will, so we are likely to deal with this provider and not you”. Has that ever happened?

**Rachel Smalley:** As far as I am aware, it has not. Under the current Licensing Act, some local authorities have tried it, and legally they have not managed it, which is why I am saying the Licensing Act needs amending to allow this to happen.

**Baroness Campbell of Surbiton:** That is interesting.

**The Chairman:** Are you saying that we need that amendment—or there is a case for an amendment? Are you also saying that existing powers are not being used?

**Rachel Smalley:** As to creating an accessible environment, I do not think the existing powers are there at the moment. Local authorities should be given those powers to enforce the Equality Act or to ensure that an inclusive and accessible environment is created. So, no, I do not think they are there at the moment. The Act would need amending to allow this to happen. Again, that comes back to the point that we made previously about the presence of the local authority access officers; your licensing officers and trading standards officers can go out and do this they would need training, but it would be good if there was a local specialist within that authority to oversee it, to be called in for specialist advice where required.

The question also touched on planning. I could go on about it for a while—I am not going to—but planning policy in this country is quite variable. In London, they have had supplementary planning guidance. The Greater London Authority has had supplementary planning guidance on access for disabled people for the last 10 years in the form of Accessible London—its supplementary planning document (supplementary to the London Plan). Other local authorities have some and other local authorities do not have any.

Because it is quite patchy in provision, nationally it creates a bit of a postcode lottery, although I do not like using the phrase. Some local authorities have planning guidance and require access to be part of a planning permission; others do not. The planning guidance, in the form of a National Planning Policy Framework and planning practice guidance, does exist; it is written. It is a case of raising awareness of that within local planning authorities and maybe having a bit more of a stick to get local planning authorities on board with access for disabled people.

**The Chairman:** I sense that behind what you have time to say this afternoon is a wealth of information about the powers that do not exist but need to exist. You might find time perhaps in the next week or so to drop us a note covering the various areas where we might be able to strengthen those powers in our recommendations—the various areas where powers might be used.

**Rachel Smalley:** Yes.

**The Chairman:** That would be immensely helpful.

**Q137 Baroness Brinton:** Could I go back to your earlier remarks about the approach to disability provision and that it should not be the responsibility of the disabled person to challenge but society's? This question is both for you and for Councillor McShane and it is about the spare-room subsidy, where we regularly see reports that specially adapted accommodation has a bedroom too many and the people for whom it was designed are having to move out. Should there be specific powers for local authorities to be allowed not to charge the spare-room subsidy, and are there any figures for how many people have had to move out of adapted accommodation?

**Rachel Smalley:** I am looking down the table on that one.

**Councillor Jonathan McShane:** I do not know if you have any figures. We can provide you with figures.

**Baroness Brinton:** That would be good. Would you also welcome the extra powers to waive it?

**Councillor Jonathan McShane:** Absolutely. I read last week about a big housing association in Liverpool that is knocking down walls to try and get round some of the excesses of the policy, so some additional discretion would be valued by local authorities.

**Justin Bates:** The problem you will have, being perfectly frank, is that the Government will tell you that discretionary housing payments solve everything, and, regrettably, the courts agree with them. That is the problem.

**Baroness Brinton:** We understand that.

**The Chairman:** Thank you.

**Q138 Baroness Pitkeathley:** I have an interest to declare, which is that I am vice-president of Carers UK. My question is principally for Councillor McShane. On 3 November, when the Department for Transport representatives were here with us, they told us that it was for local authorities to decide on the suitability of shared space schemes in their local areas. That was in relation to other people with needs in the shared space, such as those carrying heavy loads or those with pushchairs and so on. How are such decisions made, and are the effects on disabled people of those decisions then monitored?

**Councillor Jonathan McShane:** First, shared space is relatively new in this country. There is greater experience of it in some northern European countries, and there are very positive aspects to shared space in bringing back to life town centre areas. The LGA does not systematically collect information on shared space schemes, but, like any major

improvement or change to a road layout, there is a need for a road safety audit that has been in legislation since 1974, and a statutory duty was reinforced by the 1988 Road Traffic Act. So there is a mandatory requirement to carry out that audit. Part of that—this goes back to the discussion about access officers—is how you make sure you are thinking as broadly as possible about the impact of a shared space scheme on the whole range of people who live within your community. If the thinking behind a shared space scheme is bringing back to life a shopping area that has fallen on hard times, does that mean you are looking at it from one perspective more than another, perhaps from a commercial perspective?

**Baroness Pitkeathley:** Or the shoppers' point of view, rather than—

**Councillor Jonathan McShane:** Yes, from the point of view of a certain group of shoppers. I know from my own experience in Hackney, an area that is undergoing an awful lot of redevelopment, that where we have had the feedback from people, whether access officers or motivated individual residents, at an early stage, it has made a huge difference to the overall outcome. Often, it is about trying out a shared space scheme and identifying, and so trying to avoid, any issues in the first place, but being open to making sensible changes afterwards once you have seen how it operates in practice. As I say, a shared space is new to all of us so it is hard to predict—

**Baroness Pitkeathley:** How is that feedback from, for example, people with disabilities collected?

**Councillor Jonathan McShane:** It will vary from local authority to local authority. I am sure some are better than others. As the Local Government Association, we are working with the Chartered Institution of Highways & Transportation and the Department for Transport to produce further practical guidance, including good and bad practice. That is due out in summer 2016 for local authorities.

**Baroness Pitkeathley:** Is there any way you would be able to give this Committee any heads-up about good and bad examples?

**Councillor Jonathan McShane:** It would probably be easier to find you good examples, but I will do my best to find some less successful ones.

**Q139 Baroness Campbell of Surbiton:** Are you familiar with the 2015 report *Accidents by Design*, when there was an overwhelming feedback from the public, who said that they did not enjoy shared spaces and in fact go out of their way to avoid them? Did the LGA respond to that, or what does the LGA think of that?

**Councillor Jonathan McShane:** It is seen as an issue for individual councils. Obviously, we are a membership body, we are led by members and we are cross-party. We offer best practice guidance and share experience, but we do not instruct councils on how to behave.

**Baroness Campbell of Surbiton:** This was a national survey. I would be interested to know whether local authorities responded to that or what they think about it.

**Councillor Jonathan McShane:** I can find out whether there was an LGA response. I would imagine there may have been responses from individual authorities. Again, my own authority of Hackney has one particular shared space scheme that I know has divided opinion quite dramatically and there have been changes to it as a result of feedback. In Hackney, we have removed a lot of barriers on the sides of streets because the view was that, if you have barriers, people feel entirely safe as drivers and therefore pay less attention to the things that are going on around them. Shared space is at a very early stage in this country and people will adopt it in different ways and at different paces in different areas.

**Rachel Smalley:** I find the Department for Transport’s approach on this quite worrying, because 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. As Baroness Thomas has pointed out, research has been done—TNS BMRB did some research quite a few years ago—into the use of shared space schemes, and it came out that 70% of blind and partially-sighted people would go out of their way to avoid a shared space scheme. That avoidance does not show in the statistics because they are not users of that environment. If you keep creating these environments, one and then a few streets along another, you are creating no-go zones for a lot of disabled people. Yes, you can monitor it and go back and look at it, but once it is created you have created an environment that is not inclusive and accessible for everyone.

Also, I think national guidance is required on this subject. Flicking across to the UN Convention on the Rights of Persons with Disabilities, there is a provision in there for states parties to “take appropriate measures to: ... Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public”. This is one area where I really think that national guidance is required to ensure disabled people’s needs and requirements are taken into account on shared space schemes.

**The Chairman:** Was sufficient research done before this was entered into? I can see that if there is research now and it turns out that it is not good for disabled people, it is going to take years and millions of pounds to undo what has already been built.

**Rachel Smalley:** Yes, that is the worry with the Department for Transport’s approach, as in, “Put a scheme in and then monitor it”. That is a scheme that has been put in which, at the moment, a lot of disabled people are saying is not inclusive.

**The Chairman:** Thank you. The next question is from Lady Browning.

**Q140 Baroness Browning:** Thank you. I need to declare that I am a vice-president of the National Autistic Society, the Alzheimer’s Society and a patron of Research Autism. Is physical accessibility the only concern in relation to the built environment, or are there other factors that could impact on those with, for example, mental health problems, learning disabilities or dementia? What is the role of local government in provision that is not part of the physical infrastructure, such as Shopmobility schemes or those who are sensitive to sound, and obviously those with sight problems?

**Bob Ledsome:** I will start by commenting on the first part of the question. Clearly, there are issues that could impact on people with mental health problems or dementia and so on—lighting, glare, echoes, the combinations of shapes and colours, the colour schemes and so on. So there are clearly issues there that are potential considerations and relevant. Rachel may want to comment on this, but we are at the very early stages of understanding what that might mean for the built environment. One of my colleagues, interestingly, was at a workshop that was organised by the British Standards Institution quite recently, which was called Design for the Mind, which is starting to explore some of these issues. There was quite a lot of appetite for more work needing to be done for a better understanding of the issues and whether that in due time might be translated into good practice guidance—design

guidance. Clearly, there are issues there. It is still very early days to work through and understand what that would mean for design solutions in the built environment, but clearly it is something that needs to be factored into our future thinking about how we might develop design guidance, and indeed ultimately whether we would need to say anything in relation to that in our statutory guidance supporting the building regulations.

**Rachel Smalley:** I agree with Bob's views. The British Standards Institution is looking into neuro diverse conditions and how that subject fits in with existing or future standards. For me, it is quite important 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, because potentially there are some contradictions there. For example, some of the dementia design guidance would contradict more traditional built environment access design guidance. That is not helpful for designers who are trying to make sense of the guidance in front of them. It is brilliant that the British Standards Institution is taking this on board and incorporating it. Personally, I think some money is required to enable research in this field because it is a relatively new field, and subject area. We do need some research on this and to know how it fits in with physical accessibility. For me, standards, including British standards, should be freely available, and currently they are not. The British Standards Institution charges for standards because of the way it is set up, but it would be great if the Government could put some money into standards. The main accessibility standard, BS 8300, is due to be reviewed next year. It is a brilliant standard and it covers an awful lot, but it is also quite an expensive standard to purchase. On the other hand, the Department for Transport standards—for example, “inclusive mobility”—have always been freely available. Awareness is probably higher with those because they are freely available among disabled people and professionals. It would be great if the Government could put some money into research and making other standards freely available as well.

**Baroness Browning:** Thank you. Perhaps Mr McShane will come in on this. The LGA recently put out guidance on developing dementia-friendly communities. What are your thoughts on the whole concept of communities, because clearly there is quite a challenge to take account of the vast range of disabilities and environments that are needed to be adaptable or accommodate all of them? Looking into your crystal ball, could you see whether the future is going to be more towards the development of communities for specific people with specific needs? Is that the way we are going forward? Is that the only practical way to go forward?

**Councillor Jonathan McShane:** I was going to mention dementia-friendly communities as a general response to this, if you are not just looking at the physical environment. My own area has set up a dementia action alliance. We are in early discussions and have just launched with the ASA a dementia-friendly swimming programme. I am hopeful that at the end of that not only will we have made some small but important changes as a council, local retailers, transport providers and housing providers, but it will make us think more broadly about the impact of physical design, the way services are delivered and a community's attitude towards a much wider range of people. Dementia-friendly communities, and the Dementia Action Alliance behind them, feel like the most developed structures for thinking about the issues that exist at the moment. Once you have made some progress on dementia, you will have identified some other areas where people can make sensible changes and you will have generated a bit of enthusiasm where people begin to think a lot more is possible than you thought before.



Related to that, there was a question earlier about licensing and whether you could refuse a licence on the basis of a premises not being accessible. 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. Sometimes people think that is all about stopping 24-hour drinking and problem gambling, but it could be about a whole range of things, and the values of a particular community could be to do with community and the facilities and services within it being accessible to all and how we could use powers to do that. Not being able to do that because, particularly in relation to licensing, things are very nationally driven is hugely frustrating. The dementia-friendly communities process flags up lots of areas where we think there is something sensible we can do and then when we look into it we realise that nationally there are some restrictions.

**Baroness Browning:** But your approach to that is integrationist rather than communities that are isolated but designed specifically for people with certain conditions.

**Councillor Jonathan McShane:** On a personal level, that is not something I would aspire to at all.

**Justin Bates:** May I pick up a small point spinning off from what you were saying? On the housing side, mental health is the single biggest issue in homelessness cases, not just in identifying and meeting the needs of the homeless person but from the local authority side: how do you find somewhere to accommodate them, whether on the interim duties or on the permanent housing duties, given the massive shortages in the availability of stock? It is not just the built environment; it is access to void units in the built environment. I appreciate that you cannot do anything about the scale of the housing crisis in the UK, but any metropolitan authority talking to you about their homeless provision will tell you that, for them, the biggest disability issue they come across is mental health and its associated homelessness. Something needs to be done, whether money-wise or improving hostel accommodation, whatever it is going to be, to recognise much more the various diverse needs of the mental health homeless community in both temporary accommodation and longer-term accommodation.

**Baroness Browning:** Thank you.

**The Chairman:** Thank you. I feel we have only scraped at the surface of a very complex and interesting situation, but I would like to thank all of you for making things clear for us in this very difficult area and for guiding us through it and giving us some helpful suggestions. Mr McShane, I know it was rather short notice, so thank you for doing it so quickly. We are very grateful to all of you. If you have any postscript thoughts, as I said, do please write in and let us know. Thank you very much indeed.

*24 November 2015*

**Department for Communities and Local Government – Supplementary Written Evidence (EQD0191)**

I am writing further to the hearing on 24<sup>th</sup> November to follow up the Committee’s request to provide further information on the costs of Section 36 (“Common Parts”) of the Equality Act 2010.

The then Government published an impact assessment for the then Equality Bill in November 2009. Annex H of the impact assessment covers the provisions which are included in Section 36. The full version of the impact assessment can be found at:

<https://www.gov.uk/government/publications/equality-bill-impact-assessment-version-3>

In May 2012, the Coalition Government announced the outcome of its Red Tape Challenge review of equalities law. The full text of the written ministerial statement laid in the House of Commons on 15 May 2012 by the Home Secretary and the House of Lords by Baroness Verma can be found at:

<https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome>

In its response to the Committee’s call for evidence, the Government said that it is considering the future of the uncommenced provisions in the Act.

Yours sincerely,  
R J Ledsome

*14 December 2015*

## **Department for Communities and Local Government – Supplementary Written Evidence (EQD0201)**

### **NOTES ON GUIDANCE RELATING TO THE EQUALITY ACT IN APPROVED DOCUMENTS SUPPORTING PART M (ACCESS TO AND USE OF BUILDINGS) OF THE BUILDING REGULATIONS**

#### **SUMMARY**

Guidance in the Approved Documents is intended to help those undertaking work comply with the requirements of the Building Regulations. Guidance is now split between dwellings (Volume 1) and Buildings other than dwellings (Volume 2).

Guidance in Volume 2 is more extensive than guidance in Volume 1 because there has been longstanding confusion as to how compliance with Part M of the Building Regulations relates to duties under the Equality Act on service providers etc (i.e. some people believe compliance with Part M of the Building Regulations implies much broader compliance with the Equality Act), and there is also a need to clarify how compliance with the guidance in Approved Document M (Volume 2) provide a 10 year exemption to make reasonable adjustment under the Equality Act.

Duties in relation to residential premises are different, are not typically a source of confusion, and there is no 10 year exemption to explain. The guidance in Approved Document M (Volume 1) for dwellings is therefore concise in providing the information needed by people undertaking building work to understand the relevance of the equality act in this context.

#### **BACKGROUND**

- Requirements to make reasonable adjustments apply to service providers, local authorities undertaking public functions and associations. Where building work complies with the requirements of Part M, that work is exempt from the requirement to make reasonable adjustment under Regulations 9 of the Regulations for a period of ten years.

1. The duty to make reasonable adjustments applies to service providers, persons exercising public functions (not limited to local authorities) and associations. In these situations, the duty to make reasonable adjustments is anticipatory, so the service provider / person exercising public functions is required to consider in advance what reasonable adjustments disabled people in general might need and keep this under continuous review. Note that in the case of associations, the duty is slightly narrower - it is to anticipate the adjustments that might be needed by members, associates and guests, and people who are seeking to become / likely to become guests (not disabled people more generally).

2. Regulation 9 of the Equality Act (Disability) Regulations 2010 (SI 2010/2128) provides that it is not reasonable for a service provider, public authority or association to have to remove or alter a physical feature where the feature concerned (a) was provided for the purpose of assisting people have access to / use the facilities in the building; and (b) satisfies

the relevant design standard (i.e. in England, it accords with Approved Document M ('ADM') and was not completed more than 10 years ago).

- People who dispose of, let or manage premises are subject to the provision in part 4 of the equality act 2010 which prevent discrimination etc. However, the requirements to make anticipatory reasonable adjustments to physical features (and by implication the ex10 year exemption) are not applicable to people building, selling or letting dwellings.

3. Part 4 of the Equality Act 2010 covers premises and applies to the sale, leasing and management of all premises, both residential and commercial (but not holiday lets). The duty to make reasonable adjustments applies to a controller of let premises (i.e. a person by whom premises are let or a person who manages them) and a controller of premises to let, and a commonhold association. Here there is no anticipatory duty to make reasonable adjustments, and the duty will only arise where the controller / commonhold association receives a request from or on behalf of the tenant / person entitled to occupy or person considering occupying the premises. The Equality Act 2010 (Disability) Regulations 2010 makes no provision in relation to the 10-year exemption / ADM in these cases (presumably because there is no anticipatory duty). There is no duty to make reasonable adjustments in relation to the sale of premises.

*9 February 2016*

## Department for Education, Independent Parental Special Educational Advice (IPSEA) and Ofsted – Oral Evidence (QQ 113-122)

Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Campbell of Surbiton  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley

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### Examination of Witnesses

**Ann Gross**, Director responsible for policy on special needs, children in care, adoption and children’s mental health, Department for Education, **Kate Copley**, Deputy Director, Academy Operations team, Education Funding Agency, Department for Education, **Lesley Cox**, National Lead for Special Educational Needs, Ofsted, and **Claire Jackson**, Legal team member, Independent Parental Special Educational Advice

**Q113 The Chairman:** Good afternoon and welcome. Thank you very much for coming. I should tell you that, as you probably know, the session is open to the public and a webcast of the session goes out live and is subsequently accessible via the parliamentary website. Indeed, one of our number is in hospital but she is able to watch on the webcast. A verbatim transcript will be taken of the evidence and that too will go on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check it for accuracy, and it would be helpful if you could advise us of any corrections as soon as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence or you have any additional points to make, please feel free to submit supplementary evidence to us. We know and you know that time is fairly short and you have to be fairly concise. It may be that you leave feeling that there were more things that you wanted to explain to us. If so, do please write in afterwards.

We welcome this afternoon, starting on the left, Ann Gross, who is a director responsible for policy on special needs, children in care, adoption and children’s mental health at the Department for Education; Kate Copley, who is Deputy Director in the Education Funding Agency’s Academy Operations team, Department for Education; Lesley Cox, who is the Ofsted National Lead for Special Educational Needs; and Claire Jackson from the Independent Parental Special Educational Advice organisation. Between you, you cover nearly all aspects of education that are relevant to this inquiry, so thank you very much.

The first question is coming from me and it is a fairly broad one. How confident are you that schools of all types are meeting their obligations under the Equality Act, including towards those with hidden disabilities such as mental problems? Is your answer the same for pupils who are classed as having special educational needs and those who are disabled but not SEN? Should academy chains have the same obligation to produce an accessibility strategy as local authorities do? Please do not feel you all have to answer, but if it is your special field please do, or add to whoever takes that one first.

**Ann Gross:** The first thing I should say is that as part of my director role, the team in the Department for Education responsible for policy on special educational needs and disability policy reports to me. The issue of equality and promoting equality in educational settings for disabled children and young people is something that we take really seriously. We led work on the Children and Families Act 2014, which incorporates and builds on the equality principles in the 2010 Act, and we have done a lot to communicate those responsibilities and duties to schools. The duties in both Acts apply equally to all types of schools, whether academies or mainstream schools. It is important to say that to start with.

In terms of communicating responsibilities to schools, we have issued guidance on the Equality Act. We have published a statutory code of practice on special educational needs and disability, which covers, for the first time, both SEN and disability policy in one integrated code. That went out last year. We have also published statutory guidance on supporting pupils with medical conditions, and we fund a lot of activity by voluntary and community sector organisations to work with schools, to train schools and to provide advice and guidance. For example, the National Association for Special Educational Needs is very active in training schools, and we fund the Autism Education Trust, which is particularly focused on supporting schools working with autistic pupils. They have trained over the last three years over 80,000 members of school staff. We have been doing a lot.

Clearly, we are monitoring very carefully how our policy framework is working in practice in schools. We draw together a lot of information to do that. We regularly survey local authorities and parents' forums. We have statistical data collections through the school census and through other data collections, and we also really work actively with voluntary organisations and hear the feedback that they are giving us about what is happening on a day-to-day basis. Clearly, Ofsted is also a really important source of information from its inspection regime. I know Lesley will say more about that.

Taking all of that evidence together, there is a strong commitment in schools of all types to doing a good job for disabled pupils and meeting the needs of disabled pupils, and the changes that we made to the policy framework last year are now settling in well. There is more to do, and there will always be more to do in this area in terms of sharing good practice, supporting schools and building up the confidence and skills of teachers and other professionals. We have some really good examples of schools with good practice and we are very willing to keep sharing that, but when we hear that things are not going well, we will pick up on that too and we will challenge examples of poor practice. We look at complaints and we take action in response to those complaints. I will stop there; perhaps we will come back to some other parts of the question.

**The Chairman:** What about the academy chains?

**Kate Copley:** The Equality Act applies equally to schools of all types, whether maintained or academy. In the case of pupils with disabilities and those who are SEN, the Equality Act requires all schools to produce an accessibility plan. The point of the plan really is about

ensuring that all aspects of school life are fully accessible to disabled pupils. That same Act also requires local authorities to produce accessibility strategies. These really have the same aims as the school-level plans but have a different coverage. The provisions that I have just described were designed to replicate the effect of provisions that were previously in the Disability Discrimination Act.

I also want to pick up, as Ann did, on the Children and Families Act in this context, because that requires local authorities as well to produce to a local offer. This sets out in one place the provision that they expect to be available across all of education, health and social care for children and young people in their area who have disabilities or special educational needs, including those who do not have either an EHC plan or a statement. That local offer must include the local authority accessibility strategy. It is also the case that all schools, whether maintained by the local authority or academies, are required to publish information about their policies for pupils with special educational needs, to make anticipatory reasonable adjustments for children with disabilities, to prevent discrimination and to promote equality of opportunity.

You are absolutely right; there is no legal requirement for multi-academy trusts to produce trust-level information, and we do not think such a requirement is necessary, because of the things that I have just said. One can see why some trusts might choose to do it. For example, it could help to ensure a consistency of approach across a whole trust where that was meaningful, but it would not always be the case.

**Lord Harrison:** Ann Gross, can you give a practical example of a school that was failing and what you did about it?

**Ann Gross:** Can I give you a specific example of intervening in a school? We can give you some statistics in relation to admissions—

**Lord Harrison:** No, give me an example.

**Ann Gross:** Are you asking me to name a particular school?

**Lord Harrison:** Not to name a school; you can leave it as the generic.

**Ann Gross:** There will be examples where the Education Funding Agency receives complaints in relation to admissions to academies and then the department will step in and address those. Kate can say a bit more about that.

**Kate Copley:** Yes, and we will direct an academy to admit a child if it has been named in a—

**Lord Harrison:** You have still not drawn a picture for me of a problem arising and you moving in to do something about it.

**Kate Copley:** In relation to admissions, we might be contacted either by a local authority or by an academy where a child had been named in a statement and where an admission had not followed. In those cases, we would investigate, we would determine whether or not the local authority had acted reasonably in naming the academy and, if we felt that it had, then—

**Lord Harrison:** That is what you have to do. What I am trying to get from you is a practical example of where you moved in and solved a problem.

**Kate Copley:** We have been asked to make such investigations into academies in 70 different instances since January 2013. In the vast majority of those admissions cases, the child has been admitted as a result, and in only one instance have we had to direct the academy to admit the child, but we have done so.

**Q114 The Chairman:** You have told me a lot about the input, but what about the outcome? There has been a lot in the newspapers recently about children with mental health problems

and about young people with special educational needs. How do you make sure that at the end they do not all take jobs, if they can get jobs, which are below their capacities, but they are prepared for higher-level management jobs? Do you follow the outcome? How do you know that all the strategy that you are putting in is going to produce people at the end who will be able to work to their full capacity?

**Ann Gross:** That is a good question. The first step is making sure that all pupils, whether they have disabilities, special educational needs or any other form of need for additional support, are able to make good progress and attain well in school. Clearly, we expect schools to be providing individualised support and then assessing and tracking progress of all children and young people so that they can perform as well as they can in terms of attainment in GCSE and at higher levels.

We do recognise that some of the hidden disabilities, as you have called them, like mental health needs, can be more difficult for schools to understand and address. That is an area where we have been doing quite a lot of work recently. Nicky Morgan has a strong interest in mental health policy, and we have been working closely with the Department of Health to produce some new guidance on how schools should address and recognise mental health needs in children and young people. We have also just set up some pilots in schools, where we are looking at how we can establish a system of better contact between schools and child and adolescent mental health services to get join-up going better and sharing of expertise improved. Those are some of the key things that we are doing.

What we are trying to promote in schools is an ethos where schools try to look for the underlying cause of any difficulty that a child presents. Rather than focusing on the presenting problem, which, for example, is often a behavioural problem, we want schools to understand what it is that lies beneath that—whether it is a mental health need or whether there is some form of disability there—and to put in place the right strategies to address that.

**Baroness Brinton:** You raised the point about working closely with the Department of Health and local CAMHS. I know that during the process of the Children and Families Bill there was a lot of discussion with the Department of Health about how they could work better with you. What tangible evidence is there now that that has worked? It was very frustrating to get to the end of that Bill and discover that there were still barriers because it was not possible to streamline the service for children with mental health problems.

**Ann Gross:** A lot has happened since the Children and Families Act last year. The Department of Health published *Future in Mind*, which is the Government's strategy for improving and transforming children's mental health services. That was done jointly with our two departments. Since the election, there has been confirmed additional funding for child and adolescent mental health services and the Department of Health has put in place a structure for implementing the reforms. I know you have Flora Goldhill coming to give evidence after me. Flora and I work together very closely on these areas. I am a member of the oversight board for the children's mental health reforms and we are very closely joined up. There is a lot to do. We are starting from a low base. It is a Cinderella area, but we are working hard at the moment to try to turn it around.

**Q115 The Chairman:** Echoing Lord Harrison, and having read the recent EHRC report *Is Britain Fairer?*, I would be very interested in hearing something about the outcomes. Do we know how many children with special needs, mental health problems or disabilities go to



university or get A-levels? What happens to them as a result of the work that you are doing? Are there statistics on that?

**Ann Gross:** Through the national pupil database, we have really quite a strong evidence base for looking at the attainment of individual children. We know that much will depend on the type of disability or special need that the child has. There will be children who have mental health problems, dyslexia, or specific impairments like hearing impairments, who can attain really well and perform at the highest levels academically. Other children with different types of special need will not find it easy to make as good progress academically. It is something that we look at and monitor. We know that there is more to do to make sure that young people with learning difficulties and learning disabilities, for example, can find their way into the labour market and into the workforce—that they can be successful in getting jobs. One of the things that my team has been doing is developing a programme of supported internships that are particularly for young people with learning disabilities, which enables them, when they are following programmes of study and further education, to spend periods of time working with employers so that they get real practical experience of the workplace. While it is a small programme at the moment, we have secured a little money this year to expand it and it has been getting some encouraging results.

**The Chairman:** Thank you. If there are any readily accessible statistics that you can send us, we would be very interested.

**Ann Gross:** We would be happy to write to you with further information on that point.

**The Chairman:** Thank you. The next question is coming from Baroness Campbell. I should say that when asking a question, any one of us who has an interest relevant to this inquiry will declare it. To save time, I am going to read out the interests of Baroness Campbell. She is a patron of Just Fair, a patron of the National Disability Arts Collection and Archive, founder and member of Not Dead Yet UK, and recipient of a social care personal budget, Disability Living Allowance and Access to Work. She was a disability rights commissioner throughout the life of the Disability Rights Commission and was a commissioner at the Equality and Human Rights Commission for three years.

**Q116 Baroness Campbell of Surbiton:** You have painted a pretty glossy picture in terms of good practice, lots of support, et cetera. I would like to go into that a little more deeply in terms of special school education. The Alliance for Inclusive Education has told us that numbers of pupils in special schools in England are rising at a worrying rate, and that they believe that segregation in mainstream schools should be prohibited—that we should be making more endeavours to mainstream children with special needs. Are mainstream schools able to meet the needs of disabled children who wish to attend them? Should the Equality Act prohibit segregation? You can really go to town on this one.

I am particularly interested in this because last year I supported a family of a very bright disabled child who had gained entry into a mainstream school that would be able to meet his academic needs, but the local authority felt it was better for him to go to a special school because he was—quote—“highly dependent” and needed special care. There was quite a fight to get him in. I want to get a feel for how the mainstream segregated system is working. The numbers are going up. Why is this? Are these children getting the same academic qualifications in the special school sector as they are in the mainstream sector?

**Lesley Cox:** It is important to stress that Ofsted is an inspectorate and we do not impose the rules on schools, but we check their performance against the rules and the laws. We are not particularly compliance-focused, but we look at the outcomes. That relates very much to

your question, in the sense that we would look at the practice against the individual needs of pupils. We would want to have confidence, and, indeed, we would unpick through our inspection remit how the school had identified what those needs were and their rationale for any segregation, if you want to use that term, in the sense of how they were meeting the needs. That would form the basis of a dialogue with the school leaders. It may be that those practices that we have seen in front of us, because we are on the school site at that point, are able to be explained, but, if they were not, we would then follow that up through a leadership and management dialogue, and that would impact on the judgments that we made for the school.

My answer is that it would depend on the context of the school, the needs of the individual and, indeed, making sure that school had identified those particular needs and was able to meet them appropriately, whether that was in a specialist setting or a mainstream context.

**The Chairman:** Is that not your field your field, Ms Jackson? I thought mainstream education or not was your particular interest.

**Claire Jackson:** No. While you have said that, is it possible, after this question, to go back to question one? IPSEA has some important evidence to give about that particular area.

**The Chairman:** Sure, yes.

**Baroness Campbell of Surbiton:** You still have not answered my question. Can disabled children access the same academic curriculum in a special school as they can in a mainstream school? There is evidence to suggest that many special schools feel that they do not have the resources or the capability to offer academic curricula-based teaching with the children that they have, because the children require physiotherapy, et cetera. I am interested in whether or not these kids are coming out with qualifications when they have the perfect capability to get them. Can you give me a feel for academic success in the special school sector?

**Lesley Cox:** Absolutely. We apply a common inspection framework across both mainstream and specialist providers. We would look at the quality of the curriculum and make sure that that was appropriate to the identified needs and expectations of particular students that that context was serving. We would ask them how they had established those targets—for example, academic targets, and personal, social and emotional targets—and we would look at how they were making sure that the expectations were high enough and, therefore, were leading to an appropriate destination, an appropriate life choice, or a job or a career opportunity that was linking very much to the needs of that individual group or individual child. That would not be different; that would be consistent across all of the providers that we inspect.

**Baroness Campbell of Surbiton:** Is the mainstream sector able to give places to disabled children of significant support needs? These kids are not getting into mainstream schools and the excuse is that their care needs are too substantive, which is not what a reasonable adjustment should be doing.

**Lesley Cox:** We would look specifically at the group that we would define as disabled or special educational needs children, and we would expect schools to be able to evidence how they have identified and supported those needs. If they were on roll at the school, then we would hold them to account for meeting those needs and achieving the outcomes that those individuals could be expected to obtain.

**Baroness Campbell of Surbiton:** Can you account for the fact that the gap in academic attainment between those who are going to mainstream and those who are not is getting wider? Do you have figures?

**Ann Gross:** You are raising an important set of issues about how we ensure that disabled children who have high academic potential are able to achieve high standards in terms of educational outcomes. The way I would answer that is that policy is quite clear in terms of a general presumption in law of mainstream education. That is enshrined in the Children and Families Act and it is also enshrined in the statutory SEN and disability code of practice. The circumstances in which children can be refused a place in mainstream education, where their parents want that, are very few and very specific. The code sets out in a lot of detail the steps that schools and local authorities are meant to go through in order to make adjustments to meet the needs of disabled children. I do not know enough about the circumstances to comment on the individual case, but the policy framework here is clearly set out.

**Baroness Campbell of Surbiton:** I understand that, but the policy is not working and the gap is getting wider. What is the reason for this?

**Ann Gross:** Is the gap getting wider? I am not sure. I have read the Alliance for Inclusive Education's statement, which points out an increase in numbers of children in special schools. In broad terms, the proportion of children in special schools has remained very stable over the last five years. It is about 1.2% of the whole pupil population. There has been a general increase in the pupil population, and there has been some increase in the numbers of children in special schools too. I do not think it is a big trend, but it is in the context of an overall rising population. What we do see—and this is another important principle in the Children and Families Act—is that parents have a right to express a preference and to make a choice of school for their child, and many parents do want to choose a special school or a specialist environment, where their child has a special need or a disability. That is because they feel it best meets their child's needs. We try to have a policy framework that respects both positions and that recognises the point you are making that academically able disabled children should be supported to have a place in mainstream schools, but there will be some children who have severe and complex cognitive impairment, where a special school environment may meet their needs and where that is what their parents want.

**Q117 Baroness Brinton:** My question may be to Claire Jackson as well as Ann Gross, rather than Kate at the DfE. If the numbers of children in special schools are increasing and the emphasis on mainstream has meant a lot of children either with SEN or with disabilities, or both, are often the only child with that disability or SEN in a school, what is happening to the overall number of units in schools? I used to be the chair of governors of a hearing impaired unit primary school. My real worry about that is that the money to support them is dispersed much more. My question is: do parents feel, having chosen their local mainstream school, that their child is then getting the appropriate support for them? For example, a hearing impaired teacher can only provide two or three hours a week instead of being around the whole time.

**Ann Gross:** You are raising an important issue about the support that mainstream schools receive so that they can really meet the needs of all children with SEN and disabilities. The resourced-unit model of units in mainstream schools can be really effective. It does not have to mean segregation, but it can be a good way of enabling children to be in a

mainstream environment and also to receive extra specialist attention. That can be a very good model. There can be other really good models of specialist advisory services working closely with schools, and schools sharing expertise across clusters of schools or academy chains.

**Baroness Brinton:** Have the numbers of those units decreased?

**Ann Gross:** I was going to say we need to write to you with that information. I am not sure that we still collect it or whether we have collected it, but we ought to write to you and let you know what the position is.

**Claire Jackson:** I just want to pick up on the point of a child being denied mainstream education. It is right that the threshold in law for a child to be denied mainstream education, whether that is through a statement of special educational needs or an education health and care plan, is incredibly high. It is a high threshold for the local authority to dislodge the parents' preference for mainstream education. However, what IPSEA finds is that the test is often misapplied, so parents are put off at the first hurdle. People say, as you said there, "Your child would be better off in a special school place", but that is not the test in law. It is not about whether a child would be better off in a particular placement.

**Baroness Campbell of Surbiton:** Absolutely, but it is happening again and again. The parents will come to us and say, "I cannot get my child into the appropriate mainstream school. It is such a battle". Yes, you are right; either they give up or they have to fight. What are you doing about this particular barrier? It is enormous.

**Claire Jackson:** I agree that some parents really have to battle for mainstream education. Although IPSEA does not advocate for one or the other, we very much support parental choice. If a parent is, say, going to a tribunal, which they would have to do if a local authority refused to name mainstream education on the child's statement or education health and care plan, we would very much support that. We have been involved in some case law where a local authority has tried to restrict children's rights to mainstream education, and have challenged that successfully. I agree that if a parent is put off at that first hurdle by someone saying, "All the professionals think it would be better for your child to go to a special school"—this is another common phrase we hear—then the parent has fallen at the first hurdle, and quite often they will not go through the appeal process.

**The Chairman:** Is the test not the welfare of the child?

**Claire Jackson:** No. As was said earlier, the test is that, when it comes down to mainstream education, a child must be educated in mainstream education unless it is against the wishes of the parent or young person—that is under the new law—or it is incompatible with the efficient education of other children and there are no reasonable steps that the local authority or the school can take to remedy that incompatibility. Suitability drops out of the picture by the time you get to that test. People often say, "It is bizarre that you do not have to take into account suitability", but that test is not concerned with suitability. The rationale behind that is if you put enough support and enough structure in the child's statement or their education, health and care plan, you can make any environment suitable, so you can ensure that the child's physiotherapy or their occupational therapy takes place in the mainstream environment.

**Q118 Lord McColl of Dulwich:** Some witnesses have suggested that the interpretation of a "tendency towards physical abuse" in the excluded conditions to the Act has deprived many children of protection. Do you agree that this is a gap in the legislation? If so, could you give us some examples?

**Claire Jackson:** Based on what parents tell us about their children’s special educational needs and disabilities, we would estimate that a significant proportion of those children also have some challenging behaviours, but as a direct result of those disabilities. Common examples include children on the autistic spectrum, children with attention deficit hyperactivity disorder, and children with various types of mental health difficulties. Parents also tell us—and our experience tells us—that if it does get to a point of physical aggression or physical challenge in school, their children do not erupt for no reason. Quite often they present as challenging because reasonable adjustments have not been made for them—for example, a school has not made an adjustment to a behaviour policy or a school has intervened in a situation that has made the situation much worse. As a result of that, 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”, so that last incident, which has perhaps resulted in the child being excluded, is not protected for the purpose of the parents making a claim of disability discrimination.

**Lord McColl of Dulwich:** With children with attention deficit disorder, presumably, when you are looking into these problems, you look into whether they are on medication like Ritalin. If they are not, that is a different picture, is it not?

**Claire Jackson:** Potentially, but you would still look at their difficulties against the description in the Equality Act regardless of whether they are on medication or not. Certainly, medication may relieve some of their symptoms.

**Lord McColl of Dulwich:** It should do, if they are on Ritalin.

**Claire Jackson:** It should do, but we often find that children do not just have one particular type of difficulty in isolation from another.

**The Chairman:** Do governing bodies have to balance the need to take care of the child whose vulnerabilities result in physical abuse against the effects of that violence, if it is violence, on the other children and the teacher, or must they take as their starting point the need to include the child?

**Claire Jackson:** As a starting point, they would always need to be seen to include a child, but if you know, for example, that you have a child on the autistic spectrum and you are employing certain behaviour strategies and one of those strategies that you may use for another child is perhaps to step in front of them to stop them physically leaving the classroom, and you know, based on evidence and professional reports, that that is really inappropriate for a child who is on the autistic spectrum, then you should be making a reasonable adjustment and not taking that course of action.

**The Chairman:** What would the reasonable adjustment be?

**Claire Jackson:** It could be identifying and tackling that particular difficulty in a different way—again, what has been recommended by another professional—rather than this whole idea that we treat everybody the same, which we hear schools say time and time again. They say, “If we make an adjustment to our behaviour policy, that undermines good behaviour”.

**The Chairman:** While you have the floor, I remember you said there was something else you wanted to add to question one.

**Claire Jackson:** Yes, if you do not mind. I will be as brief as possible. I know others on the panel have been able to give some good examples, and I feel a little like “bad cop” coming in here and giving some quite negative examples where we feel that the Equality Act is not

being applied consistently in all schools that we come across. Parents do not come to our services and tell us that everything is wonderful. By the very nature of our charity, they come to us when they have a problem. It may appear obvious, but I should point out that not all children with a special educational need have a disability, and vice versa, because there are different legal thresholds for each different type of one under different legislation. Through the information that we take from parents when they contact our services—we take certain monitoring information about their child’s learning difficulties or disabilities—we estimate that in excess of 85% of the children that we advise on have both a special educational need and a disability. If I use the term “SEN” I am also including disabled children.

We have seen a consistent rise in the number of parents calling us about children with mental health problems, so we agree that that is a real problem across the country at the moment. It is a vicious cycle, because we also know that waiting lists for child and adolescent mental health services are ever increasing and children are waiting a long time to have those needs addressed. What figures do tell us, which is reflected in our casework, is that children with SEN—I say “SEN” because this is how the statistics are collected by us and by the Department for Education—are disproportionately excluded. We know that from our figures and from the department’s figures. They are far more likely to be excluded than children who do not have SEN. What those figures do not tell us is the amount of children—it is one of the most commonly called-about issues on our helpline—who are informally excluded.

Informal exclusion is unlawful, because essentially it is punishment without law, and schools do not collect figures on informal exclusion because, quite frankly, it is unlawful. We would find it difficult to see any circumstance where the informal exclusion of a disabled child could not be viewed as discriminatory as well. We know that some disabled children are missing out on large chunks of education because they are informally excluded. We know that in 2013 the Children’s Commissioner carried out an investigation around the use of informal exclusion and found that it was a significant problem, particularly for children with SEN, across a significant amount of schools that they looked at.

We would say, with that in mind, that things are not all well. We would say that schools, we find in some circumstances, are not fully aware of their duties under the Equality Act and do not seem to appreciate that that type of practice alone is incredibly discriminatory.

**The Chairman:** That leads directly into Lord Northbrook’s question, which is about what to do about it.

**Q119 Lord Northbrook:** What sanctions can be brought against schools that are found to be failing in their obligation to disabled pupils and parents? How is the Equality Act reflected in government education policy and the Ofsted inspection framework? That is a question for Lesley Cox first.

**Lesley Cox:** We would follow up on the circumstances that we found in any particular context, and that would vary. We would hold all schools to account for the judgments that we make under the common inspection framework. That would include personal development and welfare, academic outcomes, progress against measured targets, leadership and management, as well as the quality of teaching. As far as sanctions go, we would probably be talking about consequences, in the sense that we inspect and report on a school and it is for others then to take the action as a result of our findings, but if we found any discrimination or concerns against individuals, or particularly groups of students, in the

sense of special educational 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. That, for us, would invoke further monitoring and follow-up, and an account of the actions that the school was intending to take to address those failings. We would then continue to monitor that in our process.

**Lord Northbrook:** Do you have any figures for the number of schools that have caused problems? That would be useful for us.

**Lesley Cox:** I do not have those here today, but we know how many are in a category of concern and we can certainly get that information to you.

**Lord Foster of Bishop Auckland:** I wondered whether Ofsted is picking up this evidence of informal exclusion that Claire has told us about.

**Lesley Cox:** I would hope so, in the sense that we have a very clear remit for checking attendance against particular groups. 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. We would look at case studies. We would ask, for example, on the day of an inspection how many pupils were not attending on that day and we would look at that in the context of their educational outcomes against their progress targets. We moderate quite closely across our judgments to, hopefully, identify any instances of what we are terming illegal exclusions here. It should be possible to identify that.

**The Chairman:** What is the department's view on sanctions?

**Ann Gross:** In addition to the approach that Lesley has described and the role that Ofsted plays, parents and young people now can make a claim to the Special Educational Needs and Disability Tribunal. It has been established for over a decade that they can bring that claim in relation to disability as well as issues relating to special educational needs provision. It is a system that the tribunal tries very hard to make as accessible as possible. You do not need to have legal representation and the rates of success without legal representation are quite high. The tribunal has powers to make rulings. It tries to make its rulings on disability issues as practical as possible. For example, it can order training of staff, or extra tuition for pupils, or a written apology, where that is appropriate. Perhaps the most relevant ruling it can make in this context is in cases of permanent exclusion, where, if the tribunal finds that that is a result of discriminatory behaviour on the grounds of disability, it can make an order to reinstate the child who has been excluded on those grounds. That is quite an important set of sanctions that are available to parents.

More generally on exclusions issues, we do take the higher rate of exclusion of pupils with special needs and disabilities very seriously. We also take the issues around informal exclusion as a serious concern. We make it very clear in the guidance that the department publishes on exclusion that what is important is that schools seek to understand the issue that underlies problem behaviour by a child. Is there a mental health issue? Is there an underlying special need or disability that has not been identified? The guidance encourages schools to use multiagency assessments in those contexts and, in the case of exclusions, parents also have the right to bring an SEN expert to the independent reviewing panel. There are a number of steps that we are taking and we do recognise that it is something that we need to be vigilant on and continue to monitor.

**Q120 Lord Faulkner of Worcester:** I should declare in interest in that I am patron of New College Worcester, which is the former Worcester College for the Blind. I also have a Private

Member's Bill before this House on disabled access to sports grounds. I have interests in public transport too, where access to public transport is the issue.

My question follows on exactly from the last answer. How well do parents and children know their rights under the Equality Act and how easy is it for them to access and enforce those rights? Claire Jackson might like to comment on the evidence that IPSEA has given us saying that jurisdiction should extend to colleges as well as to schools. Maybe I can give you the opportunity to go first.

**Claire Jackson:** We are not convinced that parents are aware of their rights under the Equality Act. They seem to be more aware of their rights under the SEN framework rather than the Equality Act. For example, it does not seem to cross many parents' minds that formal or informal exclusion is potentially an equality issue, as well as a failing, perhaps, under the SEN framework. In terms of enforcement, I will just go back, because it ties in with this, to one of the options if a child is permanently excluded—that they can go to the First-tier Tribunal and ask for that child to be reinstated. That is significantly underused. Since that has been available to parents, in nearly five years there have been 20 cases heard where a parent has been actively asking for that. We know that in general, compared to the SEN appeals that the tribunal hears, claims of disability discrimination are very low and have been consistently low over the years.

One of the problems we see in terms of enforcement is that if a parent wants to make a claim of discrimination or wants a remedy, there is only that one statutory route, which is making a claim of disability discrimination to a tribunal. From having a claim registered to it being heard is roughly a 20-week—or five-month—process. If the problem, for example, is that a child is not being permitted to go on a school trip the same as their non-disabled peers, often the trip has been and gone by the time the claim is heard. Sometimes the claim in itself, although the parent may get an apology at the end of that process, does not really remedy what the child has missed out on. We believe there needs to be not just that route but alternative statutory routes for parents that can deal with a problem like that a lot quicker or in another form.

I have to say as well that, by the very nature of litigation, one of the parties is going to lose. If the parent loses on a claim of disability discrimination, quite often they say to us, "The school has got away with it". That is how they feel afterwards. If, on the other hand, the school loses the case, then they are often—again, we have found this in practice in case examples—very mistrustful of the parents after that. The relationship is often soured completely, beyond repair. We do believe, based on that, there should be more than one route.

**Q121 Baroness Brinton:** Can I declare two interests in relation to my question? I am co-chair of the APPG on bullying and I am a patron of the Red Balloon Learner Centres, which provide support for severely bullied children who have often self-excluded. Research has shown that severely bullied children have clinical depression and other mental health problems. We are talking about 70% to 80% of these children who have got so far that they cannot face school. What recourse do they have when, in an academy that had an internal pupil referral unit (PRU), the self-excluded bullied child was put into the PRU with the bullies, or had to leave the school but, because the school had provided an alternative, the money could not follow the child to alternative provision elsewhere?



**Ann Gross:** Shall I say some things generally about bullying and disabled children's experience of bullying? This is, obviously, an awful thing and we want to be really clear that—

**Lord Faulkner of Worcester:** Could you also comment on what Claire Jackson was saying in response to my question a moment ago?

**Ann Gross:** Yes, I am very happy to do that. We are really clear that bullying, for whatever reason, is completely unacceptable. We recognise that there is a higher incidence of bullying of children and young people with special educational needs and disability. That is not a situation that any of us feels comfortable about. The department has been taking lots of steps to tackle bullying. One of the specific things that we have been doing is funding the National Children's Bureau to work with schools and to train school staff on issues specifically relating to disability and special needs. They have worked with over 1,500 schools on those issues. It is not an enormous piece of work, but it is a significant piece of work. It is something that we take seriously.

**Baroness Brinton:** That is fine and it is important for good practice. I am talking about that small group of children with mental health problems because they have been so severely bullied they are therefore disabled. They have clinical depression. They are mostly getting help from elsewhere. What recourse do their parents have for them to get access to education when the choice is either to stay in their own school because the school says, "We can manage it" or, even worse, to be put in a PRU?

**Ann Gross:** In those situations, the special educational needs framework and all the protections that sit under that would apply to those children. You may tell me that in practice it is not working. We have been working hard to make improvements and reforms in this area, but, as I recognised at the beginning, there is much more to do to embed and support this. I understand that you have some children who are in really difficult situations.

**Kate Copley:** On the back of that, may I write to the Committee after this meeting to follow up on your particular question about the movement of funding when pupils are referred from mainstream into a PRU or alternative provision? I will include that in our follow-up response.

**Ann Gross:** May I go back to the question about how far and how well parents know their rights in relation to the Equality Act and disability issues? Claire made some good and important points. This is a complicated system and the department takes very seriously the need to make sure that we do as much as we can so that parents know about their rights and they know about how the special educational needs and disability system works. We have taken quite a lot of action, both nationally and locally, to address that. It is not perfect, but the 2014 Act, for example, placed a new duty on local authorities to provide information, advice and support for parents, which covers both disability and special educational needs, and there are requirements to make that accessible. We have also required local authorities to publish local offers of their local services and provision, which cover both special educational needs and provision for disabled children. There are now parent-carer forums in every local area. They have existed since 2008. The department provides them with funding and they are really important in enabling parents to have their voices heard locally in terms of how the local system is working. They do play a role in working with local authorities and health partners in raising issues and concerns. Nationally, we have also published a very well received parents' guide to the special needs code and to the law. We are providing training for local authority staff on how the legal framework works. We also fund various helplines.

Contact a Family offers a national helpline for parents and we also fund some work that IPSEA does in terms of legal helplines, I believe.

**Claire Jackson:** I must make it clear that the department does not fund any of our services. It currently funds a project that makes sure information is going to areas of deprivation. Our advice services are completely separately funded from the department.

**Baroness Campbell of Surbiton:** Are you monitoring whether parents are receiving this information or have any idea it exists?

**Lord Harrison:** If I may say so, you have just given us a list of things that you have done. What is the follow-up? How do you compare what was true two years ago with the information that now needs to be imparted to parents?

**Ann Gross:** We carry out termly surveys of parent-carer forums across the country and they feed back to us on how well things are going locally, in their perception.

**Lord Harrison:** What are the results? Where are these results?

**Ann Gross:** We publish the results. They will tell you how well the various elements of the special educational needs and disability reforms are going. That is published. There are some positives there and there are some areas where they want to see improvement. Ofsted is also going to be introducing a new system of inspecting local area performance on special educational needs and disability. That is something you have been piloting and will be starting in the spring. That will be an important source of evidence about how things are going. All I can say is it is not perfect, but we have been working really hard to address this.

**Lesley Cox:** Can I just add to some of the information Ann has just shared? We follow up in our inspection framework particularly around the views of parents. We would check complaints histories before we even began to inspect, and we would give opportunities to parents, such as the very dissatisfied parent who was mentioned in the sense of the pupil referral unit. They would have the opportunity to and explain the situation to an Ofsted inspector, who would then follow up that line of inquiry and develop that into a leadership and management conversation. We would expect schools to be engaging with parents and raising their awareness of their rights but also making sure that there were high satisfaction levels with the service that was being provided, in the sense of the education that that child was getting.

To add a little more about the local area inspection framework, we have conducted three pilots this term and we conducted two last term. A big aspect of that has been engaging with parent forums. We have had some incredible feedback. We are doing road shows around the country that have been very well attended and there are more we are doing, which suggests that parents are certainly engaging with the new code of practice. They are providing really positive feedback, and some negative feedback, that we can then feed in to our inspection framework and the further inspection activities that we do. It has been very well received and the uptake from parents has been very high so far.

**The Chairman:** If you have that information, Ms Gross and Ms Cox, please send it to us. I know you said it was published, but it would be very helpful if you would send it to us. As you will see, we are interested in the actual outcomes.

**Q122 Baroness Pitkeathley:** This question is specifically for Ofsted. What is your relationship with the Equality and Human Rights Commission? Are you a member of its Regulators, Inspectorates and Ombudsmen Forum? Does the commission, in your view, have the right balance between enforcement and collaboration?

**Lesley Cox:** Our relationship with the Equality and Human Rights Commission is an informal one, in a sense that the information and guidance provided by them play an integral role in informing us about our own compliance with the Equality Act. Our lawyers meet regularly with the government working parties on equality issues. That is done quarterly to identify key issues that we can then align to our inspection approach. We are not a member of the Regulators, Inspectorates and Ombudsmen Forum, but we make sure the work it does is reflected in our own practice and that is reflected in our common inspection framework and the handbook we produce.

**Baroness Pitkeathley:** Do you have any plans to join that forum?

**Lesley Cox:** To the best of my knowledge, no, not at the moment.

**Baroness Campbell of Surbiton:** Do you think that is really working? In what ways are you able to have a relationship with the Disability Committee within the Equality and Human Rights Commission? The Disability Committee has done a whole raft of work on bullying and hate crime. Are you in connection with this committee? Do you have any even informal discussions or do you leave it to your lawyers to talk to lawyers?

**Lesley Cox:** That would all feed back into our inspection principles. It is a joined-up process. We are using our legal teams to interact with that commission, but that does feed back and would be reflected in the inspection guidance.

**Baroness Campbell of Surbiton:** But at the moment it is just the lawyers.

**Lesley Cox:** At the moment, my understanding is that the lawyers are the people who meet on a regular basis, but the further discussions that that would generate take place in Ofsted.

**Baroness Pitkeathley:** Could you answer the last part of my question, which was about the balance between enforcement and collaboration?

**Lesley Cox:** We think their enforcement record is impressive, particularly in terms of the number of court interventions. We find this encouraging, as a regulatory body, as it adds greater weight and support to our own work when we are carrying out our own enforcement activities, in the sense of inspection judgments. We think there is room for improvement and we would like to work closer with their teams, but we feel that the commission has gone some way to identify and issue non-statutory guidance and statutory codes of practice.

**The Chairman:** Thank you all very much for enlightening us on this extremely difficult and emotional field that you work in. We have learned a lot, and we hope you can continue to work your way through all of the problems you have so clearly outlined for us. Thank you all very much.

*17 November 2015*

## **Department for Education – Supplementary Written Evidence (EQD0189)**

At the Committee's hearing on the 17 November, at which you took oral evidence on disability and education issues, I promised to write to follow up on a number of points. I am also including in this letter answers to those questions on which my colleague Kate Copley committed to provide further information.

I understand that Lesley Cox from Ofsted will be writing separately on other issues, and I have copied this letter to her for information.

Further to your and Lord Harrison's questions about educational outcomes of disabled children and young people, I enclose a summary of data in the attached Annex.

Baroness Brinton asked about the number of specialist units for pupils with special educational needs (SEN) in mainstream schools. I can confirm that data are available from the school census. In January 2015 there were 1,440 state-funded mainstream schools with an SEN unit of which 530 were academies or free schools.

We also collect data on the number of pupils in resourced provision or (SEN) units in state-funded mainstream schools. For information, 14.5% (8,975 pupils) of those with a statement in primary schools were in resourced provision/SEN units in 2015. In secondary schools, 14.3% (8,340 pupils) of those with a statement were in resourced provision/SEN units in 2015.

Baroness Brinton also asked what happens to place funding when pupils are referred from mainstream education into a Pupil Referral Unit (PRU) or other alternative provision (AP). Regulations require local authorities to adjust the budgets of their maintained schools by deducting an appropriate per pupil amount when a pupil leaves a school, or is permanently excluded, and the local authority is funding the education of that pupil in alternative provision. We expect local authorities and academies to make similar arrangements, and the latest funding agreement between the Secretary of State and academies requires this.

Lord Harrison asked to see the results of our termly surveys of parent carer forums (PCF). We use these surveys to get the views of parent carers on a range of issues relating to their experience of the Special Educational Needs and Disability reforms. This feedback helps to ensure we target our work to support implementation effectively and keep parents and children and young people with SEN and disabilities at the heart of our reforms. Our Autumn term survey is currently underway, so the summer (June) 2015 PCF survey provides the latest data. The results can be accessed here:

<http://www.councilfordisabledchildren.org.uk/media/1000140/july-2015-newsletter-vfinal.pdf>. We make sure that we publish the PCF survey results alongside our Local Authority survey results, so that people can make comparisons to aid transparency. The Annex to this letter includes links to previous PCF survey results.

I hope that this letter addresses all of the questions raised by the Committee.

Yours sincerely,

**Ann Gross**

**Director, Special Needs, Children in Care and Adoption policy**

## Annex

### Outcomes data:

#### Attainment

- **Early Years Foundation Stage Profile (EYFSP)<sup>[i]</sup>**: 21% of pupils with SEN achieved a good level of development in 2014/15 compared to 71% for pupils without SEN.
- **Phonic decoding<sup>[ii]</sup>**: 39% of pupils with SEN met the required standard in 2014/15 compared to 83% of pupils with no SEN.
- **Key Stage 1**: 60% of pupils with SEN achieved the expected level in reading, in 2014/15 compared to 96% of those with no SEN. 51% of pupils with SEN achieved the expected level in writing in 2014/15 compared to 95% of those with no SEN. 67% of pupils with SEN achieved the expected level in mathematics in 2014/15 compared to 98% of those with no SEN. 63% of pupils with SEN achieved the expected level in science in 2014/15 compared to 96% of those with no SEN.
- **Key Stage 2<sup>[iii]</sup>**: 38% of pupils with SEN achieved the expected level in reading, writing and mathematics in 2013/14 compared to 90% of those with no SEN.
- **Key Stage 4<sup>[iv]</sup>**: In 2013/14, 20.5% of pupils with SEN achieved 5+ GCSEs at A\*-C or equivalent including English and mathematics. This compares to 65.3% of those pupils with no SEN. Note that due to reforms introduced in 2014 data is not comparable to earlier years.

#### KS4 & KS5 destinations measures<sup>[v]</sup>

- **After Key Stage 4 - Young people at the end of compulsory schooling**: 88% of pupils with a statement were in a sustained education destination compared to 82% of pupils with SEN without statements and 92% of those without SEN (2013/14 destinations).
- **After Key Stage 5 - Young people who took A levels/level 3 qualifications**: 49% of pupils with SEN in schools progressed to Higher Education compared to 59% of those without SEN. 34% of those with Learning Difficulty or Disability (LDD) in colleges progressed to Higher Education compared to 40% of those without LDD (2013/14 destinations).

You may also be interested to read the DfE summary of SEN data sources at:

<https://www.gov.uk/government/publications/sen-analysis-and-summary-of-data-sources>

#### Parent Carer Forum Survey results:

- The winter 2015 PCF survey:  
[http://www.cafamily.org.uk/media/843593/parent\\_carer\\_forums\\_survey\\_4\\_implementation\\_of\\_the\\_send\\_reforms\\_report.pdf](http://www.cafamily.org.uk/media/843593/parent_carer_forums_survey_4_implementation_of_the_send_reforms_report.pdf)
- The autumn 2014 PCF survey results:  
[http://www.cafamily.org.uk/media/818937/final\\_send\\_reforms\\_report.pdf](http://www.cafamily.org.uk/media/818937/final_send_reforms_report.pdf)
- The summer 2014 survey results:  
[http://www.cafamily.org.uk/media/774619/readiness\\_survey\\_june\\_2014\\_pcf.pdf](http://www.cafamily.org.uk/media/774619/readiness_survey_june_2014_pcf.pdf)
- The winter 2014 PCF survey results:  
[http://www.cafamily.org.uk/media/765084/anonymised\\_report\\_-\\_final.pdf](http://www.cafamily.org.uk/media/765084/anonymised_report_-_final.pdf)

9 December 2015

## Department for Transport, Disabled Persons Transport Advisory Committee, Transport for All – Oral Evidence (QQ 79-90)

Members present

Baroness Deech (Chairman)  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### Examination of Witnesses

**Graham Pendlebury**, Director of Local Transport, Department for Transport, **Keith Richards**, Chair, Disabled Persons Transport Advisory Committee, and **Gwynneth Pedler**, Transport for All

**Q79 The Chairman:** Good afternoon, everyone, and a special welcome to our witnesses: Mr Pendlebury, Director of Local Transport, Department for Transport; Mr Richards, Chair of the Disabled Persons Transport Advisory Committee; and Mrs Pedler of Transport for All. I should say a special welcome to her, she having been my next-door neighbour for many, many years.

**Gwynneth Pedler:** Thirty-two.

**The Chairman:** Right. This session is open to the public and a webcast of the session goes out live as an audio transmission and is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections as soon as possible. If, after this evidence session, you wish to clarify or amplify any points made during the evidence, or you have any additional points to make, you are welcome to submit supplementary evidence to us. We have to move pretty fast and, if there is not time to cover something, do please write in later.

We will move to the questions. Our members here will declare before a question that they ask any relevant interests that they have. To save time, I shall mention now the fairly long list of interests of Baroness Campbell on my right. She is patron of Just Fair, the economic, social and cultural rights organisation; patron of the National Disability Art Collections and Archive; founder and member of Not Dead Yet UK; and recipient of a social care personal budget, disability living allowance and Access to Work. She was a disability rights

commissioner throughout the life of the Disability Rights Commission and a commissioner of the Equality and Human Rights Commission for three years.

The first question comes from me to all of you. In their written evidence, both the Disabled Persons Transport Advisory Committee and Transport for All were very negative about the effects of the Act, noting that it has been seen as a “backward step” and as having “largely failed in bringing about transport equality”. Is the solution more proactive enforcement of the existing legislation or is a new legislative approach needed? When I say “the Act”, I mean the Equality Act 2010.

**Graham Pendlebury:** Good afternoon, everybody. I would like to start answering that by saying that the success of the Act is as much about how it has helped to raise awareness and change perceptions as it is about its detailed technical implementation. It is about what you want people to do and how you want people to behave in a civilised society. What has happened since 2010, when the Act received Royal Assent, is not just about the Act itself; it is about whether transport has got better for disabled people during that period across the piece.

Since 2010, in the Government, we would like to think that the situation has got better and progress has been made in a number of areas, for example in bus and rail accessibility regulations, where compliance is now at 89% and 60% respectively, which is a big improvement on the situation in 2010. You will see that, for example, in London you have the largest accessible bus fleet in the world. Given that half of all bus journeys in England take place within Greater London, that is quite a significant benefit. But there is no doubt there is still a lot to be done, whether that is about tackling physical access barriers, a better understanding of the needs of all transport and street users, or—something that we are particularly interested in—greater focus on what you might think of as the softer side around design: training, information, consultation and those sorts of areas, and how we encourage transport providers to offer better customer service and make use of the new data-rich information that is coming through in the digital era.

It is a rapidly changing world. Progress has been made. How much of that is directly related to the Equality Act? Some of it is; some of it is happening anyway as the world moves on, and clearly there is a lot more to be done yet. That would be my initial answer.

**Gwynneth Pedler:** On the topic of accessibility, I do not argue that these buses are accessible, but if we cannot get on them and we cannot access the pavements because they are too dangerous for us, having access is of little importance to us. The opinion of Transport for All is that progress has certainly slowed since the Equality Act. We saw the disappearance of access officers, our real allies in change and advice so service providers would be in no doubt about needing to meet their legal obligations.

**Keith Richards:** When we talk about the Equality Act, we are talking from the point of view of discrimination against people with disabilities. We are talking about the picking up of legislation that has been around for 20 years, going back to the Disability Discrimination Act, which focused on the rights of people with disabilities and included transport. Now we have the Equality Act, which is a very wide-ranging piece of legislation, the feeling is that we have lost focus on the needs of people with disabilities within that, which are strongly arguably different. There are lots of physical elements to do with access to goods and services, employment and all sorts of other things that do not apply to other aspects covered by the Equality Act.

For us, we are talking about legislation that has been around for a long time, but there are still issues that make it difficult for people with disabilities to access transport. My answer would be that it is a little about effectively enforcing the existing law so the Equality Act brings in the old Disability Discrimination Act rights and responsibilities. If there is not effective enforcement, it may as well not be on the statute book in the first place. It is also about using the law that is already out there but has not been implemented yet. There are elements of the Equality Act that are relevant but have not been implemented.

**The Chairman:** We are coming to that.

**Keith Richards:** There are also European regulations that come off the back of existing legislation that the Government in this country have opted out of implementing for the time being. Sometimes it is about looking at new regulation. As you will know, the Law Commission has produced an extremely good report on taxi and public hire vehicles and suggested a number of things that would really improve things for people with disabilities. I would say that the focus has been lost. The law is there but we need a real focus to be brought back on to the rights of disabled people.

**The Chairman:** Picking up a point you made, Mrs Pedler, if a disabled person is having difficulty with their buses and is not being properly treated, to whom do they turn to champion their cause?

**Gwynneth Pedler:** First, we turn to Transport for All, who are great supporters. We then have to contact the bus companies or rail companies to present our case. Unfortunately, it is left to the individual, because the law as it stands does not allow anyone to help us or put in a complaint on our behalf. This deters many disabled people from going any further than pouring out their hearts to Transport for All. Transport for All is helpless to improve the situation. Doug Paulley, who is a great supporter of Transport for All, will tell you that the stress on disabled people trying to take forward their own cases is enormous. Many of our members have given up the struggle and no longer access transport. It is too great a risk. Everyone takes possession of our wheelchair space. That is the greatest problem for us. It is taken over by people with pushchairs, luggage and shopping trolleys and by people standing, and we are helpless to get this put right. It happens all the time.

**The Chairman:** What you would like is group action.

**Gwynneth Pedler:** We want compassion and we want action, because it needs tightening or changing. Liz Sayce said in her supplementary submission that that wheelchair space was put there for us and everyone else has taken possession of it, and we are told time and time again, “Yes, okay. If no one else wants it, you have it”. In one week, I was refused four journeys because there were pushchairs in the wheelchair space.

**The Chairman:** I should add that we cannot discuss the specifics of the Paulley case because it is sub judice. We understand the general issues, but we cannot go into that while it is before the court.

**Q80 Lord McColl of Dulwich:** One of the common complaints about the Act is that some of the provisions have never been implemented, in particular taxi accessibility, which has been on the statute book, as you know, for 20 years. What can be done about this? In particular, there is the curious situation that taxi drivers can be prosecuted for refusing to take a blind person with a dog but one has never been prosecuted for refusing to take a disabled person. It seems a rather curious bias towards animals.

**Keith Richards:** As to the issue you raised initially about parts of the law that have not yet been implemented, the easy answer is that they should be implemented. There is a reason



why bits are in legislation. There was debate that ended with the legislation being on the statute book. It makes absolute sense that Section 165 of the Equality Act, which is the one that puts the duty on taxi drivers who have wheelchair-accessible vehicles to carry a passenger while in their wheelchair and not charge extra, should be on the statute book and implemented. We hear many stories of people who are charged extra, who are not assisted or who are not even provided with the service because the taxi driver sees them in advance and drives somewhere else. That is completely unacceptable.

The other issue, about assistance dogs and people with disabilities that do not require wheelchairs, is already covered by the Equality Act. The real trouble is how you identify the drivers and find witnesses to what happened. It comes back to the point that Mrs Pedler made. It requires individuals to take their own action under the Equality Act. There is not a penalties regime that sits behind it. There is not a licensing system that the local authorities can enforce efficiently that would take away the livelihood of people who are recidivists and continually receive complaints about their activities. To me, that would be far greater pressure on the taxi trade to get it right, as well as, as I say, implementing what is already there on the statute book.

**Lord McColl of Dulwich:** Would it be legal to set a trap for these taxi drivers and have these situations filmed, or would one be acting as an agent provocateur?

**Keith Richards:** I would suggest you take legal advice on whether that is possible.

**Q81 Lord Faulkner of Worcester:** I should declare my interests. I am chairman of the Great Western Railway Advisory Board, I am the sponsor of a Private Member's Bill on disabled access to sports grounds and I am a vice-president of the charity Level Playing Field. My question is on access to taxis. What do you think the level of penalty should be for a taxi driver who behaves in the way you have described so graphically?

**Keith Richards:** That is very difficult to answer. There would need to be proper research that looks at what equivalent penalties apply in other transport modes. Just off the top of my head, it would be very difficult to suggest a particular level of penalty. It needs to be adequate enough to prevent the person doing it again. Ultimately, the sanction could be, as I say, through a properly enforced licensing regime, to remove their licence to trade as a taxi driver. That could be the ultimate sanction, but with various levels of sanctions in between that and doing nothing.

**Gwynneth Pedler:** Transport for All knows of 20 cases where Transport for London has prosecuted, revoked licences or fined minicabs for not taking people with guide dogs. We think this should apply also to those with wheelchairs.

**Baroness Thomas of Winchester:** Why has the law not been fully implemented?

**Gwynneth Pedler:** We do not know. Norman Baker promised it five years ago but the promise is taking a very long time to come to fruition. We always hope that tomorrow may be better.

**Baroness Thomas of Winchester:** Mr Pendlebury might promise.

**Graham Pendlebury:** Yes. Thank you very much. I will just comment on that point about sentencing. The current penalty for not carrying a visually impaired person with a guide dog is a fine of up to £1,000, but there is also the possibility of revoking the licence. I looked at some of the data about what the level of fine has been where prosecutions have taken place in different local authority areas. It has ranged from £1,000 plus costs in Leicester and Birmingham down to £100 in Macclesfield and Harrogate. Different fine levels are being applied in different magistrates' courts. I know there are sentencing guidelines and

guidelines to magistrates about how they are set, but that is the current level of penalty. Whether or not one feels that is adequate is a subject for debate.

To go back to your question about Section 165, the first thing I would say is that we recognise in the Government that taxis and minicabs, to give them their colloquial term, are a uniquely valuable form of transport for disabled people. We strongly encourage all taxi and minicab drivers to assist wheelchair users and we discourage strongly the practice of charging extra for carrying a disabled passenger. 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.

Should we go forward with this, there are one or two things that we have to consider about how to help drivers understand what the duties are and provide a better service. I do not believe that taxi drivers or minicab drivers are bad people. The question is whether threatening them with enforcement, fines and so forth is the right way to bring about a change in behaviour. It is one way of bringing about a change in behaviour, but the Government are keen to try to avoid a very heavy-handed implementation and make sure that enforcement is a last resort. We have read and seen much evidence—Gwynneth’s evidence is particularly powerful—about how catastrophic it can be for people when they are either mistreated in this way or denied access.

**The Chairman:** Mr Pendlebury, Section 165 is the will of Parliament. Surely, it is not for the department to say, “Well, it might be a burden”. The burden is now being borne by those who need those taxis and cannot get them. There can be no questioning of this.

**Gwynneth Pedler:** We know that disabled people are people with less money than anybody else and they are being charged extra. For instance, a grandson taking his grandfather home from hospital was charged £12 for a 1.2-mile journey. When his friend rang up and asked the price for a similar journey, he was quoted £7. That is £5 more, which means a lot to disabled people.

**The Chairman:** Quite. I still have not heard a decent reason why Section 165 should not be brought into effect. We note that.

**Q82 Baroness Pitkeathley:** I have one interest to declare. I am vice-president of Carers UK. I want to ask about local authority powers. Are local authorities, in your view, making adequate use of their powers to make sure existing and new forms of transport infrastructure are accessible? Do they need more powers? If you could answer those fairly succinctly, then perhaps you could tell us what new powers you think they might need. Could we start with you, Mr Pendlebury?

**Graham Pendlebury:** It is a very pertinent question. One of the thrusts of the new Government is the English devolution and decentralisation agenda, so power is shifting ever more towards local government in new forms and away from Whitehall. It is about local prioritisation. Local authorities are responsible for the design and management of the roads in their areas. We expect them to work towards high-quality, attractive and inclusive streets, and a barrier-free pedestrian environment is fundamental to delivering that. There is a wide range of national guidance on that and there will be more revised guidance coming out, but, at the end of the day, local authorities are responsible for it. We have to accept that in some cases there are limited resources available to local authorities, which is all the more reason why they need to engage as fully as they can with disabled groups and other members of society to avoid costly mistakes.

I am not sure whether more powers are necessary. There are conflicting views about what represents the right type of streetscape for all members of society, including people with different disabilities, so layering on more and more legislation might box us more and more into corners and remove flexibility to adapt to local circumstances.

**Baroness Pitkeathley:** Particularly if it has not commenced.

**Keith Richards:** There is a need in some specific areas for more powers for local authorities. The idea of using existing powers more effectively and more efficiently is very strong. There are all sorts of reasons why local authorities do not or cannot do that. Mechanisms need to be put in place—I have no magic solution—for local authorities to take what they already have by way of an enforcement toolbox and use it.

**Baroness Pitkeathley:** Is it your view that that existing toolbox is adequate?

**Keith Richards:** No, it is not. There are specific areas where more tools are needed in the toolbox. I refer to the report by the Law Commission that I referred to earlier, particularly with something like taxis, which makes specific recommendations about the licensing authorities—for example, that they should have the power to make determinations in their areas that taxis are under a duty to stop when hailed, and for it to be an offence in such areas for a taxi driver of a vehicle displaying a for hire sign to fail to stop in response without reasonable excuse. It makes other recommendations, which we do not have time to go through here, but they are clearly argued in the Law Commission's report. DPTAC would say here is a Law Commission report that sets out some very strong reasons why there should be new powers and very strong reasons why existing powers should be used more effectively, particularly in the area of taxis and private hire vehicles.

Having said that, coming back to what Mr Pendlebury was saying earlier, there is a real issue about the extent to which you can prevent discrimination by raising the level of awareness among the people who are responsible for providing the services. It is about behaviour change. I am not sure legislation is the way to do that, apart from in some specific instances where there is no requirement currently for bus drivers, for example, to have disability, equality and awareness training. It is about making sure people understand that there is a business you are providing—you are providing a service—and it is all about quality, and what you provide to one person you should be able to provide to somebody else. You cannot do that if you are afraid of what their needs are and, therefore, make a decision not to provide them with the service in the first place. There is a combination of new powers, use of existing powers and raising levels of awareness where we possibly can.

**Gwynneth Pedler:** We could take the examples of Norfolk and Solihull, where taxi drivers must complete equality training before they can apply for a licence. This is a good way forward. TFA would like to see this in London. We would also like the licensing of minicab companies to be provisional on meeting targets of so many per cent of their fleets in three years, going up to 50% in six years, being accessible. That would be a move forward. This comes within the public sector equality duty. Our councils are failing to help us in so many areas. There seems little point in them having powers because when they have them they do not use them. We know that from all the examples we get from our members. We are let down time after time.

As for taking the details of a taxi as it whizzes past you, I would like to know what the great secret is. If it whizzes past me, I am so surprised it has gone that it is out of sight before I can get out my pen or pencil and write it down. I am talking as a disabled person. I do not have

fine words for you; I am talking to you as I experience it, along with all the other members of Transport for All.

**Q83 Lord Faulkner of Worcester:** You are talking very sensibly about disability awareness training for taxi drivers. Do you think there should be disability awareness training for bus drivers as well?

**Gwynneth Pedler:** I understand it is already in place.

**Lord Faulkner of Worcester:** Guide Dogs tells me that its experience is that 43% of people thought that their bus driver had no idea he was supposed to be looking after people with disabilities.

**Gwynneth Pedler:** It may be a day when he has gone to sleep, but by law they have to have disability awareness training. It is something like 35 hours over five years or seven years. I cannot quite remember, but it is mandatory.

**Keith Richards:** One of the problems with bus driver training is that European Regulation 181 is on the statute book but the Government decided to exempt themselves from the compulsory bus driver training requirement. That runs out in 2018.

**Lord Faulkner of Worcester:** That was the answer I was hoping for.

**Keith Richards:** What I would say to that is that the inevitable is going to happen. Why not do it now?

**The Chairman:** Surely, when something new is built the opportunity has to be taken to make sure it is accessible. Can any of you assure me that all the stations on Crossrail will be accessible?

**Graham Pendlebury:** I think the intention with Crossrail is that all stations will be accessible. I think the answer to that is yes. I would need to check my notes on that, but certainly you are right that where there is new, particularly flagship infrastructure such as HS2 or Crossrail, that should be the expectation.

**The Chairman:** That is the intention. Can you assure me that they will be? We really need to know this. When as much money is being spent as it is on Crossrail, surely every single station must be accessible. If you do not have the answer, we would appreciate hearing it.

**Graham Pendlebury:** Okay.

**Gwynneth Pedler:** We spent two years campaigning for Crossrail to have all stations accessible. We had various demonstrations and we were all set to have one early in the morning at Greenwich station. The night before, Boris announced that all stations would be accessible—all seven stations on the list for not having step-free access would now be step-free.

**The Chairman:** I hope that is the case. It would be reassuring to know.

**Gwynneth Pedler:** It was a promise.

**Q84 Baroness Thomas of Winchester:** I must declare some interests. I am trustee and vice-president of Muscular Dystrophy UK, a member of the disabled access committee at Lords Cricket Ground and a patron of Thrive. I also spoke in a debate about shared road spaces, which I am going to talk about now, raised by Lord Holmes of Richmond about a month ago. Shared road spaces, where cars, pedestrians and other users occupy the same space without necessarily having clearly delineated pavements and roads, are becoming common in town centres and are sometimes claimed to be safer for all users. How do they impact on disabled people, particularly the visually impaired? Should they be discouraged rather than encouraged?

**Graham Pendlebury:** This is a very interesting example of where sometimes there can be competing or conflicting interests even within the broader disability community. There are some categories of mobility-impaired pedestrians, including those in wheelchairs but also other people carrying heavy loads or people with pushchairs and so forth, who welcome the ability to travel through a step-free, level-surface environment. 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 and so forth.

The department's position in a sense is a neutral one. We neither promote nor discourage shared space. It is, again, very much a local authority matter, but we do expect that local authorities who are pursuing shared-space schemes should make sure that they meet relevant legislation and meet their duties under equalities legislation. We stress the importance of engaging with all the different groups representing disabled people to make sure that the design is right, very much conscious that there are some groups and people within the visually-impaired community for whom shared space can feel potentially quite a threatening environment. I was learning about this only the other day. It can cause confusion for assistance dogs as well, who are not quite clear what signals they are getting from the environment. We are not in a position where we say we think they should somehow be banned because they cause a problem for some people, or we actively promote them. They have to be suitable for the local environment, but we would strongly urge the designers of these to make sure that they do take into account the views of different disability groups. There are, in a sense, conflicting views on this.

**Baroness Thomas of Winchester:** May I jump in before we go any further? One of the real problems is the guidance that I think your department put out. Is that right? The guidance does seem rather feeble.

**Graham Pendlebury:** There is some guidance on shared space, which dates back to about 2011, so it is probably a little long in the tooth. These things are becoming more common and they are evolving in their design, so it is one of the areas that we would want to look at. Certainly, there is one particular area, around tactile paving, where the guidance needs refreshing. We are out to consultation at the moment on some interim changes, but it is our plan, working with Keith's advisory body, to do a complete refresh of guidance around tactile paving, which is one of the most important areas.

**Q85 Baroness Campbell of Surbiton:** Are you aware of the "Accidents by Design" survey in 2015, where a third of respondents—not disabled respondents; the public—said that they go out of their way to avoid shared spaces? Will that be factored into your evaluation?

**Graham Pendlebury:** Where there is some good verifiable evidence that that is the case—that they are having the effect of discouraging people from going there, which is clearly not the intention. The intention behind shared space is to get more people coming in, lingering and taking advantage of—

**Baroness Campbell of Surbiton:** You are aware of the survey.

**Graham Pendlebury:** That is certainly something that we would need to take into account.

**Baroness Campbell of Surbiton:** Are you aware of the survey, Mr Pendlebury?

**Graham Pendlebury:** I cannot say that I am personally aware of that survey, but it may well be that the experts in the department have taken receipt of it. It sounds like a valuable piece of evidence, but not the only evidence that we would have.

**The Chairman:** How are you measuring the impact of shared road space design?

**Graham Pendlebury:** I would reiterate that it is local authorities who are responsible for them. In so far as they become more and more popular, one would infer that there is a sense that they are having the desired effect. One can look at particular locations. The area that I often think about is around Salford Media City, where there is quite a vibrant sense of activity going on. I am not sure that we have a formal mechanism for evaluating each and every one, and I am not sure we would necessarily say that was our role. It is for local authorities to take their own decisions on those.

**The Chairman:** That is slightly problematic, because we will never find out whether the majority prefer them and how to weigh the needs of the majority against the possible obstacles to minorities.

**Baroness Thomas of Winchester:** We have not heard from Mrs Pedler.

**Gwynneth Pedler:** Not enough emphasis is put on the need to have impact assessments. We used to have impact assessments for everything. When I asked in Oxford what impact assessment they had carried out, they said, “We do not need to do one now”. I said, “How will you gauge how many people, especially blind people, are deterred from using this new system where seven roads go into one square and there will be no traffic lights?”. People will cross when and how they like by eye contact. To me, that seems arrogant. How can anyone with no sight, or distorted sight, indicate to a driver that they want to cross the road? They cannot judge distance. They cannot judge speed. At night it is even worse. We are entitled to go out at night. I feel very strongly about these shared spaces and join with all other disability organisations, along with RNIB and Guide Dogs, in saying these are dangerous for people with disabilities and they should not be encouraged.

The inventor of this system says that British highway engineers do not even understand the concept. They are not meant for very busy areas; they are meant to make the environment look attractive. They are putting aesthetics before the needs of disabled people. We are supposed to be under the Equality Act so we have equality.

**The Chairman:** Mr Pendlebury, you said it was not the department’s job to measure the impact; it is for local authorities. How would you suggest this Committee gets a handle on the local authorities and finds out whether they have carried out impact assessments?

**Graham Pendlebury:** I suggest that you might want to speak to the Association of Directors of Environment, Economy, Planning and Transport, which represents the senior officers in local government who lead on transport, environment and planning issues, as its title suggests. The example Gwynneth referred to is a good one. It is hard for someone in Whitehall to tell Oxfordshire what it should be doing at a junction in its street. We can provide guidelines about what the legislation says and what considerations should be taken into account. For sure, I would expect it would be good practice to carry out some form of impact assessment, whether or not it is mandated, but we are moving into a world where we are less and less likely to want to give some order or instruction to a county council somewhere in the country about how they should design their local street scene. ADEPT may well be the kind of people who would have an informed opinion on it.

**Baroness Thomas of Winchester:** Some local authorities have done studies. I cited one that Herefordshire had done on one particular road in Hereford. That was very useful. I came to the conclusion, as others did, that every single shared space must be bespoke. Personally, I would not have them on bus routes as some authorities do.

**Q86 Lord Faulkner of Worcester:** Could I ask about the provision of audio-visual information, particularly on buses? If you want to answer about trains as well, that is fine. A

lot of our witnesses are concerned that, although the regulations may be in place, they are not being properly enforced. They also make the point that if you have poor sight or no sight an announcement of stops on the bus is incredibly important to you. Should there be a requirement that AV information is included in the public service vehicle access regulations?

**Keith Richards:** My answer to that would be yes. There is a requirement in the regulations that cover rail accessibility to have audio-visual information. It seems odd that there is not a similar requirement for buses and coaches. The issue is that, rather like taxis, buses are such an essential mode of transport for many people with disabilities, but it is too risky for them to rely on them, in terms of not just physical access but knowing where they are—if they are in an unfamiliar environment, knowing that they have got to the stop they need to get to. All those things are straightforward for many people, but if you have not just a visual impairment or a hearing impairment but anxiety or mental disabilities that mean that in unfamiliar environments you really need assistance, when in other environments you may not, to be self-reliant and independent is crucial. Audio-visual delivers that. Many bus companies suggest they can develop apps that will be just as good to tell people where their bus stop is. Many people do not have smartphones and, if they do, they may not have the coverage at the time they need it. A lot of people cannot operate smartphones anyway. That is one tool, but audio-visual helps so many people. It also helps tourists and people who do not know where they are because it is not a bus trip they go on regularly, or they have never been on at all. It does seem to me very odd that there is not a mirroring in the bus regulations of what is in the rail regulations.

**Gwynneth Pedler:** Transport for All has a message that is short, clear and simple—four words, in fact: mandatory across the whole of the UK. It is a bit longer than four. I am sorry; I am bad at maths. Mandatory across the UK.

**Lord Faulkner of Worcester:** That is very clear.

**Q87 Lord Northbrook:** What more can be done at the local level, whether by government, councils or other bodies, to ensure greater accessibility on public transport and in public spaces? Perhaps witnesses could focus on a couple of areas: whether local authorities should use their planning powers to refuse planning permission for buildings with inadequate access, or licensing authorities should use their powers to refuse to license vehicles without satisfactory access for disabled people or vehicles without audio-visual information.

**Graham Pendlebury:** Using planning powers is certainly one option local authorities might want to consider. It is a difficult one, because there are many multiple considerations about planning applications and so forth. The same applies to the licensing of vehicles. The thing I would worry about is that certain parts of the country could become a desert. If there is a sense that there is no market or aspiration, people will say, “I do not have to be a minicab driver”, or, “I do not have to be a black cab driver”, or, “I do not have to operate bus services”. One has to be careful about a one-size-fits-all policy. There should be local discretion in that, suited to local circumstances. However, the underlying principle behind what you are saying, Lord Northbrook, makes a lot of sense.

What I would focus on is better design, which we have talked about already. Design in the 21st century has to be part of the solution. When you think about, for example, improvements that have been made in airport design to assist people with mobility impairments, quite big steps are being made. The same is true at rail stations. Much more focus on better design is one thing.

We want to do more around this whole agenda of training. A lot of what I keep hearing, and what I read in the many submissions that you have received from many distinguished organisations, is about failures of information and training that can have catastrophic results for the individual disabled passenger. It is that softer area. We do need to put more emphasis on that. One of the things the department is in the final throes of going through the procurement process for is a review of disability awareness practice of bus drivers and producing some new best practice guidance on that. Again, we are working with Keith's committee on that.

I want to put in a plug as well. One area that has not been mentioned so far is the interface between driving and using public transport. The DfT funds mobility centres around the country. There is one near where I live in south London, which is fantastic. That is where people can go and take advice on how they can best maintain their personal mobility through driving, but if that is not an option for them, there is clinical and technical expertise to help people find other ways of getting around. There is something more about how we join up that kind of interface. I personally would be very keen on that, because it does help people to stay mobile for longer. It is a bit more in the bespoke or tailored environment. Those would be a few things I would suggest at first blush.

**Keith Richards:** We support a lot of what has just been said. With the Bill dealing with the idea of local bus franchising that seems to be going through Parliament, there needs to be a mirroring of what happens in the rail franchising process in the bus franchising process. I am not saying the rail industry has got it perfect or right, but it does get it to a much larger extent than many other modes of transport, because it was required to get it but also because it sees the business case and it sees the good service elements of it. 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.

What DPTAC would like to see in the process that is under way now and will be going on over the summer is a real focus on making sure that that local bus franchising process builds into its DNA the need to be accessible and to provide accessible services, recognising that there are a lot of costs attached to a lot of physical access requirements. On new rolling stock and new buses it makes absolute sense, and economic sense, to build in as much as you can to make it accessible. Retrofitting is a slightly different matter, but we have yet to see the evidence to show that it does cost as much as many bus operating companies say it costs to retrofit, for example, audio-visual. The thing that really does not cost a huge amount, as Graham has said, is the training element of it. As part of a franchise, you should be able to show that your staff are not only trained at one point in the year but receive continuing professional development as a compulsory requirement of operating a franchise bus operation.

**Gwynneth Pedler:** Could I pick up Graham's point about helping us keep our independence? It sounds a great idea, but there is a flaw. PSVAR and the Department for Transport are living in the dark ages. We would like them brought into the age of enlightenment. They do not accept that mobility scooters are suitable. There seem to be many funny reasons for this. I have been riding my scooter since 2003. I have been accessing buses and trains since 2006. I have never fallen off; it has never fallen down; I have not knocked anybody down or killed



anybody; I have not had my battery dripping out. I have not been strapped in; I have just been in the wheelchair space quite safely with guard rails around me. Could we please have them moving forward? If you take away my mobility scooter, I am finished; I would not even get to the pavement. That is what you are condemning us to. Wheelchairs are harder and harder to get hold of. Councils cannot give them; they do not let you have them until you are really very disabled. Scooters are much cheaper to buy so they are in reach. Less than £1,000 for a scooter is in reachable distance for most. Motability is taking away cars from many people and they will not have wheelchairs. This policy of “Mobility scooters out” is a disaster. It is a peculiar view and they have never looked at it in depth. We do not have anybody having a try.

**The Chairman:** When you say “out”, do you mean they are not being provided, they are forbidden, or what exactly?

**Gwynneth Pedler:** I do not know what the reason is. On wheelchairs, I do not think they have the money. I do not know, but I asked for an upgrade on mine and they said, “You do not really qualify for one” so I am hanging on to the one that really is not very much good because it is the one I have and I might be able to get to the pavement in it. I do not know what I will do when I get there, but I can get to the pavement. I do not know their thinking behind that, but I am really concerned about the thinking behind banning mobility scooters.

**Q88 The Chairman:** Mr Pendlebury, may I come back to your department and the taxi sections of the Equality Act that are not in force? I wonder whether your Minister could write to us and tell us why they are not in force and when they will be. As I said, it is the will of Parliament. I find it extraordinary that the taxi, which is the lifeline of so many disabled people, has not had that force put behind it, whereas the sections to do with guide dogs and so on have. I do not understand why, after all these decades, these provisions about taxis are not in force.

**Baroness Campbell of Surbiton:** May I add to that? I would like to see the evidence behind the statement that this would be too much of a burden on taxis. I would like to know where the evidence is coming from, what surveys have been done and what the actual burden is. I would like it detailed and compartmentalised so that we can understand the real reason behind this. “Burden” is not enough. We need to know what the burden is, why it is and where the evidence is coming from.

**Baroness Jenkin of Kennington:** May I ask an additional supplementary? I have no relevant interests to declare. As we are talking about being dragged into the 21st century, how does Uber fit into all of this? Is it covered by the legislation? I do not think it has been raised when we have been talking about taxis, has it?

**Graham Pendlebury:** It is a fascinating area. Keith touched on this before when he talked about smartphones. Uber is a service that essentially you access through a smartphone. There is no particular brief for Uber. There are a number of companies operating in the same kind of space as Uber, but Uber very recently launched a product called uberASSIST, which is targeted specifically at disabled people. I think Transport for All has been involved in providing some of the background training for Uber drivers to participate in that. This is one of those areas, a bit like mobility scooters, that has changed enormously very rapidly. There are a thousand different types of mobility scooters; they come in all different shapes and sizes; and the technology is constantly shifting. Uber is an example of a disruptive technology that is blowing apart much of the taxi and minicab market in London and the other 24 cities where they are. They are doing that without any legislative push. They have

identified a market opportunity and I guess the other operators, including black cab drivers, are going to have to respond to that; otherwise, they will see their business disappear. I think it is a very smart move by Uber to get into that space. I do not know whether the product is any good. I had a semi-joke exchange with Keith that some of his members might be good mystery shoppers for Uber services. Are they what they are cracked up to be? I do not know, but certainly they are being talked about a lot. That is something that has come about without any legislative driver.

I know that Keith's point is that not everybody has access to a smartphone and not everybody can use some of the other apps and technology that are available. It comes back to this audio-visual thing on buses, if I may. That is an example where you mandate a specific technology on a vehicle, but the technology is changing. People are using smartphones. We had a design competition recently, which was won by a young girl. The thing she came up with was a vibrating wristband that told you when you were approaching your stop. There is an attempt to try to commercialise that product at the moment. New things are coming along the whole time, of which Uber is just one example, which are rapidly changing the environment in which we are operating. Keith, I know you are perhaps not quite as enthusiastic.

**Keith Richards:** I am not quite as enthusiastic about uberASSIST. It has the potential to be a step back in terms of an inclusive transport system and to create a two-tier provision of service if there are no requirements to have fully accessible vehicles. UberASSIST is about trained drivers, which is a good thing.

**Baroness Jenkin of Kennington:** With a price differential.

**Keith Richards:** I do not think there is any price differential whatever. The thing about Uber is that the way the price operates depends on the number of cars already operating on the market. It is perhaps a little more complex than an ordinary taxi or minicab service. There is also the issue of fully accessible vehicles. There is no requirement for those, so it is hit and miss whether there are any available that meet your access requirements at the time of day or night that you may need them. However, the requirements to have full accessibility and training for everybody means that, at any given time, the likelihood is that there will be vehicles that are accessible to you with your needs, not dependent on whether the driver fancies being out there or using his car for a particular purpose. The disruptive nature of it is good in the sense that it makes people think and take notice, but I would not want it to be seen as the cure-all for the issues that exist and we have talked about already.

**Q89 Baroness Thomas of Winchester:** As we are talking about cars, may I ask Mr Pendlebury a question about blue badges? As well as displaying a blue badge, should disabled drivers have to prove they qualify for tax exemption when they park? I ask this because in the Motability magazine that I had the other day, this is what a letter writer asked, and the answer was: "Some councils only look at blue badges while others check with the DVLA. You should check with the local authority". For a blue badge holder to have to ring the local authority when they go to a new area to see whether they qualify for this tax exemption is quite a business. Do you have any views on that?

**Graham Pendlebury:** I am afraid I will have to come back to you on that. I would not want to speculate. I do not know the direct answer to your question, so I would rather just write back to you, if I may.

**Baroness Thomas of Winchester:** I took the last blue badge legislation through the House of Lords as a Private Member's Bill with a handout Bill, and I have never heard of this.

**Graham Pendlebury:** You are definitely more expert than me, then. If I may take that away, we will get back to you. This was in the Motability magazine, was it?

**Baroness Thomas of Winchester:** I have it here and can give it to you.

**Graham Pendlebury:** Thank you.

**Q90 Baroness Campbell of Surbiton:** I have a very quick question to put to all the panel. Do you think it is fair to insist that disabled passengers phone up 24 hours in advance when they want to go on the train and need assistance? This is the blight that disabled people experience. They cannot be spontaneous. I would like you all to answer that.

**Keith Richards:** From the perspective of DPTAC, we think the idea of having to pre-book two days before you want to travel is not equality. We see that there may be issues around just turning up with no notice whatever. We would like the industry to be geared up to be prepared for people to turn up with no notice whatever. This is where the opportunity to send a text, use smartphone technology or phone a number a couple of hours before you are about to leave for the train station should be just as effective as requiring you to think that far in advance. It just makes no sense whatever. I can understand why in the past it may well have been good practice, but these days I cannot see it.

**Gwynneth Pedler:** Transport for All regard it as a great injustice. It prevents us being flexible; we cannot change our mind and go out to lunch with a friend. We get booked on another train. It takes away our independence and our freedom of choice. On a number of occasions I have booked assistance and I have turned up with this precious bit of paper in my hand and they have said, “You are not getting on the train”, or, “There is nobody to help you. You cannot go”, or I arrive at the station and there is nobody there. It does not help you at all. We still make the booking, but we have great objections. Some places ask for 48 hours’ notice, which is even worse.

**Graham Pendlebury:** There is a bit of a landmark here. I understand that the London Overground commuter rail service has now introduced a turn-up-and-go service and done away with this requirement to book in advance. They have just brought in some other services that they have taken from the Greater Anglia franchise. There is one rail operator doing this. It will be really interesting. If that works on what is an incredibly busy commuter service, surely the other train operators will have to take notice of that because it will be a demonstration that there is no reason why it should not happen.

While I have the floor, may I answer one question about Crossrail? I knew I had the information here and I have found it. The answer is that all 40 Crossrail stations will be step-free to platform level by 2019. That is the answer to your question.

**The Chairman:** We record that. We look forward to it. Thank you very much, the three of you. We have been given a very clear picture of the obstacles that disabled people face when they try to use public transport. I hope that some of the answers are not just aspirational but will really come into effect. We need to know much more about shared spaces. I am glad to hear about Crossrail. I am left with great unease about the taxi situation. Thank you very much. Do press on with the valuable work that you do.

*3 November 2015*

**Department for Transport – Supplementary Written Evidence (EQD0186)**

Thank you for the opportunity to set out the Government's position regarding the provisions in the Equality Act 2010 that, if commenced, would place certain duties on the drivers of wheelchair accessible taxis and private hire vehicles (PHVs).

To reiterate the comments Mr Pendlebury made to the Select Committee, we recognise that both taxis and PHVs are a particularly valuable form of transport for disabled people. The Department strongly encourages all taxi and PHV drivers to assist wheelchair users, wherever possible, and strongly discourages the practice of requesting additional charges to carry a disabled passenger.

I appreciate the concerns of the Select Committee and 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.

Should we go forward with the regulatory solution, we will need to ensure that drivers are fully aware of the nature and extent of their duties, and are suitably trained to fulfill them. We must also consider the extent to which local authorities are able to effectively enforce these provisions in the Act.

Yours sincerely,

Andrew Jones MP  
Parliamentary Under Secretary of State  
Department for Transport

*25 November 2015*

## Department for Work and Pensions and Government Equalities Office – Oral Evidence (QQ 1-13)

### Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Campbell of Surbiton  
Lord Faulkner of Worcester  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester  
Baroness Wilkins

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### Examination of Witnesses

**Charles M Ramsden**, Deputy Director, Equality Framework, Government Equalities Office, **Pat Russell**, Head of the Office for Disability Issues, Department for Work and Pensions, and **Tracey Kerr**, Head of Legal Advisers, Government Equalities Office, and

**Q1 The Chairman:** Good afternoon, Mr Ramsden, Ms Kerr and Ms Russell. I am sorry that you are so far away. Next week, we will try to rearrange things. I do hope that you will speak up, because some of us, on top of everything else, are hard of hearing, albeit that you are of course being recorded. I wave to you from here.

I will not go around the table introducing people because there are name tags, so I hope you will see who we all are. Welcome. Thank you very much for coming. The session is open to the public, and a webcast goes out live as an audio transmission and will be accessible subsequently on the parliamentary website. There will be a verbatim transcript of the evidence, which will also go on to the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. It would, of course, be helpful if you could tell us as quickly as possible if it needs correcting, because it will immediately go out to the members of the Committee.

If, after this evidence session, we run out of time, you wish to amplify points or there is anything extra you want to say, you are, of course, welcome to submit supplementary evidence to us. This is not the whole of the opportunity open to you; there will be more if you want to send in any supplementary evidence.

We have divided the questions among us, and I think you know what the questions are. As we ask them, we will also declare our interests. One member has so many relevant interests to declare that I hope you will allow us to put them on a piece of paper rather than spending

a lot of time reading them all out, but we will be transparent about all the interests that we have around the table.

Would the three of you like to introduce yourselves briefly and tell us what your role is in relation to disability?

**Charles M Ramsden:** I am Charles Ramsden from the Government Equalities Office. My role is head of the equality framework team in the GEO. The team's role is in part the oversight of the 2010 Act. We then have a rather similar role for the remaining segments of the 2006 Equality Act and, along with that, a sponsorship responsibility for the Equality and Human Rights Commission. Finally, we are the GEO's liaison and front team for Parliament more generally, co-ordinating the work on Oral Questions, Written Questions and a whole series of bits and pieces of parliamentary business. That is our scope.

**Pat Russell:** I am the director of the Office for Disability Issues. The ODI's principal role is to support the Minister for Disabled People in his cross-government role. We have four main functions. The first is to develop and monitor the cross-government disability strategy, currently the Fulfilling Potential strategy. The second is to co-ordinate the representation of UK interests in the UN convention. The third is to promote engagement with disabled people as part of routine policy and programme development and delivery. The fourth area is to promote actions and activities that remove the barriers that disabled people face. That includes challenging others to take account of the needs of disabled people and to involve them in matters that impact on them.

**Tracey Kerr:** My name is Tracey Kerr. I am deputy director of the Government Legal Department. I head up the team of lawyers who advise the Government Equalities Office. We advise it on the operation of the 2010 Equality Act and what remains of the Equality Act 2006. We have also advised and led on the Marriage (Same-Sex Couples) Act, the Civil Partnerships Act and the operation of the Equality and Human Rights Commission. We also lead a cross-government legal team on the public sector equality duty, and we deliver training and advice to other government department lawyers on the operation of the duty.

**Q2 The Chairman:** Listening to the three of you explaining all the different issues that you have to deal with, it makes one wonder the Equality Act has been a success for disabled people, along with all the other protected characteristic people under the Act. How does their position compare now with what it was under the Disability Discrimination Act 1995? What criteria do you use to make your judgment when you are comparing the position before and after the Equality Act?

**Charles M Ramsden:** I will respond first, if I may. It is obviously easier for us to see the position as it would have been for disabled people and for disability as a protected characteristic going into the Equality Act as it began its life than as what the position might be perceived to be in 2015. As you will be aware, we very recently published the government memorandum to the Women and Equalities Select Committee on the post-legislative scrutiny. That is largely a factual statement of what has been happening, rather than a subjective or survey-based document. The Equality Act as it was set out in 2010 and was implemented, largely in 2010 and then in 2011, was first and foremost a consolidating measure and intended as such to bring together a large number of pieces of existing primary and secondary legislation that had grown up over a period in the equality and diversity area. So in many ways the Act simply reflected earlier legislation. However, some of the exceptions involved disability. The provisions on disability included a number of changes and what were seen as improvements: a streamlined definition of "disabled" and "disability"

without a list of capacities that had to be demonstrated; the creation of the prohibition of discrimination arising from disability to replace earlier protections that had been undermined in the courts; and a lower threshold of “substantial disadvantage” rather than “impossible” or “unreasonably difficult” for access to reasonable adjustments in goods, facilities and services.

Our perception is that under the Act as it was implemented, the position of disabled people was intended to be, and broadly was, strengthened compared both to the Disability Discrimination Act and, to some extent, to other groups whose legislation did not significantly change. It was really just a consolidation arrangement as far as they were concerned.

One further point is that throughout the 2010-15 period, the Equality and Human Rights Commission has been heavily involved with the Act, in part as a regulator, in part as an enforcer and in part as a guide to the legislation. Within the commission, once again there is a slight but perceptible leaning towards disability interests, given that the statutory Disability Committee has continued to exist in respect of disability as a characteristic. That is not echoed across any of the other characteristics. Under current arrangements and legislation, the committee will continue to operate until 2017. That was our perception of the situation as it was in 2010-11.

**The Chairman:** Mr Ramsden, I note that and I have read the memorandum. What I do not hear from you is a qualitative assessment. You have told us what the law is. I note at the back of the memorandum that many parts of the Equality Act have not been brought into force, which is rather worrying. I do not hear what criteria you might use to see whether the position of disabled people is actually better or worse.

**Charles M Ramsden:** In terms of their position under the Act, one criterion that we look at is the sort of litigation that has gone on. You mentioned that case law is set out in one of the sections of the memorandum. What sort of cases were these? Did they result in the changes in the law being required by the courts? Did anything within them that appears to be, or at any rate appeared to the courts and tribunals to be, a significant weakness? Also, how have disabled people’s interests fared in the context of other characteristics? As the memorandum shows, the Government have not found it necessary, and indeed the courts have not found it necessary, to require changes to the provisions in the Act that involve disabled people.

In terms of the relationship with other groups within the Act, we are not conscious of disabled people being in what might be called conflict with the other groups. That is not the case for, say, religion and gender—or maybe religion and LGBT. Generally speaking, cases that concern disability have been considered in a fairly pure sense on disability-related issues. One possible exception that might be in the minds of the Committee is *Paulley v FirstGroup*, the case in which the Court of Appeal relatively recently ruled in favour of a mother with a buggy using space on a bus and against a disabled man in a wheelchair. That is the only case that we are aware of where there seems to be any kind of potential conflict or difficulty within the protected characteristics. Of course, at the moment, that case is under appeal to the Supreme Court, so who knows what the eventual outcome will be?<sup>77</sup>

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<sup>77</sup> See however the written evidence of *FirstGroup plc*, paras 20-26, (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/20887.html>) and the supplementary written evidence of the Government Equalities Office (letter from Charles Ramsden, Deputy Director, Equality

**The Chairman:** Can I invite Ms Russell and Ms Kerr to add to this? Has the legislation been a success?

**Pat Russell:** From the perspective of the Office for Disability Issues, our responsibilities are not directly about the implementation of the Act; rather, they are about taking the Government's disability strategy, rolling that out and seeing how it is performing. Our role is very much an enabling one that seeks to ensure that government departments, for example—if I can put it this way—do disability properly. Our role is to encourage and support other government departments in making sure that as they take policy making forward it is within the requirements of the Act and that they think about, for example, engaging disabled people in developing policy in partnership. We do not have a particular view on whether the Act is working for disabled people per se; rather, we are looking at fulfilling potential strategy and the provisions within it. We have an outcome framework that measures against some of the themes that disabled people told us were important as part of that strategy. If it would be helpful, I could go through that strategy in a bit more detail for Members if they are not familiar with it.

**The Chairman:** It would probably be better if it came up later or in written evidence.

**Tracey Kerr:** We have seen no great increase in cases relating to disability. There have been a number of cases on the reasonable adjustment, but that is to be expected, given that it is an objective test and it is usually for the courts to set that out. 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.

In relation to the additional provisions for disability that were put into the Equality Act, the success that we have seen has been the introduction of Section 15 on the discrimination arising from a disability, which addressed a lacuna in the law that had been created by a previous case, the Malcolm case. We have seen no real case law on infringements of Section 60 on the restriction on making pre-employment inquiries about disability and health. We would see that as a success, too.

**Q3 Baroness Campbell of Surbiton:** My name is Lady Campbell. I am afraid that I am the one with the range of interests. I would like to explore with you current government policy, its key features and how it impacts on equality for disabled people, especially how it fits in with the Equality Act. I was interested when you said, Ms Russell, that you felt that you had very much an enabling role for government departments. I am sure that one of your main enabling roles is to make sure that the Minister conforms to the Act and to see how current government policy will impact on that. Perhaps you could tell me to begin with where the Equality Act fits in with current government policy. Then I will ask you to give a couple of examples. Perhaps we could start with you, Ms Russell.

**Pat Russell:** 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. We expect government departments to do that appropriately and properly. So the support that we give to the Minister is to help him to have conversations with other departments about



policy development and how it impacts on disabled people. One of the ways in which that happens is through stakeholders perhaps identifying their concerns and issues on policies that have been developed in other departments, and they might raise those conversations with him. We can then help him to have conversations with his opposite numbers; we can work with officials in other departments to explore where things may perhaps not be working as disabled people would expect that to work. There have been examples of that, which some Members may know. With the previous Minister for Disabled People, stakeholders were concerned about changes that were being made to the disabled students' allowance. We then had contact with the Department for Business, Innovation and Skills and have been working alongside it to ensure that stakeholders are properly engaged in a consultation process. One of the outcomes of that was a Joint Written Statement that the Minister for Disabled People and the Minister for Universities and Skills made in September last year. That was a tangible example of the way in which we support the Minister in operating at that level. There are other mechanisms by which the Minister will also talk to his opposite numbers. The current Minister for Disabled People has made it very clear that he wants to be seen to be working jointly with other Ministers and has already had a number of bilateral meetings on some important issues that disabled people have raised with him. He has, for example, had a meeting with the Solicitor-General, and I know they talked about hate crime. That again is as a result of a conversation that the Minister had with a stakeholder. So there are a number of examples in which we give effect in that way. There is another layer of activity of the Office for Disability Issues, which involves working directly with officials on cross-government groups or other structures. Work is going on with, for example, the Department for Communities and Local Government on a round-table discussion it held with professional organisations on the built environment. An action plan has been jointly sponsored by both departments, so that there is more—

**Baroness Campbell of Surbiton:** What if you felt that the Government were moving into the direction of maybe a breach in the Equality Act? Is that where you and Mr Ramsden will get together with Miss Kerr and say, “What can we do about this? Let us look at the current government policy—the proposed cap on access to work, for example, and the closure of the ILF, and how that is very much against development policy on halving the employment gap”. How do you work together as a team to reconcile that situation?

**Pat Russell:** In terms of individual policy areas, we very much expect individual departments to ensure that they meet the public sector equality duty. I certainly look to legal colleagues to explain how that is manifested through guidance and through the Treasury. We would certainly treat the Office for Disability Issues, for all that it is housed within the Department for Work and Pensions, as still being in some regard independent, and we would look to policy officials within the Department for Work and Pensions in a not dissimilar way to other policy officials.

**Baroness Campbell of Surbiton:** How would you work with Mr Ramsden on compliance?

**Pat Russell:** Well, we both have colleagues at our level and at working level, and I have regular meetings with the director as well to identify issues that we have in common. This is always an area where we can develop that, look at things that get raised particularly by stakeholders, and see where we can take that.

**Lord McColl of Dulwich:** Would it be fair to say that in assessing whether the Equality Act has been a success for disabled people, you seem to be concentrating on process—what people are doing? What about outcome?

**Pat Russell:** The Fulfilling Potential strategy has an outcomes framework attached to it. When we went through a two-year consultation process with disabled people to develop the strategy and published that, alongside that we also had conversations through a consultative approach on the things that disabled people felt were important that we measured and that were outcomes. They did not directly reflect the Equality Act; they were on themes that disabled people told us were important. That outcome framework was published in 2013, along with the Making it Happen policy. Last year, in 2014, we published the first annual update on that, which lists the measures that we have agreed with stakeholders are important to be measured. It is a long-term view, so we have some data. Obviously some of that evidence is drawn from just one year's data, so we cannot say whether there are any trends or impacts, but it is a starting point that gives us a baseline against which we can measure whether there is progress against the themes that people have said are important.

**Lord McColl of Dulwich:** Could we have a copy of those outcomes?

**Pat Russell:** Yes, of course, we can make that available.

**Q4 Baroness Thomas of Winchester:** I looked at the outcomes on the web, and under "choice and control" it simply says, "Transform the care and support system, to promote well-being and independence". But that does not sit very well with the closure of the ILF. I wonder whether that means anything. How are you going to monitor what the closure of the ILF means to disabled people? Are you going to talk to local authorities to see how they are fulfilling their part of the bargain, which is what disabled people are very worried about?

**Pat Russell:** The closure of the Independent Living Fund and the arrangements that are now being put in place are under the remit of the Department of Health, which will have responsibility for monitoring how local authorities are delivering against their new requirements. So that is not something that will appear as a result of the Fulfilling Potential strategy.

**Baroness Campbell of Surbiton:** So how does that fit in with your enabling cross-government responsibilities? Saying that that is not your responsibility does not sound very enabling.

**Pat Russell:** We are not a policing forum, we are—

**Baroness Campbell of Surbiton:** Enabling.

**Pat Russell:** Yes, so we cannot police and we have no powers to require other departments to do things. However, I can say that the Minister for Disabled People has already had a meeting with the Minister for Communities and Social Care and has raised this, and we can certainly get a response for you from the Department of Health on how it plans to do that. I am sure that when you call the Minister, which I understand you are doing in September, you will want to ask him how he is progressing.

**The Chairman:** We must move on now to Lord Harrison.

**Q5 Lord Harrison:** My name is Lyndon Harrison, and I have no relevant interest to declare. Could you tackle the question of the division of responsibilities between Ministers and government departments and, for that matter, the funding of what you do, which may well find itself split necessarily among a variety of departments because of the nature of the cross-cutting exercise? Does that hinder the implementation of the Act? Could you describe that? Are there turf wars between departments? If it is a blockage to a satisfactory design, what would your better template be?

**Charles M Ramsden:** Yes, certainly. In terms of the division of responsibilities, I had better describe our current structure in the Government Equalities Office, because I might have

added that to my introduction. At present, 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. At the more strategic level, it is probably helpful to have this type of approach, not least because it enables the Government Equalities Office to have a direct entry into a number of other Whitehall departments. At present they are Communities and Local Government, Justice and Education, but in the past the pattern has been somewhat different. This helps in a number of ways, one of which is what Ministers sometimes refer to as the mainstreaming of equalities consciousness in Whitehall. You quite often have difficulties if you have a small self-contained unit that is rather isolated, particularly a small unit in this area where, if you are not careful, it becomes seen as slightly self-obsessed and preachy, and other departments take the view, “That is fine for the GEO, but we have other priorities to think about”. We are quite well networked within government, which is helpful. We have on occasion contributed funding to other departmental programmes, most recently on bullying and harassment work being carried out through the Department for Education and the Home Office. Once again, over the years, there has been a pattern of the GEO being able to fund smallish programmes where other departments have not been able to do so.

**Lord Harrison:** I understand the defence of mainstreaming and the reasons for it, but perhaps I may ask your other two colleagues whether they can give some ready examples of where there have been infelicities but the ambition has been to work across departments or with different funding streams—or, indeed, in trying to develop policy where clashes of ideas necessarily emerge.

**Pat Russell:** There are a number of ways in which we give effect to that joint working. The first is the Inter-Departmental Ministerial Group on Disability. This was initiated last year, in 2014, and set up at the commission of the Prime Minister. It was headed up by the then Minister for Disabled People, Mike Penning, and subsequent Ministers for Disabled People have retained the chair of that group. It has 14 government departments represented on it and met three times last year. It is 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.

One of the strands of work that came out last year was on improving government communications and making them more accessible. There were elements of good practice going on and areas where stakeholders had, frankly, identified practice that was not good enough. So cross-government discussions continue about the issues and how to address them. That is an example of a genuine cross-government piece. The need for government departments to join up on policies for all sorts of stakeholders is well recognised, so there are a number of other areas where government departments with their Ministers will come together on projects. For example, in the arena of sport, there is the Moving More, Living More programme, on which Ministers from different departments are represented. And there is a range of other things. More recently, the Health and Social Care Implementation Taskforce has been set up, chaired by the Secretary of State for Health, which contains a range of Ministers from different departments. There is therefore recognition that that there are themes whereby it is important for departments actually to join up.

A third area and a third way in which the Office for Disability Issues promotes and enables some of this is through the functioning of the Disability Action Alliance. This new structure was set up as part of the Fulfilling Potential strategy. It encourages membership, and nearly 400 organisations are members. The Office for Disability Issues provides secretariat support, which encourages organisations to work together on things that are of interest to them, and a number of projects are running that have brought together interests that also cross different government departments.

**Lord Harrison:** One last try. When has it fallen flat on its face? Give an example. It must have done.

**Pat Russell:** Some things are harder than others.

**Lord Harrison:** What things are harder?

**Pat Russell:** We have interesting conversations with the Department for Communities and Local Government, for example on building regulations, where there are issues such as how far government should regulate and how far regulations should go. There is the Red Tape Challenge and how far people should be given judgment locally. That was an example where we know that there are issues that stakeholders come to us about around housing design and the built environment, challenges around street scenes—

**The Chairman:** If you think of any more, you could write in and tell us. I have been quite worried about the Red Tape Challenge and whether carrying it out might not be so good for the disabled. However, we must move on.

**Q6 Baroness Thomas of Winchester:** I receive DLA, and I am a trustee of Muscular Dystrophy UK and a member of the MCC disability access committee at Lord's. I hope I have not forgotten anything, but if I have it is in the register. I do not know which of you to ask about reasonable adjustments, because it is such a thorny issue. What we really want to know is what the Government have done to ensure that the reasonable adjustment duties are applied in practice. We all know about the theory, but the question is whether they are applied in practice. Those of us who are disabled feel that a great deal is not being done in this area. How well do you think service providers and employers know what a reasonable adjustment is and what their duties are? I do not know which of you would like to start.

**Charles M Ramsden:** I am happy to start by referencing the Equality and Human Rights Commission, which obviously has a key role across the whole area, and I believe you are taking evidence from it shortly. The EHRC has published a range of guidance, including on workplace adjustments, matters to be taken into account on determining disability questions more generally and adjustments for disabled people. The commission has also published technical guidance for schools in the matter.

Another point on the EHRC is that in quite a number of the cases cited in the memorandum, as it happens—I am sure it is no coincidence—in the bulk of the disability-related cases, including those concerning reasonable adjustments, the commission is assisting the disabled party or in some way intervening in the case to try to ensure a favourable outcome where there have been difficulties over reasonable adjustments and cases have reached the court. As my legal colleague said earlier, the reasonable adjustment concept, imported from the DDA into the Equality Act, is now the best part of 20 years old and case law has built up consistently over a long period. This is helpful in preparing this sort of guidance, particularly on some of the more difficult issues such as anticipatory duties and what they might require in practice. We are aware, not least from Lord Blencathra's Private Member's Bill in your

Lordships' House last year, of concerns about specifying some of the reasonable adjustments, particularly those on premises.

**The Chairman:** I am going to invite Lord Faulkner to jump in here, because his question relates rather specifically to that.

**Q7 Lord Faulkner of Worcester:** I am going to ask you about education. Before I do that, I should declare my interests, which I have declared to the Committee. These are all unpaid. I am president of a body called the Heritage Railway Association, which has to do with accessibility, and chairman of First Great Western Trains advisory board. I am vice-president of the Football Conference and vice-president of the charity Level Playing Field. I have a Private Member's Bill in front of the House next Friday on access for disabled people to sports grounds. I am also a trustee of the Science Museum and of the National Football Museum.

How do you think the education world is coping with reasonable adjustment? Do you feel that it is falling rather behind what people would expect of it?

**Charles M Ramsden:** I have some answers on this that are largely taken from colleagues in the Department for Education, so we will see whether I can respond in further depth. The Department for Education's view is that the number of disability discrimination claims to First-tier Tribunals has been reasonably and fairly consistently low, year on year. It has cited a figure that I am happy to give the Committee, although I apologise because I do not have broader context for it, of 135 claims to the First-tier Tribunal in 2012-13. Obviously, it is difficult to say in isolation how significant that is, and we may need to back some of that up with a letter to the Committee later.

The Department for Education provides schools, including academies, with non-statutory advice to help them to understand how the Act affects them and how to fulfil duties under it. The new special educational needs and disability code of practice from September last year reinforces the Equality Act. DfE tells me that it is currently doing outreach work with voluntary organisations to ensure that schools understand their responsibilities towards children with special educational needs and disabilities. It also tells me that the Ofsted inspection framework requires inspectors to take into account the effectiveness of a school in meeting the needs of disabled pupils.

**Lord Faulkner of Worcester:** There was a seminar on 30 June at which concern was expressed that the obligations on schools had not been properly brought to the schools' attention. Perhaps that is the reason why the number of claims is relatively low: people do not know what they ought to be doing or what the rights of disabled pupils should be.

**Charles M Ramsden:** As I mentioned a few moments ago, we should write to the Committee about the claims, if the Committee would find it helpful. We will certainly take that point on board in doing so.

**Lord McColl of Dulwich:** Can I ask you what happened to the 135 claims? Were they successful?

**Charles M Ramsden:** We can cover all those points in the letter that we send to the Committee. I am afraid that this is not my area, although I gather that my legal colleague has something to add.

**Tracey Kerr:** As Mr Ramsden has pointed out, there is guidance published and available to schools—schools have been alerted to this guidance—on the operation of the Equality Act for schools. It sets out what a reasonable adjustment is and points back to the EHRC guidance on what reasonable adjustments mean for schools. There is also a requirement in

the Act for both schools and local authorities to set out accessibility plans, so although schools are not subject to the reasonable adjustment duty as it relates to making alterations for physical features, they are required to set out an accessibility plan, which is their plan for making schools more accessible to disabled pupils. Ofsted is able to take that into account in its inspections.

**The Chairman:** That takes me neatly to Lord Northbrook.

**Q8 Lord Northbrook:** I have no relevant interest to declare. Is the law on reasonable adjustment sufficiently precise in view of the bit of case law that has built up? We have mentioned Paulley against FirstGroup, which I understand is going to the Supreme Court. There is also Natalie Black v Arriva North East and the Secretary of State for Work and Pensions v MM.

Secondly, as has been mentioned, there are two Private Member's Bills in this House: Lord Blencathra's Bill on step-free access to public buildings and Lord Faulkner's Bill on greater accessibility to sports grounds.

**Tracey Kerr:** Perhaps I can answer that one—to some degree, anyway. The Arriva North-East case was going to be joined with the Paulley case, but Arriva decided not to take it any further, so it is relying on the Paulley decision in the Supreme Court to see how it develops in that area.<sup>78</sup>

On the MM case, I may have to pass over to my colleague. There might be an appeal, but I am not sure. In relation to other reasonable adjustment cases, we think it important that it is for the courts to decide what is reasonable based on the particular facts and the particular disabled person who is before them. 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—and quite unusual; it gives claimants quite a lot of power—for claimants to go to the courts to explain what is reasonable for them and for the courts to decide. As I said, the case law is developing.

**The Chairman:** Is that not a bit late? How long is it going to take for something to go to court? Surely you cannot expect a disabled person to go through the whole judicial procedure just to get that determination. It is too late.

**Tracey Kerr:** One would hope that the employer, the service provider or the school would be aware of the need to make sure that they were taking into account the issues and the person before them. Also, it is an anticipatory duty, so they should be building that into their thinking about how they are going to provide their services or deal with their employees.

**Baroness Thomas of Winchester:** One important matter in relation to buildings is Part M of the building regulations, which we all know like the back of our hands. But a lot of hotels seem not to be following Part M particularly well, and they are not being pulled up by the building inspector, because a lot of building inspectors have not been employed by local

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<sup>78</sup> See however the written evidence of FirstGroup plc, paras 20-26, (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/20887.html>) and the supplementary written evidence of the Government Equalities Office (letter from Charles Ramsden, Deputy Director, Equality Framework Team, Government Equalities Office, to Baroness Deech, Chairman of the Committee (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/22168.html>)).

authorities because local authorities are now very strapped for cash. What are the government offices doing about making sure that Part M of the building regulations is being followed by, say, new-build hotels?

**Pat Russell:** On the specifics of whether an individual building going through the planning process is for local authorities to pick up, we would certainly expect people locally to be challenging local authorities. If the Committee wishes to get further advice from the Department for Communities and Local Government on how it supports that, we can certainly give that.

**Baroness Thomas of Winchester:** How it is enforced is what we want to know.

**Pat Russell:** We can certainly get advice, and I guess the Committee can decide whether it wants to call officials from that department to give further evidence.

On the broad range of reasonable adjustments that members of the Committee have alluded to, this again goes back to the enabling role of the Office for Disability Issues, so while it is important that the law works effectively, there is also a big education piece to be done in this space. There are a number of projects and initiatives which the Office for Disability Issues is party to that seek to create some of that knowledge. Among them is the Accessible Britain Challenge, which was launched last year by the then Minister for Disabled People, which was very much about challenging communities, local authorities and businesses to demonstrate and celebrate where there had been greater inclusivity and accessibility. That culminated in an awards process, and awards were given out in March this year. Disabled people were involved right the way through that process on the design of the awards, the judging panel and the awards themselves. There is the Disability Confident campaign, which the Department for Work and Pensions runs, which is very much about seeking to promote to employers the fact that there is a rich pool of workers among disabled people but also that reasonable adjustment need not be the scary thing that a lot of people seem to think it is and that in many cases reasonable adjustment pays for itself many times over. That campaign is being run by and is supported by disability stakeholders and organisations both large and small. That is rolling out across the country. We have a lot of organisations locally championing this in local areas. We are running the Accessible Stadia project with the Department for Media, Culture and Sport. In that project we surveyed disabled people and, indeed, organisations: football grounds, rugby grounds, cricket grounds.

**The Chairman:** I shall have to cut you off there. Perhaps you can write to us about that, because it is more factual stuff.

**Baroness Wilkins:** I am in receipt of DLA and I do not think that I now have any other interests to declare. Just to follow up on that, what you have been talking about is educational campaigns, which is what we had before we had the DDA and the Equality Act. The Act is supposed to be enforcing things, not educating the public. Where is the enforcement?

**Charles M Ramsden:** Yes, indeed. We have referred to the Equality and Human Rights Commission. I am obviously aware that there are concerns about the EHRC's functions. The commission, though, retains all the enforcement functions that it was originally given in the 2006 Act, so it can still assess compliance with the public sector equality duty, carry out investigations, issue unlawful act notices, require the production of action plans and assist people in taking cases to court. I mentioned that clearly from the way the key legal cases crop up in the memorandum, these are responsibilities which the EHRC takes very seriously.

Clearly there is a difficulty, given the observations that one or two Committee members have made about it—that it is too late by that time because it has reached court. The nub of the issue, and the extremely difficult thing, is trying to get some kind of handle on enforcement at the very earliest stage, before there has been any kind of dispute. Clearly that is the \$64,000 question and the element that is invariably the most difficult to solve.

I am being prompted on Part M of the building regulations and separate enforcement legislation for that. I am sure that that is the case and that it may be useful, but, as I say, once again this is, I suspect, about trying to get right to the very earliest stage of enforcement and dealing with it there.

**Baroness Campbell of Surbiton:** I think it is very important to get to enforcement, but I am very concerned that you seem to be emphasising the Disability Confident programme on employment when there is an organisation, the employers' forum, which has been doing this for 10 years. Disability Confident is its work. Why are we reinventing the wheel when there is already an organisation that is doing really good work and when you could be doing the enforcement practices on employers who are Disability Confident but still do not undertake the reasonable adjustments so that employees can come to work every day? It seems that we are spending a lot of time on the various campaigns that already exist and not enough time enforcing the Equality Act. Can you tell me why you are doing the Disability Confident programme? It is already being done.

**Pat Russell:** The function in terms of the DWP's responsibilities rather than the Office for Disability Issues', if I can make that distinction, was, as I described earlier, very much about the DWP's role in helping people who are out of work to get back into work, and therefore it is about their relationship with employers and supporting that process. It has been determined that part of that process is about education.

On the work that you have already referred to, I believe and understand that colleagues are working alongside the Business Disability Forum, so the department is not seeking to replicate that work but to support it. It is not the department's policy responsibility to look at enforcement. As Mr Ramsden has explained, that enforcement function sits elsewhere.

**Baroness Wilkins:** As part of the Red Tape Challenge, as you have already mentioned, there was a review of the public sector equality duty. What has been the effect of that review? Has it been damaging, as it seems to have been? I was going to bring up the issue of housing.

**The Chairman:** Could I ask Lady Brinton to put her question now, too? It is more specific, but it is on the same topic, and I think it would help our witnesses.

**Q9 Baroness Brinton:** I should declare my interest first—I have a blue badge. I think that that is the only thing that I need to declare for this item. How have the Government applied the public sector equality duty to financial decisions affecting disabled people, and are they able to assess the cumulative impact of such decisions, particularly in the light of the EHRC's report in 2010 recommending that the Treasury, among other departments, do that assessment?

**Charles M Ramsden:** First, to take the question about the review of the public sector equality duty, it reported in the late summer of 2013. In terms of the actual review and to some extent its recommendations, this exercise tried to focus on a number of different issues—the effectiveness of the PSED, if I can use that jargon, and what was seen as overcompliance. Quite a number of its recommendations were attempts to scale back what was seen as overcompliance. This has been something that we have taken into account in our work with government departments and others in the past 18 months or so. However, at



the same time we have also been extremely conscious that how the courts have interpreted compliance with the duty has sometimes been rather different and much more substantive. We tried to put this into a balanced product towards the end of the last Parliament. We at the Government Equalities Office issued revised guidance to government departments in September 2014 and then reissued it in the run-up to the election. It is intended to be a complete set of guidance for government departments on how to apply the duty in a proportionate and sensible way, very much with an eye to not being taken to court and not having to waste money in revising processes and starting again, or whatever, and basically getting the decisions right in the first place. We were careful to ensure that lessons that had been learnt from the Bracking case and others involving disability interests were prominent in that guidance.

On the financial side, the concerns of the EHRC that were mentioned were taken forward in what was initially and inevitably a somewhat difficult process with the Treasury, in 2011, 2012, or thereabouts. I am pleased to say that the Treasury has worked extensively and at length with the EHRC and others on the financial side of government decision-making and the PSED since then. Agreement on a lot of the approach and methodology has been reached to the extent that, at one point towards the end of the last Parliament, the Treasury at ministerial level reminded departments of the importance of having due regard to the duty when taking spending decisions. So that went around Whitehall at a very senior level.

**Baroness Brinton:** Much is being heralded about the Budget tomorrow, and obviously we do not know what is going to be in it specifically. Mention has been made of the ILF, the bedroom tax and a whole string of things. Is there somewhere at the moment where we can see a Treasury assessment of the cumulative impact on disabled people of all those changes?

**Charles M Ramsden:** I know that the Treasury will be very mindful of the interests of disabled people and the public sector equality duty when going into the Budget and the spending review. My understanding is that one of the remaining points of difference is 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. Although agreement on that important area and one or two other points has not been reached finally, none the less there has been a good deal of discussion and agreement between the commission and the Treasury on the central government approach to these very wide programmes.

**Q10 Baroness Jenkin of Kennington:** I have no interests to declare. Could I ask about the provisions on taxi accessibility? You will know the background to this and how the provisions replaced the provisions in the DDA, which were never brought into force. The previous Government said that they would be brought into force before April 2011, but they have still not been. We would like to hear what the plans are in this phase.

**Charles M Ramsden:** I am aware that these are long outstanding in the sense of being unimplemented since the DDA provisions. I am afraid that I do not have very much to offer the Committee on this issue. I am aware that they were part of the equalities Red Tape Challenge in 2012. I am certainly not aware of any plans to commence them. I suspect that if this is an issue that the Committee wishes to pursue further, it would be best done directly with the Department of Transport, which has an oversight role for that particular part of the

Equality Act. It would certainly be through that department that decisions would be made about commencement on taxis.

**The Chairman:** We will, but I want to express my concern that there are so many parts of the Equality Act which the Government have enacted and the public believe are in force that are not in force. That is quite inexplicable.

**Q11 Baroness Pitkeathley:** I am Jill Pitkeathley, and the only interest to declare is that I am vice-president of Carers UK. I would like two sentences from each of you in answer to my two questions, starting with Miss Russell—and please note that I am asking for your opinion about this. How effective has the Equality and Human Rights Commission been in promoting and enforcing compliance with the Equality Act? We have mentioned the EHRC a lot this afternoon. How effective has it been, and is it better or worse since the changes in its duties and responsibilities? Could you start, Miss Russell—and, please note, one sentence in answer to each of those questions.

**Pat Russell:** I am not clear—you asked for an opinion, but I do not have a personal opinion on this. In terms of how the ODI operates with the EHRC, we do a lot of work with it and support it in some of its work. Where we operate on that basis, we have found it to be helpful and effective and we expect to carry on working with it in that way.

**Baroness Pitkeathley:** Has there been any effect since the changes?

**Pat Russell:** I was not working on this subject area before the changes, but certainly the advice that I have been given by colleagues is that we cannot point either to improvements or to deteriorations. Some of it is often down to individuals and individual areas of interest.

**Tracey Kerr:** In the important pieces of litigation that we have seen, it is very common for the EHRC to intervene in that case. One of its strategic aims in intervening is to encourage enforcement and development of the Equality Act. We have certainly seen that; the EHRC has pushed that strongly. In the Bracking case, for example, it raised its concerns that the UN Convention on the Rights of Persons with Disabilities was not being applied or implemented properly. It has been very effective in some of the high-profile pieces of litigation. We have also worked with it in the past when it was developing its codes of practice on the Equality Act. It is clear that it takes that very seriously. When we have had differences of opinion, it has been very clear about its opinion and made it clear that just because we have a different opinion, that does not mean that it will change its opinion—it is very strong in that sense. Since the changes made by the Enterprise and Regulatory Reform Bill or Enterprise and Regulatory Reform Act some time ago, it is fair to say that it has been looking at its strategic approach, which has included developing its legal strategy. I have a working relationship with its legal director and we meet from time to time to discuss issues as they arise.

**Charles M Ramsden:** In response to the first question, I would say that it has been reasonably effective, given the limitation that it has always had as a body—for various reasons, it has only been able to concentrate on strategic cases and not to spread its activities throughout the courts and tribunal system.

On the second question, there have been two developments, which I think are both favourable. It has become more focused since the reforms, in our view. It does fewer things—its span of powers has been reduced but, as I mentioned, the enforcement areas remain, and I think that it has been more focused on those. The other point I would like to raise is that it has become more business-friendly and more able to interact with employer and service-provider groups and it is taken much more seriously by those groups than might

have been the case a few years ago. That is good for trying to get more into the first stage of enforcement, as we were talking about.

**Q12 Lord McColl of Dulwich:** I think this question has been answered quite a bit already but, specifically, is reliance on individual litigation an effective means of enforcing compliance with the Equality Act?

**Tracey Kerr:** It is difficult to see how else one can enforce rights that fall on individuals. As Mr Ramsden set out, the EHRC has powers to assist individuals to bring claims, financially and otherwise. It can also intervene in claims that have already been made. It has the ability to conduct investigations if it thinks that employers, service providers or others are acting unlawfully in relation to the Equality Act and can issue unlawful act notices. So there is a two-pronged attack. The EHRC also takes a more strategic approach. I would hope that for example it would look to see where there are a lot of cases that involve a particular issue, which might mean that it starts to conduct an investigation into that area. At the same time, if it sees a particularly important case or it becomes aware of a particularly important issue for an individual, it can assist them with that. It is two-pronged in that sense. As I said, given that rights are available to individuals, I cannot see how else compliance could easily be enforced other than through the methods provided in the 2006 and 2010 Acts.

**Lord McColl of Dulwich:** Do we have any figures on how effective the EHRC is? How many cases has it dealt with and how effective has it been in those?

**Tracey Kerr:** I think you would have to ask the EHRC. I do not hold that information.

**Charles M Ramsden:** Yes, it will have those figures, not least because from time to time we ask it how many times it has intervened using certain powers.

**Lord McColl of Dulwich:** Could we have that information?

**Charles M Ramsden:** Yes, we can certainly supply that. Obviously, it is going to give evidence, too.

**The Chairman:** What about the impact of the cuts in legal aid? I have seen some figures showing a dramatic drop in the number of cases brought by individuals. That must surely be due to the cuts in legal aid. Have you noticed anything?

**Charles M Ramsden:** Our consciousness is that the changes in the statistics, which are set out to some extent in the memorandum, more generally involve concerns expressed to the Government about the imposition of fees for employment tribunals rather than changes to legal aid. I am not sure that I have a lot to say on the legal aid changes. Obviously, in respect of fees, the Government have recently announced a review of employment tribunal fees, which is expected to report later this year.

**The Chairman:** Proportionately, does the EHRC not have fewer resources at its disposal for the disabled than the Disability Rights Commission had 10 years previously? Can the EHRC devote as much time and resources to the disabled sector as was the case before the Equality Act 2010?

**Charles M Ramsden:** The answer to that question is rather overlaid by the fact that we are dealing with a number of different changes at the same time. Obviously, as you say, there was the change in the structure, but there have also been changes to the EHRC's budgets, as well of course as the whole background to the 2010-15 Parliament and so on, so I find it difficult to give an answer to that question.

**Q13 The Chairman:** Now we are coming towards the end, and there are two themes that seem to have come up. I have not formed a very clear impression of the quality of the impact of all this on the disabled, although I feel better informed about the law. I do not

know whether the rest of the Committee agrees with me. I also wondered about the cross-government role to which you have made many references. For example, how often do your two offices meet? In your concluding remarks, could you tell us again very briefly about quality and how often you meet? Maybe today is the first time you have all come together—I do not know.

**Tracey Kerr:** I cannot comment on quality. As a lawyer we only measure the fallout in terms of what cases we are successful in and what cases we are not, so on that front we are successful in some and not successful in others, and you will know as well as I which ones those are. As for legal advice on equality to government, my team and I advise the Government Equalities Office, but I also chair the discrimination lawyers' working group, which has representatives of legal advisers to each government department sitting on it. We meet quarterly and also email each other fairly regularly as well. The aim of that meeting is to take a strategic, cross-government approach to legal advice on the Equality Act. With cross-cutting legislation, it is expected that all government lawyers will be able to advise themselves on that legislation—the Human Rights Act, the Freedom of Information Act and so on. They should hold that knowledge themselves and be able to advise their own Ministers in whichever government department they work. But when there are issues arising that are cross cutting and where there is no clear agreement about how that should be argued, we are frequently contacted by those government department lawyers to discuss the correct interpretation of the Equality Act. So from that respect, at a legal level I would say that there is good connection between each of the government legal advisers.

**Pat Russell:** On the level of contact, in factual terms, Mr Ramsden and I have met once previously in the last six months to have a face-to-face conversation, and I have also met the director of the Government Equalities Office similarly to talk about where the strategic direction is. Officials in both organisations are in regular contact, which is not dissimilar to how lawyers speak to each other, as my colleague described, when issues come up in daily business. So it is very much the case that the two bits of the organisation work together. The Office for Disability Issues points to all the other departments that we have spoken to, which is our day-to-day bread and butter activity.

**Charles M Ramsden:** On the quality point, I acknowledge again that the memorandum is largely a factual account of what has been happening over the past five years. I agree that not much quality assessment comes through there. There are a couple of points. First, we are dealing with legislation that, although it is only five or six years old, spans three different Governments, which makes some of the quality assessments rather more difficult. Secondly—and this picks up interestingly on a response to an early question—where the shifting around of departments has not been terribly helpful is in not having a Select Committee in this area, holding hearings on this subject, for a number of years. Obviously, we now have such a Select Committee in the Commons, as well as your Lordships' Committee. That may be a way in which Parliament can consider the quality issues.

As one final plug for the EHRC, I mention that later this year a publication—its second major review of the area—called *Is Britain Fairer?*, is due to be published. That is intended to go into a good many areas that a memorandum could not do.

**The Chairman:** Thank you very much for your time, the three of you. There were various places where we encouraged you to send in more written evidence or you offered to do so, so we look forward to hearing more from you. I thank all of you very much indeed and wish you good luck in the very important work that you do.

*7 July 2015*

**Department of Health, Care Quality Commission, NHS England – Oral Evidence (QQ 123-130)**

[Transcript to be found under Care Quality Commission](#)

## **Department of Health – Supplementary Written Evidence (EQD0183)**

### **House of Lords Select Committee on the Equality Act 2010 Disability Provisions**

At the recent hearing of the Lords Committee which I attended on 17 November, I promised I would write in relation to your question about the relationship between the Department of Health (DH) and Department for Work and Pensions (DWP) in relation to the Independent Living Fund (ILF). In addition, I wanted to add further detail about our relationship with the Office for Disability Issues (ODI)

Following the decision by the then DWP Minister to close the ILF, officials in the DH, DWP and the ILF worked together to put in place a process so that local authorities were prepared to assess and meet all of the eligible needs of former ILF recipients when they took on this responsibility on 1 July. A comprehensive package of measures was put in place, which included:

- The ILF carried out an extensive programme of transfer support reviews to enable local authorities and ILF users to prepare for the transfer of responsibilities, achieving 97 per cent satisfaction scores from users who have responded to a post visit feedback request, while continuing to provide a full business as usual service to current users.
- The DH worked with DWP, the ILF and other stakeholders to develop statutory guidance to ensure that no former ILF-users had their care interrupted during the transfer, and this would continue until their local authority had undertaken an assessment and agreed a new care package based on their eligible needs. I understand that this process reflected your vision of a process to maintain continuity of care when an adult moves between local authorities, and that you were involved in preparing the guidance.
- A Code of Practice was agreed between the ILF, ADASS and the Local Government Association in England, based on a number of key principles and including a high-level commitment to maintaining choice and control and independent living outcomes in line with the aims of the Care Act 2014.

Officials in the DH and DWP continue to work together on this issue, most recently in preparing submissions for the Spending Review so that the ILF funding was included in the social care bid. This close relationship will continue as DWP will conduct research on the actual impact of the Fund's closure, based on interviews with a sample of former users, and the DH evaluates the implementation of the Care Act 2014 such as personalisation, choice and control.

In terms of our work with ODI, DH continues to engage with them on a regular basis to collaborate and ensure that we work together as effectively as possible. As I indicated at the Select Committee, a senior official from the ODI is a member of the National Learning Disability Board (previously known as the Learning Disability Programme Board). The Board takes a strategic view of the wide range of issues that impact on people with learning disabilities and their carers. The Board has proposed the development of a learning disability action plan covering areas that would enable people with learning disabilities to lead a life like anyone else, with meaningful involvement in their communities, and with the health and social care system identifying and addressing their needs.

The ODI, along with other members, has already provided helpful advice and feedback on early thinking on the learning disability action plan, for example on linking into work that is happening on addressing hate crime. The Board also provides the opportunity to listen to and engage with the National Forum of People with Learning Disabilities, National Valuing Families Forum and Mencap as well as their wider networks, which can help to inform the ODI's policies.

ODI and DH recently reviewed the department's contribution to the Fulfilling Potential Forum, whose purpose is to discuss and input into strategic priorities and direction across government to improve the key outcomes identified by disabled people as set out in 'Fulfilling Potential: Making it Happen'. The Forum was previously jointly chaired by the Minister for Disabled People and the Minister of State for Care and Support, and it has now been agreed that it will be led by the Minister for Disabled People. DH will continue to be involved. ODI is also an active member of the cross-government physical activities and sport officials group (Moving More and Living More) led by DH and the Department for Culture Media and Sport.

Finally, I wanted to confirm that when my team meet with EHRC in early December, they will raise the matter of meeting with the EHRC Disability Committee and the Disability Commissioner to discuss their key issues.

Yours sincerely  
Flora Goldhill  
Director for Children, Families & Communities  
Department of Health

*26 November 2015*



## Disability Charities Consortium – Oral Evidence (QQ 105-112)

Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Foster of Bishop Auckland  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley

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### Examination of Witness

**Paul Breckell**, Chair, Disability Charities Consortium, and Chief Executive, Action on Hearing Loss

**Q105 The Chairman:** We welcome Mr Breckell, who is the chief executive of Action on Hearing Loss and chair of the Disability Charities Consortium, so he has a wide experience of disability charities, not just in the hearing area. This session is open to the public. A webcast will go out live and will be subsequently accessible on the parliamentary website. A verbatim transcript of the evidence will be taken and will be put on the parliamentary website. A few days after the session you will be sent a copy of the transcript to check it for accuracy. It would be helpful if you could advise us of corrections as soon as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence, or you have any additional points to make, you are welcome to submit supplementary evidence. We do not have that much time, and you may find afterwards that you wish you had said this, that or the other.

Members here will declare any relevant interests they have before their first question. To save time, because there are so many I will list the interests of Baroness Campbell. She is a patron of Just Fair, patron of the National Disability Arts Collection and Archive, founder and member of Not Dead Yet UK, and is the recipient of a social-care personal budget, disability living allowance and Access to Work. She was a Disability Rights Commissioner throughout the life of the Disability Rights Commission and the Commissioner of the Equality and Human Rights Commission for three years.

**Q106 Baroness Pitkeathley:** I am going to take you back, Mr Breckell, to 2008, but first I declare that the only interest I have is as vice-president of Carers UK. I want to take you back to 2008, when the Disability Charities Consortium told the Commons Work and Pensions Committee that, “12 years of the DDA”—the Disability Discrimination Act—“have not been enough to address prejudice against, eliminate discrimination of, and promote equality for disabled people”. We are now in the 20th anniversary of the disability discrimination legislation. Has the Equality Act, in your view, helped or hindered further progress that you hoped at that time would be made, and, if so, how?

**Paul Breckell:** The short answer is that it has absolutely helped, on balance. Both Action on Hearing Loss, or RNID as we were at the time, and the Disability Charities Consortium had involvement in drafting the original Bill, so we remain hugely supportive of the Equality Act.

We think that it has made a big difference, as have things that have come with it, such as the public sector equality duty.

That is the headline, but underneath that some issues remain for us in how the Act is enforced and some of the regulations and legislation that have come out of it. That is where we think progress has been more limited. For example, I think there is a lack of general public awareness of the Equality Act, particularly how it relates to disabled people. Certainly Action on Hearing Loss and other members of the DCC would still say that some of the people they work with and for still talk about the DDA, so I think that more needs to be done to make clear the importance of the Equality Act. We also think there has been a lack of leadership sometimes from the senior leadership of public bodies, particularly on the public service requirements in relation to the Act. One recent example is the fact that the Equality Act was cited in relation to the Red Tape Challenge. We think that was incredibly unhelpful, as it has the potential to reduce the importance of the Act in the eyes of public service providers and in the private sector and beyond because they see it in some way as a bureaucratic burden, whereas of course it should be an Act that is incredibly enabling, supporting disabled people to live a full life and contribute to society, as is their right.

From our point of view the Act is very positive, and we want to see that built upon, but we think there are some issues with the promotion of it and the regulation under it.

**Baroness Pitkeathley:** May I just ask a follow-up question about leadership? Where would you have expected that leadership to come from, which has, as you said, been a disappointment to you?

**Paul Breckell:** There is obviously political leadership not just on what happens legislatively but, from an executive perspective, on the way disability and equality legislation is talked about. We think that some of the rhetoric over that period of time has been challenging for disabled people.

We recognise that the Equality and Human Rights Commission, which I am sure we will come on to talk about, is working with very limited resources, and that has been one of the challenges, so there is an issue about resourcing there. We know that it is also challenging for public sector and business leaders to look right through the system, to get on the front foot in relation to disability and to respond very positively in relation to the equality legislation rather than always being on the back foot in the way legislation is enacted and used. We think it is really important that it is in place, and litigation is there as a right, so that is welcome, and people should have access to that. But this is about the steps that are put in place to make sure that people are aware of their rights and that in flexing their muscles they do not need to take it all the way to litigation.

**Q107 Baroness Brinton:** On 27 October, the British Deaf Association argued strongly for greater legal recognition for British Sign Language. Do you agree that this is the highest priority? Which other measures are needed to enable deaf people and people with hearing loss to participate in society on an equal basis? How should the cost of adjustments, linguistic or otherwise, be met?

**Paul Breckell:** We think it is important, and we think the legal recognition of BSL would provide real encouragement to organisations, particularly those working with people who are BSL first-language users. If we draw some parallels to some of the things, such as some of the language recognition Acts that we have seen in relation to Welsh or Gaelic, we can see what an impact that might have. That would be the first thing to say.

Obviously we are watching with real interest what happens now that the BSL Bill has become an Act in Scotland. Actually, that Act does not provide much legally over and above what is

already in place in equality legislation, but it does provide real encouragement. In a sense, as I alluded to in answer to that first question, it is about the wider context that is set. We think there is something very important in relation to that. While I absolutely respect the BDA's position, what is important—and this is about “both ... and” rather than “either/or”—is to talk about British Sign Language, which is very important for people who are first-language sign language users, in the context of hearing loss more broadly. There are 11 million people in the UK with some degree of hearing loss, of which 6 million people have hearing loss to the extent that they would benefit from wearing a hearing aid or, indeed, their hearing loss is too profound to benefit from wearing a hearing aid. So that is 6 million people, 900,000 of whom would be considered to be profoundly deaf. The numbers vary, but between one in 10 and one in 20 would be first-language British Sign Language users, so BSL recognition is very important for that group of disabled people. Yet another 800,000 to 850,000 people who are profoundly deaf have access issues that also need to be addressed in relation to equality legislation, not just through sign language recognition. It is a “both ... and” rather than “either/or”, so it is important but we do not think it is the only thing that is important.

**Baroness Brinton:** Could I ask your views on the cost of providing British Sign Language in the recent *Cordell v Foreign and Commonwealth Office* case and the implications of that?

**Paul Breckell:** In the broader sense, from a public policy perspective there are a couple of choices here. There is one model—the Scandinavian model—which I know the BDA has already talked to you about, where the requirements and the responsibilities are effectively centralised so that sign language provision is being provided. That is pretty affordable, but again it is about there being a political intent to make that the case, and that is something we do not have at the moment.

The other alternative, which is obviously where we are in terms of UK legislation, is for the responsibility to be on individual employers, service providers, et cetera, underpinned by equality legislation. Of course, the challenge then—and this was the issue in *Jane Cordell's* case—is that it becomes a matter of defining “reasonable adjustment”, which can be very challenging. By definition, human aids to communication, be that sign language interpreters, lip speakers, or speech-to-text reporters, are professionals and therefore come with a professional cost. In a job that is communication-rich, like that of an ambassador or anybody who is trading on ideas and communication, which is the case in many leadership roles, a communication support bill is clearly going to come with that.

From our perspective, at Action on Hearing Loss, we think there is an important principle at play here, because by supporting people—whether it be through Access to Work or support from the employer—there are the individual human rights of the person under the Equality Act, but there is also something about those people being role models for other deaf and disabled people in society. I am a pragmatist, and I do not think that the political will in this country is for a centralised Scandinavian-style system. I think it is for legislation underpinning. That being the case, it is important that the legislation has sufficient strength to provide people with support so that they get access from their employer or from service providers.

**Q108 Baroness Browning:** I should have declared in the earlier session, Madam Chairman, the fact that I have voluntary offices held with the National Autistic Society, Research Autism and the Alzheimer's Society.

How effective has the Equality Act been in addressing discrimination against those with mental health problems? Are there particular challenges that differ from other forms of

disability? Perhaps I might just wrap into that the general invisible disabilities—the ones that are not apparent when somebody walks into a room.

**Paul Breckell:** Thank you for that question. Again, I will start with the positive and then share the challenge too. The fact that the Equality Act broadened the definition of disability to reflect better mental health in particular is very welcome, but there are specific issues— and both the National Autistic Society and Mind are members of the Disability Charities Consortium. A fellow member, Mind—I believe Paul Farmer, the chief executive of Mind, has also given evidence—has certainly identified, through its legal line in the past few years, a variety of issues for people who are trying to access equality legislation in relation to mental health. They are some of the issues that you heard about in the first session, such as people being put off by huge cuts to legal aid, the cost of legal advice, access to the judicial system. People with a presenting mental health condition, or indeed autism, sometimes just do not feel able to challenge and need a lot of support in order to be able to challenge. This might be different for someone with, for example, sensory loss or physical disability. So we do think there are some specific issues there to make sure that discrimination does not go unrecorded or unchallenged. This is about making sure that the system provides support along the way in order that people get access to justice.

**Baroness Browning:** Could I just ask a supplementary to that? There will be times when some of this particular group are discriminated against and there will be an issue of capacity at that time. Do you have any advice for the Committee about how we can assist those who need to be assessed for capacity when they are discriminated against, and how do you see the advocacy that they currently receive to help them with that?

**Paul Breckell:** First, I would not profess to be an expert on mental health, because obviously my particular area of interest is sensory loss. Having said that, from what I understand it really is about support at the very initial stages where people are considering the claim that they are making, because you are absolutely right that there can be potential issues about capacity. That also sometimes means that there needs to be more flexibility in relation, for example, to timescales. Where someone has a fluctuating condition, particularly a fluctuating mental health condition, there may be different points in their interrelationship with the service provider, their employer, or indeed in the legal process at which they are in a position to progress their claim, whether formally or informally. It is about being person-centred and flexible, but on the specifics I would defer to the written and verbal submissions that you have already had from other colleagues in the DCC.

**Q109 Baroness Campbell of Surbiton:** In terms of your role in the Disability Charities Consortium, we have heard from other people who have come to give evidence that disabled people feel very much alone in those initial stages. Do you think there is a role for disability organisations to support disabled people in those initial stages, or do you think that is too much of a burden for them to take on?

**Paul Breckell:** There is a role to be played, and in different ways different member charities within the DCC fulfil elements of that role. For example, Action on Hearing Loss has an information and advice line, but we do not go as far as undertaking legal casework ourselves. Mind is in a similar situation to us. We know that Disability Rights UK, for example, which is also a member, has gone a little bit further in the individual work that it will do.

There is a challenge for voluntary organisations in expertise and capacity. Action on Hearing Loss did not decide to cease doing individual casework in about 2009 because of a lack of commitment to it. With a very small team in what can be a relatively complex legal area, we just did not think that we could resource the necessary skills to do it well. We were much

better placed to be a campaigning advocate and a sign-poster rather than working on a case-by-case basis. One of the roles that we do play—again, both formally and informally—is in providing advice and sign-posting, which we do through our helpline and through our community-based services. There is a lot of peer support and mentoring, and we also create a bit of an ecosystem where people with hearing loss and disabled people can talk to one another. But for us as a charity, a mixture of capacity and capability has certainly put us off actually proceeding with individual elements of legal casework, and I think that is the case with the majority of the members of the DCC.

**Baroness Campbell of Surbiton:** So is that a no, then?

**Paul Breckell:** I think the response is that we go a certain distance. After that it is too challenging, and we are better served by a mixture of the legal profession and support from the Equality and Human Rights Commission. We have a role to play, but I do not think it extends to individual casework. It certainly does not in our case.

**The Chairman:** You said “we”. Is there a difference between the organisations for the disabled and the organisations run by the disabled themselves?

**Paul Breckell:** This is probably a seminar in itself. At Action on Hearing Loss we talk about the fact that we work with and for people who are deaf, have hearing loss and tinnitus, so I suppose that all I can do is describe what we do. Some people would say that that makes us for the disabled, some people would say that means that we are governed by people who are disabled. We have a membership of 15,000 people, the majority of whom will be deaf or have hearing loss themselves, but it is not a prerequisite: people choose to join because they have an interest in the work of the charity. In turn, the majority of our trustees are elected by our membership. Again a majority either has direct personal experience—ie they have hearing loss, tinnitus or are deaf themselves—or direct family experience.

One of the members of the DCC is Disability Rights UK, which works as the umbrella for disabled people’s organisations or works alongside disabled people’s organisations, so it has a slightly different approach. But I genuinely think—and I have no doubt there are people in the room with more expertise than me—that there is a continuum in the way that we work, rather than there being such a stark, “You are either a disabled people’s organisation or not”. That would be what I would contest.

**The Chairman:** I just wondered, listening to Lady Campbell, whether more support was available from one type of organisation than the other. It is a theme that has come up from time to time.

**Paul Breckell:** In a sense, you will obviously need to ask individual DPOs—and I am sure you will—but I do think there is potentially a role for DPOs to play. Regarding equality legislation, at the end of the day it is an individual who is being discriminated against, so it is really important that there is a route for the individual. But there are potentially opportunities for support, which are provided in different ways. As I say, as different voluntary organisations we can play a range of roles. The particular work that we do at the Disability Charities Consortium is by no means us trying to merge together eight charities, which we do not think that would serve the people that we work with or for well. It is about allowing us to present a strong collective voice in our work, particularly with government. The majority of work that we do together is about the way we relate to, for example, the Department for Work and Pensions and the ODI, and some of the work we can do together to get more access than we could as individual charities.

**Q110 Lord McColl of Dulwich:** What is your relationship with the Equality and Human Rights Commission, and would Action on Hearing Loss and the Disability Charities Consortium like to see it doing more?

**Paul Breckell:** We have had only limited engagement as Action on Hearing Loss, and that has mainly been through the Equality and Diversity Forum, which the EHRC attend. We have had some instances—and I know that other DCC members have too—relating to advice, particularly working with individual sector areas. We did some work, for example, on access to banking, and worked closely alongside EHRC.

The things that we would like the EHRC to do at the moment—again, this comes with the caveat that we recognise that resourcing has been really tight and really constrained—include publishing a summary of potential and completed cases relevant to disability. We think there is that role, because of case referral to the EHRC, for capturing that information. This would also help to build an understanding of what does and does not constitute a reasonable adjustment, which has been one of the challenging issues in interpreting legislation. There has been a lack, both under the last Parliament and this one, of any publication of statutory guidance, which I know the EHRC has done in the past. Statutory guidance in relation to the public sector equality duty would be particularly welcome, so more could be done there. Again, partly because of resource constraints, there is less of a focus on disability at the EHRC since the change of governance arrangement. That was an unhelpful step as well, as having a separate disability rights committee made a big difference. I recognise some of the challenges and some of the context, but we do think there are some specific areas where more could be done.

**Lord McColl of Dulwich:** I should have declared an interest. I am the author of the McColl report and work for charities concerned with disability.

**Q111 The Chairman:** The final question is from me. How effective is the Office for Disability Issues in improving implementation of the Equality Act in practice?

**Paul Breckell:** It is a mixed bag. It would be fair to say that the Disabilities Charity Consortium has had good access, and in that sense has had a good relationship with the ODI. We welcome the fact that there is a specialist department giving attention to disability issues. In fact, one of main reasons why we come together as the DCC is because it has been the vehicle through which we have regularly met current and previous Ministers for Disabled People. From that point of view we have had some access, which has been welcome.

We have some concerns about the ODI's level of authority. 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. Certainly there is a slight change of emphasis in that we now have a Minister for Disabled People who is not a Minister of State. That is different to the way it was in the previous Parliament. As I say, while we have had very positive relationships, we worry about whether that undermines some of the influence of the cross-government role as well.

We have good relationships and we get some access. We are a collection of voluntary organisations and campaigning organisations. We are not the elected Government, so at the end of the day we make our point and we get listened to, but on the question of whether that changes things, sometimes it does and sometimes it does not. We will keep on working with and for the people we work with and for. We would like to see the ODI doing more to really exercise that cross-governmental role into issues such as health and social care and

transport—the day-to-day parts of government that have an impact on the lives of disabled people.

**The Chairman:** If you were starting from scratch, where would you place responsibility for disabled persons in the entire ministerial and departmental structure?

**Paul Breckell:** It needs to be somewhere that gives it cross-government access. That puts it in the Cabinet Office or somewhere similar. Otherwise, wherever one puts it, it is pigeonholed. One of the real challenges with it being within DWP—although, as I say, we have welcomed the fact that there is the ODI—is that it takes one small slip of rhetoric to move from there to talking about disabled people as benefit claimants. That is not just helpful, and we think it has sometimes been misused over the years since the recession. If you were to move it into the Department of Health, or to health and social care, you would start to medicalise disability, which again we think would be incredibly unhelpful and would not respect the fact that we are talking about people first and foremost who happen to be disabled people. So we think it would be better placed in a genuinely cross-government position.

**Q112 The Chairman:** At a time when cuts are being made to the budgets of various government departments, is there loyalty within the Office for Disability Issues, or indeed with the Minister for Disabled People, towards carrying out the cuts, or is it about trying to protect disabled people from the effect?

**Paul Breckell:** You would have to ask Justin Tomlinson. At the end of the day a government Minister is a government Minister, and their loyalty ultimately arguably should be to the Government and ultimately to their constituents. As I say, we see the Minister for Disabled People and the ODI trying to positively represent the views of disabled people across the Government. Let me give you two examples. The first example is Access to Work. We have campaigned on the cap that has now been imposed on Access to Work. We think that is misguided and that imposing a cap is basically saying, “There comes a point when supporting a disabled person in the workplace is not affordable, even if we have done the proper piece of assessment work and we have come to the conclusion that this is what is required”. It is a point of principle, and we just do not think that is acceptable or appropriate. While we made some representations, the majority of which were to the previous Minister for Disabled People, and we got some concessions, at the end of the day the loyalty in that case was to deliver to the DWP budget.

If you will excuse me, I have a hearing-loss-specific issue, although I have been trying to make sure that I represent whole of the DCC. We are at the moment fighting hard against cuts to hearing-aid provision. Hearing aids have been free at the point of access on the NHS since 1948. They are an incredibly cost-effective intervention. They only cost £90 a pair. The whole intervention costs £400 over three years. In one clinical commissioning group in north Staffordshire, hearing aids are now not provided free at the point of access to those who need them, which we think is an absolute outrage. We also think it is a false economy. In that instance, we have seen the ODI in a sense do what it can in writing some letters and making ministerial colleagues within the Department of Health aware. The challenge for us is that the nature of health commissioning in England in particular within the UK is that everything is decentralised to local level and there are not many central levers in place. In that sense I suppose we have had support, but it has not been particularly effective support. Make of that what you will, but our experience is that when push has really come to shove and there have been austerity changes to be made, our big concern as the DCC is that sometimes disabled people have just been swept away in the stroke of an accountant’s pen.

**The Chairman:** Thank you very much, Mr Breckell. Thank you for coming, thank you for your written evidence, and thank you for sharing your expertise with us. It has been very valuable. Thank you.

**Paul Breckell:** Thank you very much for the opportunity.

*10 November 2015*



## Disability Dynamics Ltd. – Written Evidence (EQD0054)

### How is the Equality Act 2010 working for disabled people?

1. Without doubt, five years of legislation have had limited positive benefit for disabled people and, in some ways, their situation is probably worse. This is particularly true in relation to the failings of the Public Sector Equality Duties. The Government initiative to enable disabled people to fulfil their potential and have equality of opportunity by 2025 has become a creature of smoke and mirrors, shackled by austerity cuts, deaf to the legislation's demands during policy creation and blinkered to its requirements in delivery. The generous amongst us may believe these failings are simply oversights of lazy, broad-brush policy thinkers whereas the more cynical may perceive systemic and institutionalised discrimination emanating from the very heart of the nation's public sector. Would other laws be flouted so blatantly? How can we possibly hope that employers, businesses and others will comply and make a difference when it is so obvious that the public sector does not?

2. **Perhaps the answer is really simple?** The majority of "disabled" people (about two thirds of us according to the Office for Disability Issues research) wouldn't use this label about themselves. So we are very unlikely to have any homogenous coordinated political voice. Would another 20% of the electorate be ignored so consistently?

3. One wonders how these public policies, practices and procedures will be squared with the protection afforded by the UN Convention on the Rights of Disabled People when the UK's performance is next reviewed.

### 4. **Just a few examples of issues that have been publicly evidenced over recent years:**

#### **Life chances:**

- **Prisoners.** The 2014 Ministry of Justice report was lamentable (out-of-date data and disability definitions) but did reveal that the proportion of prisoners with limiting long-term health conditions was about twice that in the general population. Does this mean that, as a nation, we manage some impairments through the criminal justice system or does the system itself create those impairments - or both? We are probably unimpressed by other nations that imprison disproportionate numbers of those from, say, ethnic minorities but seem to barely raise an eyebrow at similarly skewed outcomes of our home-grown justice system.
- **Bedroom Tax.** There is a disproportionately higher level of disabled people in social housing. They are more likely to be receiving housing benefits. It is good news that there has been more flexibility in waiving "bedroom tax" for those disabled people who need extra space for their impairment-related equipment. But how were their needs considered when the policy was created and the rules designed?
- **Disproportionately poor health outcomes.** The Chief Medical Officer's 2014 report highlighted that people with visual (like me) or hearing impairments are more likely to acquire dementia, Alzheimer's disease, other long-term health conditions, anxiety or stress and have less confidence in managing our health. Yet suggestions to her that a key issue is the failure of the health sector to communicate effectively with us

using alternative formats, auxiliary aids etc received just the response that Equality Act compliance rests with individual health providers. So where is the leadership and policy drive to redress the situation and implement the legislation? The consequences are not just discriminatory but life threatening.

**Employment issues.** My primary interest area:

- **Increased age requirements for State pensions.** Expecting people to work longer before they can claim their state Retirement Pension goes hand-in-hand with an ageing population. But does all the supporting policy make this feasible for that majority of disabled people who acquire their impairments during their working lives (some 70% according to DWP). It is very well known that propensity for disability increases with age (under 5% of those starting their careers which more than quadruples to 23% of those approaching retirement). So, let's have the policy but make sure that it works in reality by tailoring and delivering employment legislation, practices and support accordingly rather than jeopardising the livelihoods of even more people with impairments.
- **Work Programme and Work Choice.** The original concept was good: help people to get back to work. But it needed much more attention to practical realities to avoid disproportionate outcomes for disabled people. Instead, flawed funding models, poor contract management and insufficient specialist delivery has left those facing most work barriers still on the shelf. Overall, it looks as if the improvement in the economy is probably the biggest factor in the employability of jobseekers whereas publicly-funded employment support has more potential impact amongst disabled benefit claimants. But this depends on good delivery: holistic, individual, specialist, tailored, flexible, local with all adjustments in place and empathetic, experienced front-line teams – so quite different from much current delivery.
- **Employment and Support Allowance, Work capability Assessments and Access To Work (ESA, WCA and ATW).** These should be the three pillars that help disabled people get back to work. But a 2014 Select Committee report described WCA as de-humanising and distressing, stressful, confusing, uncertainty and more. Another Select Committee report the same year was similarly highly critical of the ATW system for providing in-work support for disabled people and said it required substantial improvement (and those self-employed have had a particularly hard time). So, with two legs buckling if not actually broken, are the policies properly in place to give us equality of opportunity? Instead, it seems that unlawful discrimination and harassment are endemic in the delivery systems.
- **New Enterprise Allowance.** Where is the evidence that the policy design and delivery detail for this initiative took account of the needs of disabled people? It should have been a basic consideration that then merited even higher attention because disabled people are the largest and most costly group of unemployed people and, as shown by the 2011 Census, those who work are more likely to be self-employed than their non-disabled peers. Of course, some disabled entrepreneurs will have survived the judgemental processes and inadequate timescales but was the real potential of the initiative fully realised? We receive phone calls and e-mails from

across the UK each time one of our new disabled business owners is featured by the BBC –showing that the demand is there but the NEA is not hitting the mark.

5. Return to the old box-ticking equality impact assessment processes would just risk resistance to bureaucratic red tape. But we know that one-size doesn't fit all. Instead those creating and delivering public policies need to undertake more robust success and risk impact assessments that address equality issues. Where citizens with protected characteristics such as disability will be most affected by a policy, those characteristics need to be at the heart of decision making and delivery design in order to be successful. "Most affected" means that disabled people (or other protected groups) may experience positive or negative consequences at disproportionately higher levels in relation to either/both the overall population or individual impact.

6. There is an untapped resource of experts with practical experience who can contribute to shared goals alongside those in the Government Departments that most affect disabled people. Utilising these at the outset offers more chance of getting policy and delivery right from the outset rather than years of subsequent criticism and costly change.

7. Current enforcement seems patchy at best and very difficult for individuals to access. While there is scope for improving enforcement, it is highly preferable for those in the public sector to be better motivated from the outset by recognising that effective consideration of disability issues will improve the success of their policies. More carrot than stick!

*2 September 2015*

## **Disability Law Service – Written Evidence (EQD0051)**

The Disability Law Service (DLS) is a unique national charity that has been providing free legal advice and representation for disabled people since 1975. It was born out of a parent self-help group who, with solicitors and barristers who advised people where disability was an issue, realised the need and set up what has become a significant provider of social benefit. Our purpose is to challenge the poverty and inequality faced by people with disabilities by securing equal access to legal rights and entitlements. DLS is a registered charity and a company limited by guarantee. DLS has a legal aid contract in the franchise category of community care law.

Acting as a first port of call for disabled people and their families and carers, we deal with over 4,000 requests a year and provide diagnostic advice, legal information, referrals to legal advisers and signposting for those whose problems fall outside our areas of legal expertise or capacity. All the people that DLS helps are disabled people, or family members or carers who contact us on the disabled person's behalf. They have a variety of impairments or long term limiting health conditions. Many have hidden disabilities such as epilepsy, diabetes, autistic spectrum disorder or mental health problems, which can make daily life, employment and accessing services particularly difficult. The clients often have multiple disabilities and DLS also provide a specific service to people with Multiple Sclerosis.

We are pleased to offer the following response to the Select Committee's Call for Evidence

### **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?**

The Equality Act has indeed simplified and streamlined the Law relating to disability discrimination by removing the requirement to show that an impairment affects a particular "capacity"; it introduces a single definition of disability discrimination; a single threshold requiring reasonable adjustments; the introduction of discrimination arising from disability reversed the House of Lord's decision in the Malcolm case; it also replaced a range of justifications with a single objective justification defence. However, it is our experience that these improvements in the law are of limited use to service users such as those who struggle to secure funding for oral representation of cases which go to the Employment Tribunals or Courts because of the introduction of the Legal Aid Agency's telephone gateway system for discrimination cases to only 3 providers across England and Wales and the removal of employment law from Legal Aid scope. The problem is then compounded by the introduction of Tribunal fees and increased Court fees which has severely hindered access to justice. As a result of the cuts in the cuts in our funding, Disability Law Service is now only able to assist 1 in 4 of our service users.

**2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

Before we can even consider any gaps the Equality Act has, it is our opinion that we should first of all address the fact that there are still major sections of the Act which have not come into force or have been repealed. For example, dual discrimination – we frequently run cases where our clients are discriminated against as a result of more than one protected characteristics. For example, being black, female and disabled. As a result of the current limitations in the Equality Act, we tend to do our best to run the case on the protected characteristic that is strongest in terms of evidence. We find that in such cases, we tend to encourage clients to settle for less than they would have actually got had dual discrimination been enforceable.

Our experience in dealing with service users who have Multiple Sclerosis (MS), impairment which is automatically recognized as a disability, is that there are still those who face a “grey area” pending formal diagnosis, when the worker has to rely on either meeting the s6 definition of discrimination by perception if the employer is aware that the worker is under investigation for MS. In that regards, the expansion of the definition of Disability Discrimination under s13 of the EA (less favourable treatment because of a protected characteristic) has been very helpful. Most employers seem to know that MS, Cancer, & HIV are disabilities under the EA, or are prepared to accept this once informed. The problem workers face thereafter is the employer’s willingness to accommodate their needs to allow them to continue working. Some employers set up complicated contractual arrangements in an attempt to establish a disabled worker is self-employed and therefore outside the scope of the EA. However, the wide definition of “employment” under s82 (2) (a) mitigates this.

Other examples are the duty to make reasonable adjustment to common parts of leaseholds and common hold premises in Scotland; the provisions relating to auxiliary aids in schools; diversity reporting by political parties; provision relating to taxi accessibility; and the repeal of discrimination questionnaire, to name a few.

**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?**

We believe that 80-90% of the advice we provide to our service users involve an element of their employers’ duty to make reasonable adjustments. 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. There is a high level of erroneous belief that, as long as a person is disabled, the employer has a duty to make any reasonable adjustment that the employee requests. Furthermore, about 40% of our service users also fail to appreciate that the duty to make reasonable adjustment is rendered ineffective if the employer does not know that they have

a particular impairment. It is still not unusual for some service users to inform us that their employment is terminated or job offer is withdrawn shortly after disclosure of disability.

Many employers do not understand that they can, and should, treat disabled people **more favourably** than others when making adjustments under the EA. 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. Many employers seem to **delay** putting in place adjustments. Apart from the stress it causes to the disabled worker, and the souring of the employment relationship, this can make it hard to pinpoint the exact date of a refusal (for limitation periods).

A major gap in the duty to make reasonable adjustments is that **employers are not currently under an obligation to adjust absence management criteria**, following Griffiths v DWP. This is because a disabled absent person is seen as comparable to non-disabled absent person and ignores that, for some conditions that would qualify as disabilities under the EA, a disabled person, by the very nature of that disability, is more likely to accrue sickness absence. For example, MS can be a relapsing condition, and relapses can take several months to recover from. In this respect, the EA gives limited protection to some disabled people from dismissal for disability-related absence.

**Carers** cannot use the EA to request reasonable adjustments to their duties, because the wording of s 20 excludes discrimination by association, and can only rely on the more limited right to request flexible working. This is centred on the employer's interests, rather than the disabled person's interests.

#### **4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

Over 80 - 90% of the disability cases we deal with involve an issue of reasonable adjustment. It would be difficult for the law to be more explicit as to what constitutes a reasonable adjustment, as this is very fact/context dependent. The EHRC Code of Practice on Employment is useful (para 6.33) for reference purposes, as it sets out a range of possible adjustments.

The most commonly sought after adjustments for our service users are homeworking, adjustments to accommodate limited mobility, specialist equipment, reduction to hours worked and targets, removal of aspects of their jobs or transfer to an alternative role.

We regularly use the current guidance. We find the case studies which are provided under the key components of the definition helpful especially when we occasionally come across an impairment which is not automatically considered a disability under the Act.

The majority of the cases we pursue through the Courts tend to be about an employer's refusal or failure to put in place reasonable adjustments for a disabled employee for various reasons. About 40% of the cases where there are no adjustments that can be made to reduce the impact usually involve disabled employees on long term sickness absences.

Approximately 30% of the reasonable adjustment cases we run are about the fact that the Employer has made some adjustments but not all of the ones recommended by Access to

work or Occupational Health Departments. A typical example is the case of one of our clients, Mr PB. Who was originally employed as a Traffic Warden for a Company for a over 10 years. Approximately 2 years ago, he was diagnosed with Osteoarthritis and went off sick. His employers sent him for Occupational Health assessment and the final report from them was for him to be placed in sedentary role because of his disability. His employers therefore transferred him to the Car Pound Office for over a year and then suddenly decided that they could no longer keep him there permanently because of business costs. They therefore decided to terminate his employment on capability grounds because he could no longer undertake his original duties as a Traffic Warden. We assisted him with the appeal process and his claim to the Employment Tribunal for breach of contract, unfair dismissal and disability discrimination. We dealt with the preliminary hearing and drafted the pleadings in the case. The case was finally settled by way of a COT3 agreement after witness statements were exchanged between the parties.

**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?**

The failure of some public authorities to adequately carry out equality analysis as an aid in meeting the public sector equality duty can mean that they may fail to understand the real (or potential) impact of a policy, procedure or process. When carried out effectively EA can be a powerful business tool (unlike the ‘tick box’ impact assessment some are still doing) that enables employers and service providers to identify and/or take mitigating steps to meet the needs of disabled employees and comply with the general duties in the EA.

The TUC’s response to the GEO call for evidence (<https://www.tuc.org.uk/sites/default/files/tucfiles/tucresponsepsedreview.pdf>) reported positive impact in the public sector by enabling the gathering of equality information, greater transparency and accountability, a sense of fairness and a basis for action to improve employer policies or decisions. A better engagement with protected groups; improved employment outcomes and improved service deliver outcomes for many with disabilities. It was contended that interventions for disabled workers such as the spreading of costs for “reasonable adjustments” and the maintenance of lifts to access the workplace have benefited disabled employees, whilst improved accessibility on public transport, better disabled access and audio loops in public buildings have led to a more positive experience for service users. However they did acknowledge that the impact has been mixed. There is reference as well to the detrimental effect of more limited specific duties (in comparison to specific duties under the previous duties including the disability equality duty). In some cases this, for example together with public sector cuts, has had an adverse impact on engagement with disabled people which was more effective under the previous disability equality duty.

However the current climate of public sector cuts has had an adverse impact on disabled people in the workplace who appear to be amongst the first to lose their jobs. This is because we regularly see more and more of our service users coming to us with the sad news that whereas reasonable adjustments had been put in place for them in the past, more

and more local authorities are using restructuring exercises as an excuse to get rid of disabled employees and those with other protected characteristics.

The PSED does not therefore provide protection for disabled people from losing their jobs.

**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?**

Scottish Law is outside Disability Law Service area of practice.

**7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?**

DLS does not recall any such difficulties.

**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?**

We welcome the inquiries undertaken by EHRC on important issues that affect disabled people such as disabled people's experiences of targeted violence, submission on skills and social inclusion of people with disabilities, reasonable adjustments for disabled pupils, working better: the perfect partnership, and many more.

When EHRC funded DLS to undertake casework, we were able to refer a few cases to their Specialist Unit. Unfortunately, the majority of the cases that went to the Strategic Team were not taken on because they did not fit within their priorities check list.

It is our opinion that the severe cuts in the funding of the EHRC has led a cut in the workforce, forcing it to abandon certain activities such as running a helpline and taking up big campaigns. Furthermore although the EHRC has retained its strategic litigation scheme, a large proportion of the 3<sup>rd</sup> sector organisation which identified and referred such cases have disappeared as a result of the cuts and the few remaining such as DLS no longer have the capacity to deal with the volume of need out there. Especially in the field of discrimination by service providers.

We occasionally get asked questions about whether it is lawful for a prospective employer to ask about an applicant's health records prior to the offer stage, in contravention of section 60 of the EA. It seems that many employers are still using out of date forms for job applicants. Enforcement of s60 lies with the EHRC – It would be interesting to know what steps the EHRC has taken to deal with such situations.



**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?**

It is important that regulatory bodies, when carrying out their inspection functions, place more emphasis on assessing the equality and human rights implications of provider activities on service users with a protected characteristic, including disabled people. The way in which disabled service users are treated, including in the provision of reasonable adjustments, should be a part of inspection regimes if they are not already. This requires regulators to ensure that inspection staff are appropriately trained and provided with periodic refresher training in equality and human rights standards and good practice, including the public sector equality duty.

Our service users frequently inform us that their experience with Ombudsmen and other regulatory bodies is generally unsatisfactory. This is because there are limits on what these regulatory bodies can actually do for the complainants.

**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?**

There is considerable empirical evidence that the introduction of Tribunal Fees has meant that there has been a substantial drop in the number of cases being pursued at the Employment Tribunal. Similarly the increase in County Court fees and the introduction of the Legal Service Commission's telephone gateway for discrimination cases has led to a significant drop in the number of claims to the Employment Tribunal and the County Court in particular. In fact according to a recent IDS Brief, there has been a two-thirds drop in cases going forward to Employment Tribunals as a direct result of the introduction of fees.

A caller recently told our MS Legal Officer that when she raised her right to reasonable adjustments with her line manager, he laughed in her face and said "You don't have the money to take this to tribunal".

An equally significant barrier to our service users is the apparent complexity of the tribunal process and the inability to find/fund oral representation at hearings.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

Approximately 20% of the cases we take on involve breaches of more than one protected characteristics. Although we run the cases on the dual disabilities, we usually try and ensure that at least one of the protected characteristics is stronger evidentially. For example, we

assisted one Mr X with issuing his claim for disability and race discrimination at the Employment Tribunal because he believed that his employment was terminated because of the combination of his race and disability. We were able to finally settle the case for a reasonable amount because it was easier to present evidence that the unfavourable treatment was as a result of his disability than his race, even though there was circumstantial evidence pointing to that fact.

Before the provisions were deleted, DLS regularly used the questionnaire procedure as a tool in about 80% of the case work we undertook. The advantages of it were that it served as an additional tool in negotiating settlements. It has become difficult to actually gauge the impact of the deletion of the questionnaire process because it is our opinion that of the very few cases that go on to full merits hearing, we have been unable to provide oral representation in order to be able to comment.

The majority of the cases we have taken on settle out of court and so any recommendations we would have wanted an Employment Tribunal to make were usually dealt with as part of the settlement agreement. However, we found the use of Judicial Mediation an alternative means of securing creative forms of reasonable adjustments for our clients.

However, it is our opinion that of the limited cases that go before a full merits hearing, the removal of the Employment Tribunal's power to make recommendations would have a devastating effect on the individuals concerned and on the community as a whole. This is because it is another example of how the current government is sending the wrong signal to employers about the weight it places on anti-discrimination legislation.

*27 August 2015*

## Disability Politics UK – Written Evidence (EQD0056)

**Summary** – Disability Politics UK seeks a law change to enable Members of Parliament to be able to job share. Disabled people are seriously under-represented in the Commons. Currently there is an exemption in the Equality Act at Schedule 6(2) which means that political offices are excluded from the scope of the Equality Act 2010.

Further, Schedule 18 paragraph 4(1) means that the procedures and practices of the House of Commons are excluded from the Public Sector Equality Duty.

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) contains a General obligation in Article 4 that States Parties should “modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.” Article 29 of the CRPD creates a guarantee of access to the political process for disabled people.

The United Kingdom ratified the CRPD on 8 June 2009.

Disability Politics UK seeks a recommendation from the House of Lords Select Committee:

- that the exemptions for political office in the Equality Act 2010 should be amended or removed and that the Electoral Commission should be covered by the Equality Act in its advice to Returning Officers that it currently is not permissible to stand as two candidates for one constituency.
- to the Government that the Speaker’s Conference on Representation be re-opened to hear evidence in public about how job sharing for MPs would work.
- that the Parliamentary Constituencies Act 1986 and other relevant electoral legislation be amended to permit two candidates to stand jointly as MPs.
- that confidential monitoring of whether or not MPs have a disability should be started forthwith and published to facilitate debate about the under-representation of disabled people in the Commons. This is in line with good practice in the rest of the public sector.
- that a Commons debate should be held ASAP to debate how to increase the numbers of disabled MPs.

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1. Disability Politics UK was formed in 2011 by a group of disabled people. It has a website which can be found at [www.disabilitypolitics.org.uk](http://www.disabilitypolitics.org.uk) and a Twitter account @dis\_politics.
  2. It is campaigning to get the law changed to enable MPs to job share, so that working part time as an MP becomes one of the accepted routes into elected political office. This is because disabled people are under-represented in the Commons. This has a profoundly negative impact on disabled people’s trust in the legislature, especially when so many cuts are happening which adversely affect disabled people. ‘Nothing about us without us’ is a campaigning phrase used by disabled people’s organisations which highlights the need for including disabled people in decision making at all levels of politics and government.

### **Who supports the campaign?**

3. The campaign to enable MPs to job share has attracted cross party support, for example from:

Conservatives: Dr Sarah Wollaston MP, Robert Halfon MP

Greens: Caroline Lucas MP, Natalie Bennett

Labour: John McDonnell MP, Jeremy Corbyn MP, Meg Hillier MP

Liberal Democrat: Tim Farron MP

4. Various organisations and individuals - including lawyers, academics and journalists – are backing the campaign and over 45 people signed a letter of support to the Guardian in 2012.<sup>79</sup> Some have also provided quotes for our supporters' page.<sup>80</sup>

Disability Rights UK and the Business Disability Forum both support the campaign.

**Susan Scott-Parker OBE - Founder & CEO of Business Disability Forum says:**

**"A sensible approach to job-sharing in the House of Commons is long overdue. Talented disabled individuals from all walks of life and should be actively encouraged to enter political life and represent their communities. We all benefit if we have a parliament which is more inclusive of a broader range of experiences and backgrounds. Business Disability Forum is proud to be supporting the campaign to open up job-sharing to parliamentarians; many of the businesses we work with routinely offer job-sharing to their employees."**

**Liz Sayce - CEO Disability Rights UK says:**

**"Job sharing has for a long while now allowed disabled people, those with significant caring responsibilities and the parents of young children to balance their lives. The benefits include more people in work who could otherwise not be, the retention of valuable talents and the diversity of experience that brings greater innovation and insight to private, public and third sector organisations. These benefits apply in spades to Parliament, which is supposed to represent the British people but fails on many counts – not least in relation to disability and gender. That is why Disability Rights UK supports the Job Sharing for MPs Campaign."**

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<sup>79</sup> <http://www.theguardian.com/politics/2012/sep/25/job-share-mps-representative>

<sup>80</sup> <http://www.disabilitypolitics.org.uk/supporters.html>

**The benefits of job sharing for MPs are not confined to disability and gender equality. Simon Woolley, Director, Operation Black Vote says:**

**“It's simple! Political job sharing not only means more opportunities for many more people, particularly those usually squeezed out: women, BME communities, and the disabled, but also it allows the possibility for unleashing a deluge of hidden talent. And here's the point: everyone benefits when talent can flourish.”**

5. In November 2012, John McDonnell MP presented a 10 minute rule bill to the Commons to seek to change the law to enable MPs to job share.<sup>81</sup> In the Explanatory Memorandum to the Bill, he set out the answers to the main issues which arise in relation to job sharing for MPs:

**“Practical Questions**

Members have raised practical questions about the operation of a job share. Not all of these are suitable to be addressed in primary legislation but would usually be the subject of secondary legislation or the Standing Orders of the House.

The main questions raised have been as follows:

**Would the two job sharers have to be from the same party?**

It is proposed that this would be the case and that this would be covered in secondary legislation.

**What happens if the job sharers disagree on an issue and wish to vote accordingly?**

As the job sharers entered into a sharing arrangement before the election and were from the same party, one would expect them to agree on many of the votes but where there is a difference then they can each exercise their right to use their half vote according to their judgement or conscience.

**What happens if one of the job sharers left the party under whose banner he or she was elected?**

At present there is no provision for forcing a Member who crosses the floor of the House to resign and contest a by-election and so there would be no such provision for a job sharer. It would mean that those constituents who voted for the job sharers on the basis of their party would at least be left with someone representing them with half a vote.

**What happens if one of the job sharers resigns dies or is disqualified?**

Because the job sharers were elected on the basis of a job sharing arrangement, both will be treated as having ceased to be MPs.

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<sup>81</sup> [http://news.bbc.co.uk/democracylive/hi/house\\_of\\_commons/newsid\\_9770000/9770717.stm](http://news.bbc.co.uk/democracylive/hi/house_of_commons/newsid_9770000/9770717.stm)

**Some electors may be happy with the performance of one of the job sharers but not the other and therefore would not want to vote for both. What would happen?**

The job sharers are standing as a team. The elector will still have one vote and would not be able to split that vote. The elector will have to decide whether to cast that vote for the job sharing team on the basis of a judgement of the overall performance of the two job sharers together. This is little different from the current situation in that an elector has to make a judgement on the overall performance of the individual MP and will often judge that he/she agrees with the views of the MP on some issues and not others or that the MP performs well at some tasks and not others. The elector will take many factors into account in casting their vote as at present.

**What happens if one of the job sharers becomes a minister and is covered by collective responsibility?**

A job sharer would be able to fulfil a ministerial role to the extent that the time the job sharer has to devote to this role. In appointing ministers the Prime Minister would take this into account. This could lead to job sharing for ministers. With regard to collective responsibility, the job sharer assuming ministerial responsibilities would naturally cast his/her half vote in line with collective responsibility and behave according to this doctrine.

**Wouldn't it be more expensive having two Members per constituency?**

No, because the job sharers would share offices, facilities and staff. The Parliamentary expenses of job sharing MPs would be managed by IPSA under the Parliamentary Standards Act 2009 in the same way as for a single MP.

**Finally, what is the aim of promoting this Bill?**

Many Members and external commentators have expressed the view that the composition of the House of Commons should better reflect our society. There have been real improvements in this respect in recent years with more women, more people from diverse cultural backgrounds and more people with disabilities being elected.

Nevertheless we should take the opportunity to explore every avenue we can to assist in promoting greater access to people who would like to serve as Members of Parliament. This is not positive discrimination but simply introducing practical administrative change to facilitate wider participation. The main thrust of this proposal has come from organisations that represent people with disabilities and carers, who feel that undertaking the role of MP on a full time basis would not be possible in the light of their very specific conditions or their specific responsibilities.

As the majority of carers in our society are women, this proposal would also assist in increasing the representation of women in Parliament.

Others have felt that by continuing in their work or profession on a part time basis whilst job sharing as an MP they could bring wider experience to Parliament.

Overall this relatively minor, modernising reform could improve the representativeness of the Commons.”

6. The TUC Disabled Worker’s Conference passed a motion in 2013 in support of the campaign to change the law to enable MPs to job share. This was proposed by Mike Cassidy, Co-Convenor of the Chartered Society of Physiotherapists Disabled Members’ Network, who says:

“This is not an issue about supporting a few more members of the elite to get into Parliament. For many disabled people, the current political agenda can literally be a matter of life and death. If job-sharing means we can get even a handful more disabled people into Parliament, the effort will be well worth it in terms of having a better chance of getting our voices heard in critical policy debates affecting our future.”

#### **Commitments in 2015 General Election manifestos**

7. The Liberal Democrats included job sharing for MPs in their 2015 general election manifesto:

“To reform Parliament in particular we will:

Make Parliament more family-friendly, and establish a review to pave the way for MP job sharing arrangements.”<sup>82</sup>

8. The 2015 Conservative manifesto stated:

“We also want to increase the proportion of public appointments going to women in the next Parliament, as well as the number of female MPs.”

This was in addition to a commitment which stated “We will fight for equal opportunity”, “We want to see full, genuine gender equality” and a promise to “transform policy, practice and public attitudes” so that more disabled people could find employment.<sup>83</sup>

#### **Who has tried to stand as a job share candidate in the past?**

9. In 1999, Lorraine Mann sought to stand on a job sharing basis as a candidate for the Scottish Alliance for the Highlands and Islands Alliance. The Returning Officer said he did not think was permissible and Ms. Mann brought proceedings under the Sex

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<sup>82</sup> <http://www.libdems.org.uk/read-the-full-manifesto> page 130 paper edition in Power to the People section

<sup>83</sup> <https://www.conservatives.com/manifesto>

Discrimination Act 1975 (SDA). She won on a preliminary point, namely that the office of Member of the Scottish Parliament was a “profession” within the meaning of the SDA. However the Employment Appeal Tribunal allowed an appeal on the ground that the EAT did not have jurisdiction to hear complaints relating to election law. The EAT did accept that the Returning Officer was a “qualifying Body” for the purposes of the SDA.

10. Deborah King, a disabled woman, sought to stand as a job share candidate in the 2010 General Election in the Uxbridge and South Ruislip Parliamentary constituency. This was refused on the basis that the Electoral Services Manager took advice from his Returning Officer and the Electoral Commission and was advised that there was currently no provision to allow a Parliamentary candidate to share the job.
11. In 2015, three pairs of people sought to stand as job share candidates in the May General Election. These were:
  - (i) Adam Lotun, a disability rights activist and Zion Zakari, a student, who sought to stand in Hackney North and Stoke Newington constituency, who wanted to stand as independent job share candidates;
  - (ii) Rachel Ling, a mother of young children and Emma Rome who is disabled, sought to stand in Weston-Super-Mare constituency as independent job share candidates;
  - (iii) Green Party members Clare Phipps who is disabled and Sarah Cope, who is a mother of young children, sought to stand in Basingstoke constituency as job share candidates.
12. The two Green Party prospective job share candidates brought a court case against Basingstoke’s Returning Officer. It was heard on 28 July 2015, in the form of an oral hearing for leave to judicially review the refusal of the Returning Officer for not allowing the candidates to stand. The case was unsuccessful. The written judgement is not yet available but can be forwarded to the Select Committee if they would like it when it becomes available. The judge said that the case involved matters which were hugely complex and to do with social, political and philosophical issues. He basically referred the matter back to Parliament to decide. The solicitors were Leigh Day.<sup>84</sup>
13. The Electoral Commission, in their July 2015 report to Parliament on the May 2015 UK General Election<sup>85</sup> state:

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<sup>84</sup> <http://www.bbc.co.uk/news/uk-england-hampshire-33693591>

<sup>85</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/190959/UKPGE-report-May-2015-1.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/190959/UKPGE-report-May-2015-1.pdf) page 57



“Job share candidates

3.122 Election law only allows for a single individual to be returned to a constituency for the UK Parliament. Despite this, 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, for whom it was argued this would be the only way to be able to participate effectively as an elected representative.

3.123 In response to these enquiries, we explained the rules under the law as it is currently drafted, and highlighted that the UK Government would need to introduce changes to primary legislation in Parliament to permit job share candidates to stand and be elected at any future UK Parliamentary elections.”

#### **UK Equality laws need to change to comply with the CRPD**

14. The House of Commons does not look like the country it represents. The House of Commons Information Service provided this response<sup>86</sup> when asked about the diversity of the Commons:

“Of 650 MPs elected in the 2015 General Election, **191 (29.4%)** are women, the highest number and proportion ever. The number of women MPs elected in 2015 was 48 more than in 2010. Women MPs by party include 99 Labour, 68 Conservative and 20 SNP; 43% of Labour MPs are women, 21% of Conservative MPs and 36% of SNP MPs.

**41** MPs elected in 2015 are from black and minority-ethnic (BME) groups, a rise on the 27 BME MPs in 2010. (p62)

Numbers of disabled MPs in the 2015 Parliament are less clear. Conservative MPs Paul Maynard and Robert Halfon have self-described as disabled people, although further disabled MPs may emerge as the new parliament continues.”

We can see from these figures that disabled people and women are seriously under-represented in the Commons.

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<sup>86</sup> <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7186>

### **The United Nations Convention on the Rights of Persons with Disabilities (CRPD)**

The CRPD contains a specific Article on access to politics:

#### **“Article 29: Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) 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, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.”

15. Article 4 of the CRPD contains a General obligation which says that States Parties should:

“modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.”

16. Currently, the Equality Act 2010 exempts political office from its legal protection. The UK is clearly in breach of Article 29 CRPD as so few disabled politicians have ever been selected to stand for the Commons. In order to help disabled people get better access to political office, we need to recognise that not all disabled people can work full time as MPs. If it became possible to work as an MP part time it would enable more disabled people to stand for political office.
17. The Equality Act 2010, at Schedule 6(2), means that political offices are excluded from the scope of the Act.  
  
Further, Schedule 18 paragraph 4(1) means that the House of Commons is excluded from the Public Sector Equality Duty.  
It would be necessary to consider further which rules need to be changed to enable job sharing for MPs to work successfully.
18. The Electoral Commission does not appear to be covered by the Equality Act in the exercise of its functions when it gives advice to Returning Officers. This needs to be changed if job sharing for MPs is to become a normal route through which disabled people can access political office.
19. Section 1(1) of the Parliamentary Constituencies Act 1986 specifically refers to each constituency ‘returning a single member’. Currently a Returning Officer, acting on the advice of the Electoral Commission, cannot operate outside this legislation. This law needs to be amended to permit two people to stand as job share candidates for MP.
20. The House of Lords Select Committee is urged to recommend a change to the Equality Act 2010 to enable the Electoral Commission to issue guidance to permit two candidates to stand as job share MPs.

#### **How would voting work if there were two job share MPs?**

21. Legal advice, written by Karon Monaghan QC, obtained by the Equality and Human Rights Commission, set out the law relating to job sharing for MPs. This contained a section on how voting would work with job share MPs:

“The easiest and most satisfactory arrangement would seem to me to be one which permitted each of the partners to a job share to hold half a vote but each with authority to exercise the other partner’s half vote where there was consent to do so and when both were not available to exercise a vote at the same time. Most votes are still heavily Whipped and exercised in accordance with Manifestos so, though there are rebellions from time to time, most party members vote in the same way on every issue (“Free Votes, Parliamentary Information List” House of Commons Library SN/PC/04793). However, whether or not one or other of the job-share partnership proposed to vote

differently as against the Whip or as independent members (when not Whipped), there is no reason why their half vote ought not to be counted. The same is true if the partners vote in opposite ways (which would be unusual in all probability given that job-sharing partners would be speaking to the same Manifesto and no doubt self selected for their shared political vision). It could mean that if a single vote could be split between two partners that an overall vote could win by a margin of half a vote. However, there does not seem to be anything necessarily objectionable about this and as job-shares increase, as would be anticipated, the significance of a half vote may well become more important.”<sup>87</sup>

22. If there was disagreement between two job share MPs, they would be under a duty to notify the Speaker that there was a disagreement and that only half a vote could be exercised by the job share MP who was based at Westminster. Commons procedures may need to be changed to permit remote voting by the other job share MP from their constituency, if their work meant that they were constituency based. Otherwise this would mean that only the half vote of the job share MP who was at the Commons would count and the constituency based MP’s views would not be heard.
23. Clearly what needs to be amended depends on the nature of the job share arrangement which exists. It is possible that both job share MPs would be in the Commons at the same time. They would then both vote and register half a vote each if they disagreed.

These are exceptional circumstances. It is important that rule changes can be made to accommodate diversity. Baroness Jane Campbell had to get the rules changed in the Lords to enable another Lord to read her speech if she was unable to read her own speech owing to her disability.

24. As Baroness Jane Campbell said:

“If you can change hundreds of years of tradition you can do anything, and we do need to change to include disabled people because it’s not a democracy if we don’t.”<sup>88</sup>

### **The Speaker’s Conference on Parliamentary Representation**

25. In 2010, the Speaker’s Conference published a Report on Parliamentary Representation. The Speaker had been asked by Prime Minister Gordon Brown to:

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<sup>87</sup> <http://www.disabilitypolitics.org.uk/pdfs/jobshare.pdf>

<sup>88</sup> Electing for Equality – Guardian Society 4 May 2011

“consider, and make recommendations for rectifying, the disparity between the representation of women, ethnic minorities and disabled people in the House of Commons and their representation in the UK population at large.”<sup>89</sup>

26. The Conference observed:

“Justice requires that there should be a place within the House of Commons for individuals from all sections of society. If anyone is prevented from standing for Parliament by reason of their gender, background, sexual orientation or a perceived disability, this is an injustice...While justice is the primary case for widening Parliamentary representation, there would also be real benefits for both Parliament and wider society if the House of Commons were to be made more fully representative. As we stated in our previous reports we believe there are, in all, three arguments for widening representation in the House of Commons: in addition to justice, there are arguments relating to effectiveness and enhanced legitimacy. We believe that a more representative House of Commons would be a more effective and legitimate legislature.” (pp17-18, paras 5-6)

27. The case for a more representative legislature has, therefore been acknowledged at an institutional level and the principle that membership of Parliament should be more diverse has been accepted by the leadership of all the main political parties.

28. The Speaker’s Conference received a submission from the Fabian Women’s Network recommending job sharing:

“Allow MPs to job share – this does not have to be between two women MPs. Job sharing is understood and accepted in almost all professions. How could it work in our democracy – what models could be applied? The standards and flexibility people want in their life needs to be accepted as part of the new reality, of the lives of modern men and women. It shouldn’t mean they are any less capable of being political leaders.”

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<sup>89</sup> (2010) HC 239-1

29. The Women Liberal Democrat's submission to the Speaker's Conference recommended:

"We encourage the committee to look at new methods to increase women's representation including PR and job-share possibilities.

In business there is now a much wider range of flexible and part-time working than in the past. We support the investigation of more flexibility in the way that MPs work, for example job sharing. We are of the view that the Speaker's Conference should undertake research into the feasibility of this."

30. Instead of being open and transparent, the Speaker's Conference decided behind closed doors against job sharing for MPs, without hearing evidence in public and without commissioning any research. This information was communicated to Disability Politics UK by Anne Begg, then an MP, who was a member of the Speaker's Conference. She supported John McDonnell MP's Bill to change the law to enable MPs to job share, referred to above, and is herself a wheelchair user.

31. The Speaker's Conference did, however, identify the responsibilities of a Member of Parliament and this is helpful for the purposes of scrutinising whether or not those responsibilities could be discharged by job sharing Members of Parliament, or whether a single constituency representative in the form of a Member of Parliament is required to ensure the effective discharge of their functions.

32. The Speaker's Conference identified the main responsibilities of a Member of Parliament, as follows:

- As a legislator debating, making and reviewing laws and government policy within Parliament; and
- As an advocate for the constituency he or she represents.

The MP can speak for the interests and concerns of constituents in Parliamentary debates and, if appropriate, intercede with Ministers on their behalf. The MP can speak either on behalf of the constituency as a whole, or to help individual constituents who are in difficulty (an MP represents all their constituents whether or not the individual voted for them). Within the constituency an MP and his or her staff

will seek to support individual constituents by getting information for them or working to resolve a problem.<sup>90</sup>

33. Disability Politics UK urges the House of Lords Select Committee to recommend to the Government that the Speaker's Conference on Representation be re-opened to hear evidence about job sharing for MPs, so that a proper decision, based on hearing evidence which is tested in public, can be made.

**Who could give evidence about job sharing for MPs to a reconvened Speaker's Conference on Representation?**

34. People who would be able to give evidence include Dr Pam Walton, author of 'Job sharing, A Practical Approach' and a Visiting Fellow at Sheffield Business School, Sheffield Hallam University. She would be able to present a research paper and be able to answer questions about how job sharing could work for MPs in the Commons.
35. Another person who is willing to give evidence is Dr Sarah Wollaston, MP for Totnes, who has the experience of working as a job share GP in the NHS.
36. The Committee could also hear from the three pairs of people who wanted to be candidates in the 2015 General Election.
37. Other ideas for increasing the numbers of disabled MPs could be heard by the Speaker's Conference as well.
38. This would be a more transparent way of making a very important public policy decision than deciding without hearing evidence.
39. Disability Politics UK therefore requests that the House of Lords Select Committee makes an urgent recommendation to the Government that the Speaker's Conference should be re-opened to hear fresh evidence.
40. The House of Lords Select Committee needs to send a clear message about the desirability of increasing the representation of disabled people in the Commons.

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<sup>90</sup> Ibid page 38, para 81

41. The issue of disabled people's representation in the Commons has been kicked into touch by the main parties at Westminster.
  
42. We need to ensure more disabled MPs are elected as a basic matter of justice and to ensure the legitimacy and effectiveness of the Commons is enhanced. Currently, the UK's equality and electoral laws are a barrier to greater representation of disabled people in the Commons.

*2 September 2015*



## Disability Rights UK – Written Evidence (EQD0105)

### Introduction

1. Disability Rights UK is a leading pan-disability organisation working for a society where everyone with lived experience of disability or health conditions can participate equally as full citizens. We are disabled people leading change and our top current priorities are independent living and career opportunities. This response has been developed in partnership with disabled people, to which many responded to our calls for supporting evidence via our website.
2. **Liz Sayce OBE made the most significant points Disability Rights UK seeks to make in oral evidence to the Committee. This submission adds to that oral evidence and does not repeat it. We also provide links here to reports mentioned in Liz’s oral evidence.**

### Accessing Our Rights

3. UK citizens do not have the same connection to their legal rights as people in some other countries, partly because Britons do not have a constitution with which they can identify. The Equality and Human Rights Commission (“EHRC” hereafter) found that 62 per cent of individuals facing discrimination do not know their rights [[Low Commission Report at 1.19](#)]. A similar number, furthermore, do not know the relevant claim procedures. Anybody at any time can find themselves in unexpected tribulations, either as a one-off incident or a series of interrelated problems. Many problems will be difficult to resolve and may need legal intervention. They can have profound consequences for individuals, their communities and the state if left unresolved.
4. Public law education is needed now more than ever as the recent heavy cuts to Legal Aid take away essential support in accessing rights. Heavy cuts in legal aid each year means that those in welfare benefit and family disputes, people in need of help sorting debt demands and individuals who have housing problems often cannot get the legal help that they need. Rights and justice can, as a result, be delayed or denied because of a lack of funding. This allows justice to be bought and sold.
5. Our research shows that when armed with knowledge of rights, disabled people can at times negotiate successfully for adjustments and equality, without needing to go to court or a tribunal: see for instance Radar (2010) Doing Careers Differently (see <http://www.disabilityrightsuk.org/how-we-can-help/publications/doing-life-differently-series/doing-careers-differently>), through which disabled people shared tips including how to use their rights to progress at work. And DR UK runs a successful leadership programme, through which disabled people share experience of barriers and – in detail – how to overcome them, see <http://www.disabilityrightsuk.org/how-we-can-help/leadership/leadership-academy-programme-year-1>. Our members, however, report repeated and frequent access

barriers; lack of advice and support (as reported by the Low Commission) and no access to legal advice. Disabled people are also less likely to have internet access than other citizens so even that source of information can be more difficult to obtain.

Recommendation

6. ***As indicated by the Low Commission, good public legal education is needed in schools and adult learning schemes in order for people to know their rights and where to go for help. This would provide the general public with the knowledge, confidence and skills needed to deal with law-related issues so that people are better able to help themselves and are less likely to end up in a court or tribunal.***  
This needs to become part of our culture and should start at an early age as part of our national curriculum. This will allow young people to have legal knowledge, skills and confidence that they can take with them into society and share with family and friends, who can benefit from their knowledge. Public legal education enables people to manage common problems such as debt, benefits, consumer rights, discrimination, housing, employment problems and divorce. These issues can have a massive impact on people's lives. Research shows that many people worry about their problems most of the time but do not know what to do or where to go for help. The people who are hardest hit are often those who already experience some disadvantage, for example disabled people, people with literacy problems, homeless people and older people. By building rights awareness, skills and confidence public legal education can help people access services, secure their housing and employment rights and help them to seek redress when things go wrong. The law should no longer be a distant notion and instead be a tangible tool in everyday life. We also support an increase in reliable on-line information, as recommended in the 2014 report.
7. ***The EHRC should invest in working in partnership with disabled people's organisations to share and promote information and advice, so that disabled people become better able to negotiate for their own rights in practice; and the EHRC should track use of rights in practice.*** They could also, as the Disability Rights Commission used to do, offer to provide letters and briefings on headed paper to validate legal points to support disabled people challenging discrimination or negotiating for adjustments.
8. ***Government should introduce a one-stop information and advice point, similar to the Australian Job Access service, that offers free information and Helpline advice to both disabled people and businesses (particularly small businesses) on everything to do with disability access and employment.*** When individuals and businesses can access advice at the moment that they need it, they are more likely to find solutions that support disabled people's equality and participation. See <http://www.jobaccess.gov.au/> for the thousands of pages of information on the Australian site.

**Substantial Disadvantage and the Duty to Provide Reasonable Adjustment: The Need for Clarity**

9. The reasonable adjustment duty requires substantial disadvantage caused by a practice, criterion or provision (“PCP”). It appears unclear to whom the disabled person should be compared and whether a comparison is necessary in order to discover whether the disabled person is at a substantial disadvantage, especially given that it is not required by systems like the United States (“US”). There have been, as a result of the confusion, different understandings of the comparator.
10. In *Smith v Churchill Stairlifts*, the court said that comparison is to be made to a non-disabled person who is not placed at a disadvantage by the same PCP. In *Royal Bank of Scotland v Ashton*, on the other hand, it was said that the comparator would be a question of fact and a judgment as to whether the claimant was disadvantaged. The court added that all persons affected by the PCP should be considered the appropriate comparator, as opposed to only those who are not disadvantaged by the PCP. Yet another approach was taken by Baroness Hale in *Redcar and Cleveland Primary Care Trust v Lonsdale* as she considered the comparator as ‘non-disabled people generally’. This approach does not require a search for a non-disabled person affected by the PCP.

#### Recommendation

11. The Redcar judgement is a step in the right direction as a comparator is unnecessary. ***Not requiring a comparator avoids the complex discussions as to how an appropriate comparator should be found. Consideration could instead focus on whether a PCP, when performing a function or job, substantially disadvantages the concerned disabled person. With this approach, a comparator would not be required when determining whether the concerned disabled person is disadvantaged as it would be evident from the case facts. This approach would also allow the duty-bearer to seek alternative methods of providing reasonable adjustment, as illustrated in the Archibald case.*** The US takes a similar to approach where one does not have to look to a non-disabled person to know whether a disabled person needs reasonable adjustment. This demonstrates that a comparator is not required for the duty to provide reasonable adjustments to be successful. We would be happy to discuss this issue further with the Committee.

#### **Keeping Government Support Linked to the Duty to Provide Reasonable Adjustment**

12. Access to Work assists disabled people to seek employment or remain in work, resulting in reduced out of work benefits, medical costs and supported social activities, and therefore cost savings. It also creates paid roles for others to help the disabled person, such as support workers and interpreters. Employment also allows disabled people to lead more active and healthier lifestyles. Access to Work truly supports disabled people’s independent lives and applies to all employers and does not have an upper limit, with the exception of governmental ministerial departments.
13. The Access to Work scheme, however, has not escaped changes stemming from restrictions in public spending. A cap has been placed on individual awards from

October 2015; and certain equipment such as analogue hearing aids, voice activated software and desk raisers are no longer provided. This, therefore, may prevent a disabled person from accessing work, forcing her to claim benefits and contribute to the unemployment rates. The cap means that Access to Work will only provide awards up to a limit set at one and half times average salary from October 2015. This is a limit of £40,800 per person per year, which will be uprated annually in line with the level of average salaries.

14. Access to Work in its current form helps us move towards fair and inclusive economic opportunities, promoting sustainable growth by enabling a broad range of people to be in employment. Placing more responsibility on employers for supports and adjustments risks deterring employers from employing disabled people. For the government, however, Access to Work is a good investment and makes economic sense, as for every £1 spent on Access to Work the Exchequer recoups £1.48. Expanding the programme would ensure that employers are more responsive towards employing disabled people because government in effect remove the perceived disincentives for employers. The government, at the same time, can enable more people to reduce their needs for out of work benefits, as well as achieving other savings through reduced use of health services.
15. 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. DR UK's 2015 report on Access to Work showed that placing pressure on job seekers to expect their prospective employer to fund their support or equipment led to huge stress just at the time that disabled people seek to settle in to a new job: see <http://www.disabilityrightsuk.org/news/2015/april/access-work-call-members>

#### Recommendation

16. ***We need commitment to strong and long-term investment into Access to Work in order to support more people to get a job, self-employment opportunity or keep their employment.*** Liz Sayce OBE, Chief Executive of Disability Rights UK, proposed doubling the numbers of recipients in her 2011 report. In order to get disabled people into work and reduce their need for out of work benefits, we need the Government to set clear success measures and publish progress against them, including numbers, the diversity of people supported and the impact Access to Work is having on getting and keeping jobs. We must also address some specific difficulties with support for self-employed people, people with fluctuating conditions and mental health or learning difficulties. We must also work towards greater satisfaction amongst disabled people and employers with the process, the quality of customer service, the process's timeliness and individual experience.

## **The Effectiveness of the Public Sector Equality Duty**

17. Disability law (ie the DDA 1995) broke new ground in expecting people to be treated differently in order to secure equal outcomes (through the reasonable adjustment duty); and the Public Sector Duty takes that principle further, moving away from just redress after the event to proactive, systemic change. In the early period of the Disability Equality Duty, brought in under the DDA 2005, we identified significant success stories, where disabled people had been truly engaged in co-producing new solutions to policies and services – see <http://www.disabilityrightsuk.org/how-we-can-help/publications/lights-camera-action>. In 2014, DR UK published guidance on Inclusive Communities, providing a range of examples in which public sector bodies worked in co-production with disabled people to promote inclusive policies – from planning to education - see <http://www.disabilityrightsuk.org/policy-campaigns/reports-and-research/inclusive-communities>
18. Since the Public Sector Equality Duty has replaced the Disability Equality Duty we continue to know of good examples of its use, and support the duty as a fundamental tool in promoting systemic change. However, the lack of requirement for ‘engagement’ and the discretion allowed to select outcomes can mean that disability equality is sidelined, especially in a period of resource restriction – when disadvantaged groups can end up competing over diminishing funding and staff attention. We do not see the level of promotion of the Public Sector Duty that was the case when it was first introduced: its implementation cannot be left to committed junior staff; it requires leadership from the highest level across government and the whole public sector, and all those agencies with which it contracts.

Recommendation

19. **We recommend that consideration be given to replacing ‘due regard’ with ‘to take steps towards’, which is found in the United Nations’ International Covenant on Economic, Social and Cultural Rights and other proactive duties.** Although the ‘due regard’ approach has the potential to ease the regulatory resistance generated by “command and control”, a duty ‘to make steps’ imposes an obligation on the state to act and improve the situation and it is easier for the courts to apply. It could ensure that the public sector more consistently moves forward from minimal compliance and encourage it to really think about its duty.
20. **The public sector also needs much greater promotion and attention in relation to disability.** Disability is different from some other protected characteristics in that it often requires positive action and money to be spent in order to achieve equal opportunity. This often leads to disability being avoided. The duty should, therefore, afford greater protection to disability in light of the positive obligation placed upon duty-bearers to ensure compliance with the Act’s provisions. This requires leadership right across Government and the public sector – and amongst organisations with which the public sector and government contract.

**Transport on Buses: The Missing Piece**

21. The Act's failure to provide fresh and unitary guidance on the wheelchair space on buses is a missed opportunity to ensure that wheelchair users, in their quest to lead independent lives, can use the space. Wheelchair users are often left at the bus stop after several buses have passed and denied access because of buggies, baggage and people standing in their space. This negatively affects their ability to get to work as journey times become unpredictable, particularly during peak times. This can also make accessing jobs further away more difficult as the ability to make transport connections is hampered. Independent and stress-free social time also becomes more challenging, especially when they cannot use other public transport available to non-disabled people. The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 are also being disproportionately used against disabled people. Buses are often overpopulated, even without a wheelchair user on board, but more passengers are permitted to enter the bus. It appears to be discriminatory to refuse access to a wheelchair user when, at the same time, more non-wheelchair users are let onto the bus. Similarly, a wheelchair user is often refused access when there are one or more buggies in the wheelchair spot. When a wheelchair user is in their space, however, buggies are often allowed on-board. These regulations are, therefore, being applied discriminatorily in favour of non-wheelchair users. This cannot continue and further legislative guidance is needed.

Recommendation

22. ***The wheelchair space was created to allow wheelchair access to the bus. It was not created for extra standing capacity, buggies or baggage. The current provisions imply that wheelchair users can only use the space when it is convenient for everybody else. That is not true equal opportunity.*** Usually, the preferred solution is for agreement amongst passengers and this often occurs. However, at other times wheelchair users are being unfairly denied when others would not be refused access. Buggy users and those with baggage need to understand that they cannot use the space if a wheelchair user needs it. Non-wheelchair users have greater options available to them as they can decide to fold their buggies in favour of vacating the bus and they can use public transport unavailable to wheelchair users. New provisions are needed to give effect to the space's intended use and give wheelchair users guaranteed use of the space, unless a wheelchair user already occupies it or it is needed for an emergency.

### **The Housing Gap**

23. Disability Rights UK and Habinteg Housing Association are concerned that the new housing standards, to be introduced from October 2015, may reduce the supply of high quality accessible homes. This has obvious implications for disabled people's equality and independent lives, as a lack of accessible properties makes it harder to find your own home that provides shelter, freedom, control and privacy. Although there is a 124-page impact assessment of building process costs with the consultation documents, the impact on equality between people has not been published.

Habinteg's specific response to the consultation can be read here:

[http://www.habinteg.org.uk/mediaFiles/downloads/103251243/Summary\\_Response\\_Housing\\_Standards\\_Consultation.pdf](http://www.habinteg.org.uk/mediaFiles/downloads/103251243/Summary_Response_Housing_Standards_Consultation.pdf)

Recommendation

**An equality assessment should be published if it has been conducted or Ministers should set out their timetable for conducting and publishing such an assessment.** The Equality Act 2010's provisions dealing with adjustments to common parts of a residential building should also be brought into force. There needs to be greater enforcement of access and reasonable adjustment provisions, particularly in respect of the private sector.

**Disabled Political Office Holders: Opening the Doors**

24. Disabled people are lacking representation in Parliament to the extent where Members of Parliament ('MP') statistics are not recorded as they are with gender and race. The Equality Act has exemptions in Schedules 6 and 18, which prevents political office holders from benefitting from adjustments that would make the role manageable. 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.

Recommendation

25. **The law ought to be changed to allow MPs to job share as a reasonable adjustment to the existing practice of only allowing one person to represent each constituency in Parliament.** Job sharing has for a long while now allowed disabled people to balance their lives with other working roles. This would allow for the retention of valuable talents and the diversity of experience that brings greater innovation and insight to private, public and third sector organisations. Making this change would also work towards satisfying Article 29 (a) of the United Nations Convention on the Rights of People with Disabilities that obliges the UK to facilitate Disabled people holding office and participation in public affairs.

**Equality and Human Rights Commission: Supporting and Furthering Disability Rights**

26. Replacing the separate Equal Opportunities Commission, Commission for Racial Equality and the Disability Rights Commission with a wider Equality and Human Rights Commission were rational in that people cannot be boxed into single identities. The Commission has enjoyed some small success in creating a debate and a narrative. *From Safety Net to Springboard* is an example such work, which re-framed the purpose of social care as enabling full participation – not offering residual care. They have also gathered evidence to influence change such as *Hidden in Plain Sight*, a formal inquiry into disability-related hostility, harassment and hate crime. However, there has been relatively little active strategic work with partners in the disability sector, little by way of publicised strategic litigation on disability, and therefore relatively little confidence externally in progress on disability equality. The Disability Rights Commission, for example, produced codes of practice through consultation with disabled people, the Federation of Small Businesses, unions and parents organisations amongst others, leading to widespread dissemination, distribution and ownership. This would be a method worth exploring.

Recommendation

27. ***The EHRC's Disability Committee, a statutory decision-making committee, 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.*** The Committee also needs greater resources allowing it to make a bigger impact on the rights of disabled people through better engagement and consultation. One simple thing it could do is to publish regular updates on significant litigation on disability equality to both disabled people's organisations and employers and service providers.

**Enforcing Our Rights**

28. Enforcing our rights is difficult because of lack of access to justice, as discussed above. Accessing the courts and tribunals to give effect to our legal right is a challenge. A case involving goods and services would most likely be taken through the small claims process, which requires filling out forms, mediation and financial resources. The employment tribunals have similar obstacles and also incur higher court fees for discrimination cases. This makes it more difficult for disabled people, who often have lower incomes and are at greater risk of poverty, to access justice.

Recommendations

29. ***It would be helpful for the EHRC to work strategically with all the inspection bodies and ombudsmen - to embed the promotion and enforcement of the Equality Act as it relates to disabled people into all the existing complaints procedures and appeals processes. For instance, in health and social care there are proposals to create a single, streamlined complaints process and ombudsman; if this whole body was charged with resolving complaints about discrimination and disputes over adjustments, that could significantly extend and simplify processes of redress and resolution for disabled people.*** Clear and well-publicised joint agreements with bodies from the Care Quality Commission to Ofsted would similarly give confidence that inequalities and inspectorates would pick up discrimination.
30. ***Consideration could in principle 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.*** Such an initiative would need to be integrated with Ombudsman services overall. They could also use their experience to help professionals to adhere to good practice, which should reduce the number of complaints. They could also assist with improving internal complaint-handling processes where undesirable behaviour does occur. To prevent clogging the system, complainants would have to exhaust all relevant complaint mechanisms within the accused company and then seek advice from the ombudsman. This will ensure that a solution is found without confrontation and those who need help finding justice will get such assistance.



## **Conclusion**

31. Legislation is a powerful tool for setting cultural change and we have recommended measures for positive change that will steer towards the equality of disabled people: in particular, a greater focus on systemic change, on enabling disabled people to use their rights in practice and on enforcement of rights. We look forward to the Government's response to the Committee, to which we offer our ongoing support in the interest of disability equality as the bedrock of a fairer society.

*4 September 2015*

## Disability Rights UK and Royal National Institute of Blind People – Oral Evidence (QQ 14-26)

### Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Browning  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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Baroness Wilkins

### Examination of Witnesses

**Fazilet Hadi**, Managing Director RNIB Engagement, Royal National Institute of Blind People, and **Liz Sayce**, Chief Executive, Disability Rights UK

**Q14 The Chairman:** Good afternoon and welcome, Ms Sayce and Ms Hadi. Thank you very much for coming. We are very pleased to have you. Before we get going with the questions, as you know this session is open to the public and a webcast of the session goes out live as an audio transmission and is subsequently accessible via the parliamentary website, so you can see and hear yourself, if you are so minded, in a couple of days' time. A verbatim transcript will be taken of the evidence. You will be sent a copy of it a few days after this session and you can check it and advise us of any corrections that you feel should be made as quickly as possible, please.

If we do not get through everything, if you find at the end that there is more that you would like to tell us, please write in to clarify or amplify anything or to add any points that you made in your evidence. Our time here is rather limited and you might find you do not have a chance to say everything that you want to. We do not have very much time. Also we may well be interrupted. If a bell goes, our Members will be going off to vote and I am afraid that breaks up our session by about 10 valuable minutes, so you will have to bear with us if that happens. That is why I am very much hoping that you will be as concise as possible in your answers. We really want to hear your opinion and your evidence about what is happening and not happening, but we do not need to hear about the law and so on because we have other people who supply us with all that. We want your personal experiences and opinions on what has been going on in relation to disability and the Equality Act.

I think we should go round the table for the sake of Ms Hadi, not to mention Ms Sayce, and just say who we are so you can hear our voices. I am the Chairman and I am Ruth Deech. On your left, Lord Northbrook, just say who you are.

**Lord Northbrook:** Lord Northbrook, Conservative Peer, House of Lords.

**Baroness Wilkins:** Rosalie Wilkins, Labour Peer.

**Lord McColl of Dulwich:** Ian McColl, Conservative.

**Baroness Thomas of Winchester:** Celia Thomas, Liberal Democrat.

**Baroness Brinton:** Sal Brinton, Liberal Democrat.

**Lord Faulkner of Worcester:** Richard Faulkner, Labour Peer.

**Lord Foster of Bishop Auckland:** Derek Foster, Labour Peer.

**Baroness Browning:** Angela Browning, Conservative Peer.

**Baroness Jenkin of Kennington:** Anne Jenkin, Conservative Peer.

**Baroness Pitkeathley:** Jill Pitkeathley, Labour Peer.

**The Chairman:** As our Members put questions to you, they will start by mentioning any interests they have that are relevant. Some of them do not have any interests, as it were, but if they do they will mention interests that are relevant to this inquiry, so we all know where we are coming from. Do you have a very brief opening statement about your position, either or both of you, before we get going on the questions? Is there any opening brief statement you would like to make?

**Fazilet Hadi:** Could I say a few words?

**The Chairman:** Please.

**Fazilet Hadi:** I have been blind, maybe not as severely blind as I am today, since I was about nine and I think that there has been a real cultural shift in this country in attitudes to people with disability. I know it is not perfect, but if I talk to people from other countries I always feel very privileged. My feeling is that the Disability Discrimination Act in the mid-1990s played a real part in supporting that cultural change and promotion of better public understanding and more positive attitudes. I think that the Equality Act again helped to cement that change. I know it is not necessarily the purpose of Acts, but I think they have an influence, so I am personally very positively disposed to our legislation on equality.

My main comments, which I will come on to in more detail later, would be that I do not think the Act is taken seriously enough by institutions, particularly central and local government and others, but I would single out government. Finally, I do think there are some real problems and challenges in expecting an Act of this sort to be enforced by Joe Bloggs in the street. I think we need to find some other ways of making the Act real.

**The Chairman:** That is very interesting. For the sake of the recording, I am mentioning that you are director of engagement at the Royal National Institute of Blind People, the RNIB.

**Liz Sayce:** In the 1990s, I was involved in mental health advocacy policy. I was policy director of Mind. I was very involved in promoting the benefits of the then Disability Discrimination Act in the mental health sector, because people with mental health issues had faced such severe discrimination, and I then joined the Disability Rights Commission. During those early days there was real hope and a sense of a number of progressive changes that were being made quite regularly: a law that did not just give redress after the event, that said you have to treat people differently in order to get equal outcomes through adjustments; then the public sector equality duty; then the definition of who was covered being expanded and more, and more things covered, such as education. I think there was real hope, including to some degree in the mental health sector, where perhaps people traditionally did not think of themselves as disabled people.

But I think it has become a bit more difficult. Some of those progressive changes moved into the Equality Act—for example, employers are not normally permitted to ask questions about disability or health at the point before job offer. There was a real campaign where groups came together in a fantastic way, such as Macmillan Cancer Support, the National AIDS Trust, Rethink Mental Illness, and pan-disability organisations such as mine. But the sense of this is moving in a positive direction seems to have slightly stalled. I meet a lot of people who say, “Yes, but what use is the Equality Act really?”—not that it is not, but it could be better promoted and used more systemically, as Fazilet said, not just left to the individuals to pursue things, more leadership and engagement of disabled people to make sure that the public sector equality duty really works well. So I sense that perhaps the hope attached to it is not quite as strong as it was, and I would be very keen to explore further what might remedy that.

**Q15 The Chairman:** Again, for the sake of the recording, I just mention that you are chief executive of Disability Rights UK.

You have both almost answered the first question that I am going to put to you. You may want to add a bit to it, but I have a sense from both of you. Has the Equality Act 2010 been a success for disabled people? How does the position under the Act of those you represent and work with compare with their position under the Disability Discrimination Act 1995? I have already sensed something not quite so good from Ms Sayce but a sense of optimism from Ms Hadi.

**Fazilet Hadi:** From our point of view, the Equality Act did not change significantly what was in the Disability Discrimination Act. I know there were some technical changes, but really it carried on as is. The purpose of the Equality Act was to bring lots of things together. We have been left with the positive provisions of the Act, but as Liz was just saying, some of the challenges around making it real have continued and—we will come on to this a bit later—maybe with the added complexity of dilution alongside lots of issues.

**The Chairman:** Yes, the rolling in of all the characteristics together. Ms Sayce?

**Liz Sayce:** I think that at the level of individual access to justice there have been some real challenges. I am sure you are familiar with the Low commission, which is looking at the gap in advice services generally, including in relation to the Equality Act, in many parts of the country. There has also been some impact from the changes in legal aid. We have an information line at Disability Rights UK and we hear from people who are facing real unfairness and discrimination. It seems like discrimination at work or in goods and services, but actually people are finding it very difficult to exercise their rights. More positively, the more people know about their rights the more they know that you do not always have to go to court or a tribunal, and I think the word has spread: “What is an adjustment at work? What could I ask for?”.

I think awareness is higher among disabled people than it was, say, a decade ago and among some employers, but there is always the challenge that small and medium-sized enterprises, which is often where the job growth is coming and which are often really important to people in their local communities as providers of goods and services, are less familiar not just with the law but with what good practice is and what they can do, which will be in their interests as well because it will get them good-quality people.

One final thing is that I think we need a sort of revived high-level commitment to the public sector equality duty and to the principle of systemic change, not just reliance on individual redress.

**The Chairman:** One of you made the interesting suggestion that the man and woman in the street need to know more about this. How could that be achieved?

**Fazilet Hadi:** I think the man and woman in the street might have a sense about fairness, and, as I say, that might have increased in all sorts of issues, including disability—a sense that injustice needs to be got rid of. The provisions of the Act are quite technical and complex and not that straightforward, so concepts such as reasonable adjustments are not straightforward to explain. We can get across that people have a measure of protection against unfairness, but it is quite hard to make people conversant with the actual detailed provisions of the Act.

**Q16 Baroness Pitkeathley:** I want to declare that I am vice-president of Carers UK. I want to ask you something very specific about something else that might be quite difficult to explain—the protected characteristics. What do you think has been the effect of disability being one of those protected characteristics?

**Liz Sayce:** In principle it seems a good thing, because people are not segmented. You are a disabled person and a woman and you may be from a minority ethnic community and so on. An holistic approach seems to make sense. It says something about what kind of society Britain wants to be. The difficulty comes when some employers and service providers extrapolate from what they were used to with race and gender legislation, which is that you just treat everybody the same. They extrapolate from that to disability, where actually with disability you might need to make a workplace adjustment. In that sense, disability is not completely different; you might need to do positive things in race and gender as well. We probably do not have time to go into that.

The other thing is that increasingly we find that employers and service providers put on training on equalities, for example, and it might just be half a day. They might in any given year decide, “We are focusing our equalities work this year on reducing the gender pay gap, let us say, so this year it is not disability”. When you had a more specific focus on disability, it was slightly easier to discuss the need for that disability-specific attention. There are some fantastic employers and service providers who are doing it really well, but I think some are just covering equalities in a very generic way and are not exploring what they need to do to be inclusive on disability, which would be beneficial to them as well to disabled people.

**Fazilet Hadi:** I agree with Liz. Rationally we all think that you cannot just, as Liz said, tackle all these things in different buckets. “Let us join them up and let us make it easier for employers, business, government to look across”. That is rational, but emotionally it is quite interesting. I was just thinking that as a disabled person I could identify with the DDA, the Disability Rights Commission. In a way I find it more challenging now with the Equality Act and the Equality and Human Rights Commission, because it is so generic.

I also agree with Liz about that kind of dilution of, “We have to work across all these nine areas, so we will give them each a dob”. The public sector duty is suddenly so broad that the question is whether it is meaningful when you look across the nine. The same is true of the codes of practice when you look across the nine. 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?

**Baroness Pitkeathley:** Might the very genericism that was sought in the Act be disadvantageous to people with disabilities?

**Fazilet Hadi:** I think so, in terms of the focus and the impetus that Liz was talking about. Have we lost that drive and that energy? I think that is partly due to putting it all in one bucket neatly. Do not get me wrong, I understand why that was wanted, but one of the

consequences has been a kind of stalling of the energy around the need for change on disability.

**Q17 Lord Foster of Bishop Auckland:** Does the government policy on disability support the implementation of the Equality Act? Can you think of any additional action that you would like to see the Government take to improve implementation?

**Fazilet Hadi:** I know this is a very sad thing to say, but I think that we have seen better implementation of the Act from the banks, the utilities, the John Lewis-es, the private sector, than we have ever seen from central or local government. That is a bit of an indictment, given this is government legislation. I say that because in 2015 there are still government departments that do not have proper mechanisms for giving blind and partially sighted people and other people with disabilities information in accessible formats. 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 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—the NHS does it as well—and so it goes on.

I think this goes back to other point about the Act: is it really speaking to institutions and making institutional change, or is it just there so that the person in the street, with no resources, no money, feeling quite powerless, is meant to enforce it?

**Liz Sayce:** I think there is something about the narrative of different Governments. I have noticed a trend—and this may be partly to do with successive Governments' commitment to welfare reform and austerity and so on—for a strong commitment to look after people who are vulnerable, but I think what is being lost in that kind of narrative is a commitment not only to offer social protection to people who may face the biggest barriers and disadvantages but to promote equality of participation for people whatever their experience of disability. 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. I think that has got a bit lost in the debate about protecting people who are vulnerable, which is obviously a well-intentioned strand of debate but we are slightly over-depicting disabled people as vulnerable people who need looking after, and we have moved away from the idea that for disabled people to have real independent living, some support is often needed. It is not something that you can just do on your own, but we have to get those adjustments and supports right and then people can really participate. It makes economic and social sense, because people are not isolated and so on. There is something about the narrative.

Leading on from that, I think it would be good to have stronger and clearer cross-government leadership on these issues. There are some real opportunities at the moment. We have a Government right now who are committed to halving the disability employment gap, for example, and maybe some of that could be framed in relation to equality. Things like the public sector equality duty are tools to help that happen, but I do not see the equality frame being used all that much, and I think it would be really useful if it was.

**The Chairman:** We are very aware of the different silos that the government departments seem to work in.

**Lord Foster of Bishop Auckland:** Do you think that any amendment to the Act is necessary, or is it is all about implementation?

**Fazilet Hadi:** One of my colleagues made the point to me today that you do not really know what amendments are needed, partly because there has been so little test case law around the Act, but I suppose I would make a point about the lack of clarity on whether digital TV is covered—coming back to some of the issues we are concerned about at the RNIB. When I get my Virgin TV or my Sky TV, is it a service, is it a manufactured good? Should I have to worry about that? We do not know whether that is covered by the Act or not. Washing machines, dishwashers, tumble dryers, microwaves are definitely not covered; they are goods and we feel they should be covered. We feel they could be designed inclusively. Digital has moved on now so that it is not even that expensive to design a washing machine with a readout that you can look at or a voice you can hear, or a smart meter or whatever. Goods are definitely not covered by the Act.

The other thing that needs changing is that we need to get a bit more imaginative about the implementation enforcement provisions of the Act and, as I said earlier, not leave it to the person on the street to carry the weight of changing and testing the law. We need to find other mechanisms.

**The Chairman:** This ties in with the cuts in legal aid and the greater hardship for those who want to go to a court or tribunal, does it not?

**Baroness Thomas of Winchester:** Just before we leave Ms Hadi's reply, do we know why there have been so few test cases?

**Fazilet Hadi:** I do not know. Even though the Act is there, it may be partly because individuals do not come forward in huge numbers. The funding for those cases might be questionable and there might be complexity in what is covered and not covered, but I am probably not the right expert on that question.

**Liz Sayce:** We will send in a written submission. We want to consult our members over the summer on this question of potential amendment to the Act, but I will just mention a couple of things that we are concerned about. One is that under the Red Tape Challenge there was an intention to take away the power of tribunals to make an order for systemic change. There have been a number of cases where that has been really important. For example, there was a woman who had panic attacks and lost her job, but she also overheard really discriminatory and nasty things being said about her. The tribunal ordered that not only should she have some compensation but, very importantly to her, that there should be training on disability equality for the HR staff and the key managers.

If we want this law to be a real engine of change, we do not want to hamper it. There is a theme in some of the things I am saying, which is that the systemic aspects of this legislation are very important, otherwise you just get an individual who may or may not get some redress, but it does not change anything else, and that is not the best use of public money in terms of the tribunal system. That is one area.

Another area is transparency about employment levels. This is something that I know employers grapple with: how do they know how many disabled people they employ, and so on? A 10-minute rule Bill was introduced recently that advocated that kind of transparency but only for larger organisations, a bit like what is done on gender pay gap issues. We think that is really important, because if you are trying to get real change, say on employment, and you do not know your baseline position, how do you know if you are making any progress? If we can create cultures where people feel comfortable about being open, they understand why they are being asked those questions and they feel that if they are open perhaps adjustments will be made for them, that could have a transformative effect. We need to do some more work on the detail of amendments and what that would mean.

**Q18 Baroness Browning:** I am Angela Browning. I am vice-president of the National Autistic Society and a patron of Research Autism and Action Against Elder Abuse.

Could I ask you about the comment you have made about individuals approaching the commission to see if test cases can be brought forward? My experience has been that if you go with an individual case, unless they can immediately see that it has a wide read-across, they do not take any notice. As two people who represent charities, can you explain why the charitable sector, charities, do not cluster together to put the sort of pressure on them that would give them that critical mass to encourage them to take cases to the court? It happens with judicial review. I wonder why it does not happen with the commission.

**Fazilet Hadi:** We 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. We could have taken individual cases or referred it to the commission, but going back to Liz's point, what we really wanted was systemic change in the Department for Work and Pensions. Those 50 people and their cases enabled us to open up a conversation, a discussion, with the Department for Work and Pensions about changing things across the board—what could be done within their systems for changing things. We could have won individual cases ourselves, as you say, or gone to the Equality and Human Rights Commission, but that individual case would not have necessarily resulted in a root and branch sort of review of what the systems were. That probably does not fully answer your question, but I suppose it just shows that sometimes it is not the individual case that is the big issue; it is the way that institution is not building equality into its systems.

**Q19 Lord McColl of Dulwich:** Has the failure to bring provisions on taxis and adjustments to common parts of buildings into force had an impact on those you represent and work with?

**Liz Sayce:** Can I respond on taxis in particular? Those of us who operate in London—and it is not perfect in London—get a slightly overly positive view of taxi accessibility, because there is a fleet of accessible black taxis, black cabs, at least in principle. I know there are still issues with that sometimes with driver behaviour and so on. In some parts of the country there is an absolute lack of accessible vehicles. Over time, disability groups have campaigned for stronger regulation and at least requirements that say that a mini cab company has to have some accessible vehicles, even if you do not go as far as to say that every vehicle has to be fully accessible but that they have to be able to provide a service to people with access requirements, remembering here that we are talking not only about wheelchair access, hugely significant though that is. We have some vehicles out and about in taxi fleets that have hearing loops, good grab rails and so on, that are accessible for people with a whole range of different impairments. It is not working in some parts of the country.

**Fazilet Hadi:** Your question has made us want to go back and ask our own members about common parts. We do not know the answer to that question and we need to find out whether that is a big issue.

On taxis for blind and partially sighted people, the Act already covers being able to take guide dogs and assistance dogs. Fifteen, 16 years later we still find prosecutions and people being denied taxis, but that is already in force.

**Lord McColl of Dulwich:** I was rather surprised to find that if we are talking about access to, say, a block of flats or something, a landlord is not obliged to put in a ramp, and in fact they may make the disabled person pay for it. I do not know if you have come across that.

**Fazilet Hadi:** I am sorry, I have not.



**Liz Sayce:** Yes, we have come across examples of that. There is a wider debate, because the other thing we come across sometimes is new developments that are still not accessible, which is a separate point. I do not have data to hand or examples. We will look into it with our members as well and can get back to you, but, yes, we have come across it. I agree with you.

**The Chairman:** Is it not really a question of there being so many million people—I have forgotten the number—who are impaired either permanently or temporarily, that it is only common sense for every area of society just to take that as mainstream? Is that not it?

**Liz Sayce:** Particularly with an ageing society. There are more and more people living with impairments, many of them acquired, and to create inclusive communities just makes sense. Then everyone can participate. People can go to college, can go to work, and if they are older they are not isolated and can be grandparents and so on.

**The Chairman:** Any one of us could break a leg tomorrow, or whatever, even without thinking of ourselves as disabled permanently. Yes, quite. I take your point.

**Q20 Baroness Thomas of Winchester:** We come to reasonable adjustments. I should say that I receive DLA. I am a trustee and vice-president of Muscular Dystrophy UK and various other organisations—I do not know whether I need to go into all of them—the MCC Disability Access Committee particularly. In your experience are the reasonable adjustment duties applied in practice? What measures have been shown to promote compliance with the duties? Are the failures to apply duties due to any particular barriers? If you have any examples it would be very helpful to have them.

**Liz Sayce:** Talking about adjustments in the workplace, I think the best employers—and there are some that have adopted very good practice—do not ask first, “Is this reasonable?” They say, “What is the adjustment a person says will enable them to work at their best?” and they just do it if it is straightforward and they try to do it fast. That is transformative, because conversely if you start a new job and the adjustment is not in place—and we hear from people in this situation all the time—you have the anxieties of being in a new job and you cannot perform because maybe you are waiting for your accessible software or for a desk that you can actually sit at or whatever, or you are waiting for the transport to be in place. Sadly, that happens all too often.

The first thing is that we do know something about what good practice is and it does not overly focus on reasonableness, although of course if it comes to something that is really tricky or very expensive, you do have to start thinking, “Is this reasonable or not?”. So I think that we know something about what good practice is. Unfortunately there are still too many examples of employers not knowing what to do, being nervous, not having advice to hand. One thing that would make more difference than anything else would be free advice for employers at the point when they hit the issue, not like a generic disability campaign—and I am not knocking it—to let you know in theory how important it is to employ disabled people. What the employer needs is, “Well, now I have Mary in front of me. She has bipolar disorder and she wants this, and I do not have the faintest idea what to do. I have never encountered this before”, and so on. I think that would make an absolutely massive difference.

**Baroness Thomas of Winchester:** Who ought to provide this advice?

**Liz Sayce:** In relation to small and medium sized enterprises particularly, I think Government have a role and indeed Government are taking some steps towards that with their Fit for Work service, but I am not sure how expert that is on workplace adjustments. Big companies should be able to find those things themselves, put them in place themselves, join

organisations for money that will provide that. There was another point but it has slipped my mind. I will come back to it.

**The Chairman:** What about the disabled charities themselves? Could they not provide this advice?

**Liz Sayce:** Yes, and we do do that. In Disability Rights UK, for example, we have done a number of things. At the moment we have a career development programme run by and for disabled people, which is enabling both the disabled person and their company to know how to enable them to progress in their careers, because some people get stuck below their potential. We also offer training and consultancy advice and so on, and we are not the only ones. Other people do that. It is just that it is a bit patchy, I would say. Australia, by contrast, has a free helpline for both employees and employers, and they have thousands of webpages of all the different adjustments and what they could be. We do not have anything like that here.

The other thing I was going to say was that we recently undertook a study for the Cabinet Office on the experience of civil servants. It was particularly about whether disabled civil servants progress in their careers. We found that while there was some very good practice, and the Civil Service does employ quite a lot of disabled people, there were some real barriers to career progression that were about adjustments not being put in place in a timely way. In the Civil Service you have to move from job to job in order to progress, but you could not move from job to job because this job had managed to make your adjustments and you could not get the adjustment in the next job. We heard that again and again and again. This report is published on the Cabinet Office website if you want to look at it. There were a number of issues like that. There were also issues in the performance management system whereby if people did not get the adjustments they did not perform as well, and that knocked them back and so on. I think the Civil Service is taking those findings very seriously and trying to do something about it.

**The Chairman:** We would be interested in seeing that report. Also, if you have a link to the Australian system, it would be of great value if you could send that in later on.

**Baroness Thomas of Winchester:** Before we get on to Ms Hadi, is the mental health support service provided by Remploy Employment Services in the Access to Work programme working satisfactorily under the heading of reasonable adjustments, as far as you know?

**Liz Sayce:** I think it has helped in the sense that Access to Work used to have something like 1% of people using it having a mental health condition, whereas a huge proportion of people on benefits or wanting to move into work have mental health problems. Access to Work overall serves only 35,000 people per year, and people with mental health problems are a very small proportion of them, whereas there are 6 million disabled people of working age and significant numbers of those have mental health issues. So it is the tip of the iceberg, I would say. More needs to be done.

**Fazilet Hadi:** I benefit every day from reasonable adjustments, from the audio announcement on the train on my way to work, the personal assistance I get from the railways or the aeroplane companies, from lift buttons that are in Braille or lifts that talk, from the fact my bank sends me a statement in a format I can read. It is all good, but—and this goes back to the point Liz and I have been making about systemic institutional responsibility—there is an anticipatory duty in the Act. Going back to the point the Chairman just made, we are a society that includes 12 million disabled people. Get over it. That is how it is, and you should plan for it: plan for it when you are designing your services, designing

your goods, delivering your information and designing the streetscape. Why is the anticipatory duty not taken seriously?

As an individual I should not have to find personal redress. Institutions should be taking it seriously by providing me with the information in the format I want it in, designing the service so that all disabled people have an equal chance at it, or the employment, and making sure that they buy the right IT, the right building. You do not purposely get IT that only some people can use, and you do not build streetscapes where blind people do not know where the kerbs are or wheelchair users cannot get around easily. Reasonable adjustment is great, but it should not all have to be about advice to individuals; it should be about what we can do as a society to make institutions that have the resources to spend those resources in an inclusive way that builds in reasonable adjustment from the beginning so that we do not need things retrofitted at the end.

**The Chairman:** Yes, that is very clear.

**Baroness Wilkins:** May I ask for views on the new housing standards and the fact that Government have made it optional on local authorities, and that developers will have to prove a need in order to build the equivalents of wheelchair and lifetime home standards?

**Liz Sayce:** We have worked with the Habinteg Housing Association and others to say that we think that these provisions need to be strong and should not be watered down.

**Baroness Wilkins:** Anticipatory duty.

**Liz Sayce:** Exactly. It just makes sense, does it not, for new homes and housing developments to adhere to lifetime home standards. It also makes life simpler for everybody. People do not have to move so often, and if you acquire impairments you do not need to move later. So, yes, I think that is a retrograde step.

**Q21 Lord Northbrook:** Francis Northbrook. No relevant interests to declare. Do disabled people know their rights under the reasonable adjustment duties? Can you give examples of where the law on reasonable adjustment is or is not sufficiently clear? From my perusal, there seem to be about three cases. First, the DWP has had its knuckles rapped for failing to take reasonable steps for claimants with mental health problems assessing eligibility for the DSA. The other two cases, which I understand are under appeal, are about the rights of wheelchairs on buses as compared to pushchairs.

**Liz Sayce:** On the question of awareness, the proportion of disabled people who knew that there was a law that protected them used to be tracked, and I would need to check that out. I am not sure whether it is still tracked, but perhaps we could look into that. Every day more people are having accidents, being diagnosed with MS, acquiring hearing loss and so on, so there are always newly disabled people, and I think it would be fair to say that many of them do not know their rights. It is a constant challenge. We would like people working in the health service, in social care, people who are in direct contact with people when they acquire that impairment, just to signpost them quickly and give them the decent information. They do not have to be experts themselves but just to give all that good information and let them know where they can get more advice.

In terms of the clarity of the reasonable adjustment provisions, I know that employers sometimes say, “Well, yes, but how do we know what is reasonable? It is very confusing. It is a confusing concept”, but I think the concept of reasonableness is quite useful, because you simply cannot expect the same of the corner shop as you do of BT. What is reasonable for one company is completely not reasonable for the next, and I think the law rightly takes that into account. It means that it is not quite so crystal clear for the employer as saying, “You

just have to do this”, but it means they have to think about what they can do, given the nature of their service and their budgets and so on, and I think that is no bad thing.

**Lord Northbrook:** We have two Private Members’ Bills before the House, one to improve step-free access to public buildings and Richard Faulkner’s Bill to make provision for greater accessibility to sports grounds.

**Fazilet Hadi:** I agree that reasonable adjustment is a great concept. As Liz says, what is reasonable now might not have been 10 years ago. I was just thinking that we have recently worked with and challenged banks to make their cash machines talk, and when it got down to it, because of the way digital has moved on, for most of them it was a software upgrade. It was not like ripping out the machine and putting in a new one, so of course that becomes reasonable. Maybe 10, 20 years ago it would not have been reasonable because they would not have been able to do it. So the concepts changes, and as Liz said that then makes it harder for all these people who are becoming disabled, and some of us who have been disabled for a long time, to interpret what it means for us. We have a sense that there is some fairness and some law, but the detail—what is reasonable, what is a substantial disadvantage—is all quite complicated.

What is also quite complicated is if my GP is communicating with me by letter, not by email or text or something that I can read or listen to, I do not feel that I want to challenge him or her. They are in charge of my health, I have a relationship with them. Do I really want to be sitting there going, “Right, give me this in a format I can read”, or to be talking to someone about my medical, so I think there are issues, even if the public person in the street could understand it, with the extent to which emotionally they are ready to insist on their rights.

**Q22 Baroness Thomas of Winchester:** How effective has the public sector equality duty been in advancing equality in public services affecting disabled people, and can you give examples of good practice and poor practice?

**Liz Sayce:** Since the Disability Discrimination Act first brought in the disability equality duty, there have been quite a few examples of public sector organisations that have used it really positively. I have brought with me—I can email a link to this—something from before the Equality Act. It is called *Lights, Camera, Action* and it includes quite a lot of examples, such as universities that have taken proactive steps in looking at the proportion of their students who are disabled and doing something to increase those numbers and achieving that, or health services looking at why people with, say, learning difficulties do not live as long as other people and doing something about that. We have quite a lot of examples of people using it well.

We have recently published some work on inclusive communities, and some local authorities, with their partners, have used the public sector equality duty alongside other drivers for example to look at how they can increase economic growth in their area by enabling more disabled people to be economically active or how they can improve health and well-being using the public sector equality duty. We have had examples such as local authorities working with young disabled people to improve health and well-being opportunities for young disabled people. So there are examples out there.

The one slight regret I have is that, first of all, the disability equality duty was actually a bit clearer. It was about engagement and evidence and then action and review and so on, and that engagement piece is so crucial. All the best examples of use of the public sector equality duty involve a lot of engagement. Secondly, the public sector equality duty seems to have been less promoted, and this goes back to what I was saying earlier. In a way the argument was that by reducing some of the paperwork and not having to have schemes and so on, it

would be used more and would not be a burden and so on. I do not have systematic data on this, but my sense is that that has not really been the case, that if anything the public sector equality duty may be less heavily promoted. Also, because organisations can say, “I will select an outcome”, we go back to, “This year we are selecting gender”.

**Baroness Thomas of Winchester:** You do not think it has anything to do with the Red Tape Challenge?

**Liz Sayce:** I think 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. That just did not give the right message. Of course you want to make sure that things are not too bureaucratic, but it was just unfortunate that that got a lot of attention in the media.

**Fazilet Hadi:** I am going to be a little more negative than Liz and say that our experience is that institutions do not really implement it. We think it is a great tool and we would not want to lose it, but we think there is a bit too much lip service. We do not believe that we could point to an example of where an authority or business has changed what they were going to do as a result of looking at it, but maybe we are just bit jaundiced and Liz has better examples. We do not feel that it is really biting, I suppose.

**Q23 Baroness Brinton:** How well do you think the Government take account of the public sector equality duty in major financial decisions such as the recent Budget? I will just put that into context. Last week I asked officials if the Treasury took a view of the cumulative impact of some cuts, and I was told that they did not believe that an assessment of the full cumulative impact was possible.

**Liz Sayce:** I believe the Equality and Human Rights Commission said that it thinks that an assessment of cumulative impact is possible, so I think that is an interesting debate. There have been a number of decisions where the impact on disability equality has not been sufficiently analysed. I would take one example as well as the Budget, which is the proposal to make changes to disabled students allowance. We and others supplied evidence that showed that the disabled students allowance both encourages disabled people to go to university and, very importantly, prevents dropout. You waste public money if people start degrees and then drop out. I am very glad to say that those arguments have been listened to and that there is now consultation rather than just jumping to the decision, but sometimes there is not enough analysis of the impact at an early enough stage.

On the Budget, we are worried about potential perverse incentives. For example, on the reduction in the benefit levels from 2017 for people in the work-related activity group on ESA, as far as I can understand if you are an existing person and are still protected on the higher level, you try work and it does not work out after a certain amount of time, you then go back to a lower level. That creates a disincentive to trying work.

There are issues like that that really need to be bottomed out, and there are a number of things in the Budget. Obviously some things have been protected such as PIP and DLA, which is good, but the WRAG ESA thing could have a very significant impact on disabled people, as well as some of the changes on tax credits.

**Fazilet Hadi:** I agree with Liz. 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? So I think that government does struggle with joining the dots in these issues.

**Q24 Baroness Jenkin of Kennington:** Anne Jenkin. No interests to declare. How effective do you feel the Equality and Human Rights Commission has been in promoting and enforcing compliance with the Equality Act? Can you give examples of where you think they have been particularly effective or where their performance could improve?

**Liz Sayce:** At times they have been good at creating a debate, a narrative. As an example, they did a very good piece of work on social care called *From Safety Net to Springboard*, that asked what the purpose of social care is. It is not just to look after you. Say you have a learning difficulty and you have somebody, a buddy or whoever, who can go out with you, then you go out and do things. If you do not have that, you cannot. I thought that was very good. They have sometimes brought a lot of evidence together and used that to influence, such as in their Hidden in Plain Sight formal inquiry into disability-related hostility, harassment and hate crime. Obviously we have the comparison of the Disability Rights Commission, so I should probably declare an interest because I used to work for it, but I think that had more focus on working with the range of stakeholders. For example, when the Disability Rights Commission produced codes of practice, it would bring in the teachers unions and the parents organisations and come up with a code of practice that had ownership and was then disseminated and distributed. It worked with the Federation of Small Businesses and all sorts of people.

As a stakeholder in the Equality and Human Rights Commission, I do not see that kind of engagement. The budget has gone down, the engagement has gone down, and although there are some examples of good initiatives I do not see evidence of a kind of systemic approach to really moving forward on disability equality that is strong enough. There are some good pieces of work, but they are slightly isolated.

**Fazilet Hadi:** I agree with all that. I think their role in test cases is important, although I cannot give you an example. We also think that they could widen that to supporting people in the lower courts as well, because that is a way of enforcing the Act. One of our thoughts was on whether, as well as codes of practices, or instead of them, the Equality and Human Rights Commission could be given a strengthened role for setting standards in particular sectors or industries. Just last month in June we saw NHS England agreeing a mandatory standard on access to information and saying to all NHS bodies in England, “You will implement this by next summer”. Of course we could say that the Disability Discrimination Act provisions on accessible information have been in force since 1999, but health bodies could say, “We do not know what that means. What does it mean for us in health?”. Now NHS England has set those standards. There is no wriggle room. That is what it means. Get on and implement them. I wonder if we could look at ways that EHRC could extend that standard-setting role to other sectors.

**Baroness Jenkin of Kennington:** You said that the level of engagement had gone down. How would you describe your organisation’s relationships with the commission, and do you find that they are responsive to the concerns of your own charities, disabled people’s organisations and others in the sectors?

**Liz Sayce:** There is engagement. 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. There are some. For example, tomorrow there is an event looking at how fair is Britain and their triennial review. They have some fantastic people working in the EHRC and on their board and so on on disability issues who deserve great credit, but sometimes they do not have quite the depth of knowledge across all disability issues.

Just to give you one example, in the last triennial review they set as an ambition closing the employment gap on disability when their own data showed that the pay gap was a massive issue. It was as though they were not being very ambitious. For women, you wanted careers; for disabled people, any old job is probably all right, never mind if it is on minimum wage. I am paraphrasing but it came across like that.

**Fazilet Hadi:** I am sure their role has changed hugely, because they have had to refocus and they have a different budget than they had years ago, but I suppose my observation would be that I personally as a director of a disability charity have very little contact. I am not saying that as a critical thing. It may be, as Liz says, that their strategy has changed, that their relationships have changed, but when the Disability Rights Commission was around I would go there regularly, we would talk to them regularly, and so on. None of that is a criticism, because roles change and it might have justifiably changed.

**Q25 Lord Faulkner of Worcester:** I want to ask about enforcement mechanisms and the access that disabled people have under the Act. My declared interests are all unpaid, but they are relevant in that I am a vice-president of the organisation Level Playing Field and I have public and heritage transport interests, and on Friday I am promoting the Private Member's Bill, which Lord Northbrook referred to, on disabled access to sports grounds. My question is this: have you found that the fact that disabled people now effectively have to bring individual actions to prove discrimination has led to a substantial decline in the number of cases that are being considered? What do you think should be done about that?

**Fazilet Hadi:** I do not know if things have changed, but there are certainly the points that we made earlier about the complexity of the law, so it is quite a challenge for people to get their heads round the law. If it is about goods and services they possibly have to take it through the small claims process, which is not completely straightforward for an individual, which again can pose some accessibility problems. The costs of both employment cases and goods and services cases could be a barrier. I made the point earlier that a lot of people still tend to say that it is the principle of it, that it is just wrong, but if they get the redress for their own personal situation it does not mean that that institution changes it for everyone. So case by case, individual by individual, might not be the way to really embed equality into the system, into the institution.

There is no ability at the moment to bring any sort of class action. If the RNIB knew that 90 blind people were prejudiced by some new shared space scheme somewhere, we could not step in. It would be great if we could, but we cannot. Sometimes we take cases to the ombudsman when the small claims court seems just too onerous for people, and we find that their expertise on these discrimination issues is not always as good as it should be. So another thought, in addition to the small claims process, is whether the ombudsman could be given some sort of discrimination remit.

**The Chairman:** Which ombudsman is this?

**Fazilet Hadi:** I do not mind which one you give it to. It could be local government when it is to do with local government. It could be the financial ombudsman when it is relevant, but they should actually feel that discrimination is part of their remit and employ experts.

**The Chairman:** Perhaps we need a disabled ombudsman, a disabled champion.

**Fazilet Hadi:** Yes, a disabled or equality ombudsman.

**Lord Faulkner of Worcester:** It sounds like a good recommendation already, Lord Chairman.

**Q26 Baroness Browning:** Could you say a few words about people who lack capacity? I know that assessing capacity has to be based on an individual instance, but it does seem to me that within the disability population there will be quite a large number of people who would just not have the capacity to exercise their rights under the Act. I will leave it as general as that. How do you assess their ability to access their rights?

**Lord Faulkner of Worcester:** Can I ask as a supplementary to that very important question whether the changes in legal aid arrangements and the fact that those charges have gone up has meant that a number of people feel that this is now beyond their means?

**Liz Sayce:** On that last question, there has been a huge reduction in the number of cases going to employment tribunals, for example, which seems to be to do with them having to pay the upfront fee. We talk to people on our phone lines all the time who feel that it is beyond them to do anything about their very difficult situation at work. In relation to goods and services, there has always been an issue about, say, going to a restaurant and getting treated badly. Ultimately a lot of people simply go to another restaurant. It is not quite as life changing as if your job is threatened – but it still matters to huge numbers of disabled people. There has been less case law and so on on goods and services, and I think that is an issue.

To come back to your point about mental capacity, I think this is hugely important. Again, there are some things that you can do through more systemic things like formal inquiries. The Disability Rights Commission did a piece of work looking at health inequalities experienced by people with learning disabilities and by people with mental health issues, and some of those individuals lacked capacity to make decisions and were getting very bad physical healthcare. It was not reliant on the individuals taking a case; it was done through an inquiry, albeit with every effort made to enable people to have a voice, which, under the Mental Capacity Act, is what you should do. That is one way.

I think that advocacy is really important to enable people where possible to voice that something is not fair or to voice discontent if they can, even if they are not able to completely absorb the nature of the legislation and so on—a bit like what has been done in the criminal justice system, where lots of efforts have been made to enable people to give evidence rather than saying, “You are not a reliable witness. We will just forget it”, which is kind of what used to happen. I think there is an issue that people who lack capacity do not have sufficient access to justice in relation to their rights. I think we need advocacy and systemic approaches such as inquiries.

**Fazilet Hadi:** To add to that, your question has made me think not technically about not having the capacity but about 90% of people losing their sight in retirement age. A lot of them are over 75, and a lot of them over 85. Are we really suggesting that they trot down to the small claims court? Of course you have mental capacity issues, which are very real, but you have issues about how real a lot of people’s genuine capacity, energy level or whatever you like to call it is to actually implement their rights themselves in the way we are talking about.

**The Chairman:** Good point, yes. I think that brings us to the end. I remind you that there is more material that you mentioned you might send in to us—I was particularly interested in the mention of Australia—and anything else that you can think of would be very welcome. Thank you for giving us such interesting and helpful evidence. We all wish you well in your



campaigning work and the support that you give to others, which is so valuable. Thank you very much indeed, and I hope you will read our report in an accessible form next March.

*14 July 2015*

## **Disabled Persons Transport Advisory Committee – Written Evidence (EQD0094)**

### **Introduction**

1. The Disabled Person's Transport Advisory Committee welcomes the opportunity to submit evidence to this enquiry. In doing so we restrict our comments to our observations on the impact of the Equality Act on the experiences of disabled using transport services. We have limited our responses only to those questions where our knowledge is relevant to the enquiry.

### **Context**

2. Before turning to the questions posed by the Committee we thought it would be helpful to briefly set some context to disabled people's use of public transport.
3. A growing number of disabled people are facing important changes in their lives as they are increasingly expected to find work and cope with the challenges of commuting. The replacement of Disability Living Allowance by Personal Independent Payment will see significant numbers (perhaps 300,000) losing all or part of a benefit which helps with their transport costs.
4. Consequently, disabled people who have developed coping strategies to avoid using a public transport system which many believe remains wholly or partially inaccessible to them will need to consider using it for at least some of the journeys they make.
5. This is why DPTAC consider it is essential to ensure that legislation that drives the development of accessible public transport is effective and its impact monitored, that it is supported with appropriate incentives and is backed by a robust enforcement regime. It is vital that there is sufficient understanding in Government of the developing transport needs of disabled people. It is equally vital that there is sufficient resource in the public service to lead and deliver creative, pragmatic solutions to remove barriers and open up opportunities.

### **Q1.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?**

6. 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.

7. Unlike other forms of discrimination on grounds of gender, race etc, which are entirely down to prejudice and ignorance, disability discrimination also arises from physical barriers. This emphasis on discrimination caused by the physical environment needs a different focus and a much more effective enforcement and monitoring regime.
8. 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 (this is expanded on below) there is little effort going into making sure that accessibility features are consistently in place and working, such as audio and visual announcements on trains are one clear example.

**Q3.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?**

9. The reasonable adjustment duties on the majority of transport operators are significantly different to those imposed on other service providers because the access provisions to land based transport vehicles are specified in Access Regulations passed by Statutory Instrument. (The exception is with Taxis where it has proved impossible to devise regulations for the design of a universally accessible vehicle that it would be economic to manufacture for a realistic cost).
10. Consequently the practical issues involved in making public transport vehicles accessible are dealt with by regulation, the reasonable adjustment duties relate to where assistance is required in boarding and alighting from the vehicle and during the course of the journey. In addition the reasonable adjustment duties apply to the physical environment, including train and bus stations.
11. There is significant evidence that transport operators are failing to make the necessary reasonable adjustments to provide this assistance. Transport Focus carry out periodic mystery shopping to assess the reliability of passenger assistance provided to disabled users of the rail network. This has consistently found that some disabled passengers do not receive the assistance they have booked. Although staff do their best to help, poor communication and a lack of training can result in an unreliable service with disabled passengers sometimes relying on the help of other passengers to complete their journey <http://www.transportfocus.org.uk/research/publications/passenger-assist-summary-report>
12. The issue of access to the wheelchair space on buses has been a regular source of conflict. The matter has been subject to litigation which is now to be considered by the Supreme Court on the case of Paulley v First Bus. DPTAC will not comment on a case which is sub-judice, but is monitoring the outcome closely.

13. There have been regular anecdotal reports of taxis avoiding picking up disabled passengers and charging them extra if they require an accessible vehicle. Here are just a few of many examples:
  - [http://www.theargus.co.uk/news/11616785.Wheelchair\\_user\\_turned\\_away\\_by\\_taxi\\_FIVE\\_drivers\\_at\\_Brighton\\_railway\\_station/?ref=rss](http://www.theargus.co.uk/news/11616785.Wheelchair_user_turned_away_by_taxi_FIVE_drivers_at_Brighton_railway_station/?ref=rss)
  - <http://www.mirror.co.uk/news/uk-news/boro-taxis-disabled-passenger-row-3013905>
  - <http://www.bbc.co.uk/news/uk-england-london-29917990>
14. We understand that a survey was conducted in 2014 about this issue, we have asked the Department for Transport to share the results with DPTAC.
15. The reasonable adjustment duties have applied to transport operators since December 2006. It is a matter of considerable concern to DPTAC that there is evidence that there are still regular examples of them not being followed. The industry has largely embraced the challenge of making vehicles accessible, but has not been able to achieve the consistent levels of staff service that would mean disabled people could use public transport confident in the knowledge that they will always receive the level of assistance they require.
16. It is particularly important that these duties are fulfilled in the transport sector because, by and large, there are no alternative providers to whom disabled passengers can turn. If a shop, bank or restaurant does not make the necessary adjustments a disabled customer can take their business to one that does. Competition drives consumer choice. However this is not the case when using public transport, and a more common outcome is that they avoid using public transport altogether.
17. DPTAC is keen to see greater investment in staff training to improve the quality and consistency of assistance provided to disabled customers and is preparing to carry out work to evaluate the current disability awareness training on offer from bus operators. The aim is to analyse the reasons why current training isn't resulting in better customer service for those with extra needs and to make recommendations for improvement in training and develop a voluntary code of practice with the industry. However we also believe that senior management has a key role in stressing the importance of meeting the needs of disabled passengers.
18. Mandatory training for holders of taxi and private hire vehicle driver's licences was one of the recommendations of the Law Commission's report on Taxi and Private Hire Services published in May 2014 ([http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347\\_taxi-and-private-hire-services.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347_taxi-and-private-hire-services.pdf)). DPTAC supports the recommendations included in the report which relate to improving the service provided to disabled passengers. We are concerned that there has to date been no response to this report from the Government.

**Q4.Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

19. The Appeal Court suggested in its judgement on the Paulley v First Bus case suggested that if the Government had intended that giving wheelchair users priority access to the wheelchair space they should have put this intention into legislation.
20. Putting such a provision into the Equality Act would set a precedent that sees the Courts inviting the Government to be similarly more explicit in other areas of reasonableness. DPTAC will review its position on this issue when it has the judgement of the Supreme Court on this case.

**Q7.Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?**

21. It makes sense for each Departmental minister to take responsibility for those issues within their own sphere, otherwise it perpetuates the impression that disability is not part of the mainstream agenda for transport. So transport ministers should be tackling disability issues as a standing item in their discussions with transport chiefs in all sectors.
22. One example of the effect of a division of responsibility on implementation can be found in the Public Service Vehicle Access Regulations (PSVAR) which apply to buses. These are enforced by the Driver and Vehicle Standards Agency (DVSA).
23. Introduced in 2000 the Regulations 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.
24. 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.
25. DPTAC was concerned that the Government and DVSA had not been seen to be taking action during 2014 to alert the bus industry to the impending deadline.
26. In March this year DPTAC was told that DVSA had taken enforcement action against 3 operators who were continuing to use non-compliant buses, and that a number of other operators were being investigated. 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.

27. 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.
28. Nevertheless we are concerned that an apparent 'softly softly' approach to enforcement, where the deadlines have been known about for 15 years, sends a dangerous message that operators using larger non-compliant vehicles need not be greatly concerned about the approach of the deadlines, which will be reached over the next 18 months.
29. While some of the services affected by the end date which was passed on 1st January may not be very profitable, any new operator who might be prepared to offer a competing service could find it difficult to compete against an existing operator using such old vehicles that their capital costs are negligible. Moreover we are not convinced that any business that cannot meet a deadline for which they were given 15 years notice is well run. We wonder whether there are other regulations to which a bus operator might be 'turning a blind eye'.
30. The enquiry might like to ask senior figures in the Department for Transport and DVSA about how robustly they have been enforcing the PSVAR, and what has been the effect of enforcement action.

**Q8. How effective has the Equality and Human Rights Commission been in exercising its regulation and enforcement power, and what contribution has this made to the impact of the Equality Act 2010 on people with disabilities?**

31. The EHRC has not been visibly proactive in enforcing legislation on the disability side. It appears to lack the focus, expertise and commitment to deal with the issues properly. As a result there has been very little case law established which could have helped to raise standards and improve consistency of service delivery.

**Q9. 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?**

32. 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 be charging extra for carrying a wheelchair or assistance dog.
33. Some Local Authorities have been active in using these powers applying sanctions, including short term suspensions of licences (or ultimately revoking a licence), to drivers who discriminate against disabled passengers. Others have been less active in using their powers.
34. As far as DPTAC members are aware many disabled people appear to have little knowledge of these powers. However we believe that they may represent an easier

way to challenge discriminatory behaviour than using the Equality Act, particularly as the costs are much less.

35. This way of challenging discriminatory behaviour avoids the costs and stress of bringing a court action. Moreover, a sanction applied by a Licensing Authority can apply to future behaviour in a way, which a court judgement cannot achieve. This meets the aspirations articulated by many disabled people who bring a case under the Equality Act, that bringing about change in behaviour is more important to them than financial compensation.
36. In a similar vein DPTAC has been discussing with the DfT rail franchising team how they can include the way in which Train Operating Companies (TOCs) meet the needs of disabled passengers in its performance monitoring processes. We hope that such an approach will focus the minds of senior managers of TOCs on the importance of improving the reliability of the Passenger Assistance Scheme.

*3 September 2015*

Disabled Persons Transport Advisory Committee, Transport for All, Department for Transport  
– Oral Evidence (QQ 79-90)

**Disabled Persons Transport Advisory Committee, Transport for All,  
Department for Transport – Oral Evidence (QQ 79-90)**

[Transcript to be found under Department for Transport](#)



## **Discrimination Law Association – Written Evidence (EQD0129)**

### **SUMMARY**

1. The Equality Act (EA) has enabled wider understanding of disability discrimination since its protections apply to everyone, although under the EA there may have been a loss of focus on disability issues, which necessarily involve specific and unique provisions.
2. The definition of disability in the EA remains a stumbling block for many claimants.
3. There are gaps in the law exposed by case law, provisions in the EA which would strengthen disability equality rights which are not yet in force and repealed provisions that should be restored.
4. Far too often the reasonable adjustment duties and the stages contained in the definition are not understood by disabled people or by employers, service providers and others. In the ET this can limit a claimant's arguments and prospects of succeeding. There is insufficient awareness of the anticipatory nature of the duty outside of employment.
5. There is an urgent need for review and up-dating of guidance on reasonable adjustments, drawing on EA case law in the statutory Codes of Practice (and issuing of new Codes with such guidance for other areas covered by the EA).
6. A positive aspect of the reasonable adjustment duty in the EA is its flexibility both in terms of the barriers to which it can be applied and the nature and form of the adjustments.
7. There is no doubt that the public sector equality duty (PSED) has contributed to the achievement of the aims of the EA. State institutions have been made to see the need to change policies and practices, most often without litigation. A serious gap, however, is non-compliance by external bodies carrying out public functions.
8. The EHRC, now with reduced remit and resources, has failed to use its enforcement powers as parliament had intended, and generally has not given the leadership it might have done to challenge discrimination and advance equality
9. Enforcement of rights against disability discrimination has been severely impeded by the imposition of ET fees, increased County Court fees, drastic cuts to legal aid and severely reduced access to quality legal advice. The effect is the removal of any imperative on employers or service providers to avoid discrimination.

**Response to the Call for Evidence by  
The House of Lords Select Committee on the Equality Act 2010 and Disability**

The Discrimination Law Association (“DLA”), a registered charity, is a membership organisation established to promote good community relations by the advancement of education in the field of anti-discrimination law and practice. It achieves this by, among other things, the promotion and dissemination of advice and information, and the development and co-ordination of contacts with discrimination law practitioners and similar people and organisations in the UK and internationally. The DLA is concerned with achieving an understanding of the needs of victims of discrimination amongst lawyers, law-makers and others and of the necessity for a complainant-centred approach to anti-discrimination law and practice. With this in mind the DLA seeks to secure improvements in discrimination law and practice in the United Kingdom, Europe and at an international level.

The DLA is a national association with a wide and diverse membership. The membership currently consists of some 300 members. Membership is open to any lawyer, legal or advice worker or other person substantially engaged or interested in discrimination law and any organisation, firm, company or other body engaged or interested in discrimination law. The membership comprises, in the main, persons concerned with discrimination law from a complainant perspective.

Before responding to the Committee’s call for evidence, the DLA consulted with our membership on the Committee’s questions; we received responses from case workers, consultants, lawyers working for voluntary organisations and those in private practice. The organisations and individuals whose opinions and experience provide the examples in this response work with and represent hundreds of disabled workers, service users, transport users and members of the public. Our focus is on the experiences and concerns of these people and of their advisers, lawyers and representatives.

**Q1 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?**

1. The inclusion of all nine characteristics in one unified piece of legislation gives a sense that everyone is now included. As a legal advisor in a discrimination advice charity comments,

“The benefit has been to allow for a better understanding by a wider number of groups and individuals about rights (as the law feels simpler even if might not prove to be in practice). There is greater buy-in as it is easy to demonstrate that discrimination law gives protection for everyone in society in some way.”

2. 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. The general approach tends to marginalise two important aspects of disability discrimination, which are different from other types. Firstly, disability includes a wide range of impairments involving very different forms of

disadvantage, for example barriers faced by people with visual impairments in contrast to barriers faced by people with mental health disabilities. The concern of some of our members who represent particular groups of disabled service users and employees is that the general developments in discrimination law do not necessarily reflect these differences.

3. Secondly, disability discrimination is covered by specific and particular provisions, and the positive duty to make reasonable adjustments is unique. This is a fair and proper reflection of the fact that the barriers to equality faced by disabled people in different situations are often very different to the barriers faced because of other protected characteristics. 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.
4. In contrast, there are advantages in that, in purely practical terms, it is easier for claimants and their advisers to explain claims based on more than one protected characteristic because they only need one piece of legislation and the descriptions of the various torts are unified and easier therefore to apply across the protected characteristics.
5. Some members consider that the actual drafting of the Act is relatively easy for disabled people to follow, but the drafting of some specific areas continues to present difficulties. One law centre lawyer comments, “The definition of disability in the Act could be more accessible.” The definition of disability in the EA is potentially wider than previously, since it is not limited by a prescribed list of “normal day to day activities” and thus possibly more easily applied to people with mental rather than physical impairments.
6. However, the definition of disability is reported by many of our lawyer members as a real stumbling block for claimants, with the question of whether a person is or is not disabled often a matter of significant legal debate. Employers are reported as unreasonably disputing the existence of a disability both as a reason not to make adjustments at all -- even where it is evident that they would be simple and would make a difference -- and in resisting a disability discrimination claim in the employment tribunal (ET). This is more prevalent where there is a mental health disability such as depression, and particularly difficult where there is a lack of understanding that even an episodic condition can be long term.
7. There has been significant press interest in the question of whether obesity is a disability of itself (it is not), and our members report continued difficulties where the disability is a mental health issue or a learning disability. In one case, despite clear medical evidence, a disabled claimant was cross examined on the basis that she was not suffering from a disability, but had a personality disorder.
8. The need to fit within the definition is also difficult in terms of the self-labelling. One member states that:

“Only 12 out of 56 clients self- identified as having a disability or wanting advice on disability rights. The majority had conditions that they would never have understood as falling under the definition under the Act, even though they clearly met the definition of disability. Clients with a variety of problems, for example, those suffering from migraines, back pain, mental health problem, diabetes type 1, heart problems, dyslexia and asthma all identified as not having a disability on our equality questionnaire but then went on to pursue and win disability discrimination claims.”

9. We are less concerned about ‘harmonisation’, since, as we mention above, different and additional legal provisions and duties are needed in order to build in maximum protections against discrimination for disabled people. These are distinct and arguably require different approaches.
10. For example, the application of the burden of proof provision to the duty to make reasonable adjustments is not the same as it is for direct discrimination, since there is no need to prove that a refusal to make an adjustment is caused by the person’s disability, only that the adjustment would remove the barrier (the substantial disadvantage) the disabled person faced.
11. A number of our members have expressed concerns that the move in the EA to a single public sector equality duty, which applies to eight relevant protected characteristics, may have worked to the disadvantage of disability equality. Our members report that the focus and attention which employers and service providers and others carrying out public functions had previously given to disability has been spread far more thinly since implementation, and we are very concerned at the lack of engagement by public bodies and transport providers, with the needs of disabled people when planning, developing and carrying out their various functions. (see Question 5 below)
12. While it is not possible to say that making disability one of nine protected characteristics in a single equality law has made it more difficult to combat disability discrimination and to change the attitudes, perceptions and prejudices of employers, service providers and others, we also cannot say that this legislative reorganisation has of itself notably improved the rate of positive change. The evidence we have received cites persistent patterns of discriminatory policies and practices and widespread negative stereotypic perceptions of disability by employers, service providers and others subject to the EA.
  - The Guide Dogs Association reports that many restaurants still refuse entry to people with guide dogs, fail to make menus accessible and seat blind and partially sighted diners in dark corners or in separate rooms.
  - Lawyers report that many employers, when they have fewer resources, respond to a request for reasonable adjustment by making the disabled employee redundant.
  - Increasingly we are experiencing disabled people being offered a termination package as a first response to a grievance being raised in respect of a reasonable adjustment. We are aware of this in a significant number of cases

and in respect of a variety of disabilities including mental health issues and learning disabilities such as dyslexia and any health issue leading to longer term sickness absences. We are very concerned that this is indicative of an attitude amongst some employers that it is easier and cheaper to replace a member of staff than to retain and retrain them and assist them to stay in the workplace.

13. Overall our view is that the EA has not done enough to strengthen protection against disability discrimination, despite disability being one of the nine protected characteristics, and despite the inclusion of some improved provisions such as discrimination arising from disability.
14. As we discuss below, a key concern remains the lack of available advice and assistance to bring litigation at all, and the enormous burden that litigation as a process for resolving disputes places on a disabled individual. We comment on the role of the EHRC and the PSED below, and emphasise that disability discrimination is a problem for the whole of society and that solutions should therefore be looked for at a collective and community level as well as at an individual level.

**Q2 Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

Yes.

15. There are gaps which case law has exposed:
  - The case of *Stott* makes it clear that, after boarding a plane, disabled passengers are not covered by UK law and the European Regulation on air travel. Nor can disabled people seek compensation from the airline if they are discriminated against during a flight.
16. There are provisions in the EA directly relevant to disability that are not yet in force :
  - The provisions in the EA for reasonable adjustments to common parts (section 36(1)(d)) has not yet been implemented (and the government has announced that it has no intention of doing so).
17. In addition there are wider provisions in the EA not yet in force:
  - The DLA strongly recommends bringing EA section 1, the public sector duty regarding socio economic inequalities, into force without further delay. In our view this would contribute to the eradication of disability discrimination by the designated public authorities and more widely and would help to move the emphasis for tackling disability discrimination onto the community and not just the individual. Research has shown time and again that those who suffer most from discriminatory policies and procedures are the poorest and most marginalised in society, of which disabled people form a significant

proportion. A public sector obligation to take account of inequality with an aim of reducing it when spending public money is and remains of fundamental importance.

- We also recommend bringing EA section s.14, dual discrimination, into force. The recognition of multiple identities and the fact that discrimination may be because of the interconnection of disability with one or more other protected characteristics, eg disabled black woman, disabled lesbian, is of fundamental importance to the protection of some very marginalised members of society.

18. An example of dual discrimination arises in the context of age and learning disabilities such as dyslexia. An older person with learning disabilities who went to mainstream schools may not have documentary evidence of disability nor will they be able to afford to instruct an expert and thus may have difficulty in proving disability. One member reports difficulties when a person is diagnosed as having a disability under the Act at a late stage in their career, and employers or others refuse to accept the impact or the value of making changes or adjustments apparently because of the person's age.
19. We are also aware of particular difficulties faced by BAME disabled claimants with mental health disabilities. Members have reported numerous incidents of stereotyping of black workers as aggressive and unmanageable where the issue is depression or other mental health issues. We are also aware of difficulties faced by some BAME disabled claimants in accessing services, benefits and even the courts for the same reasons.
20. The repeal of two important provisions of the EA by the Enterprise and Regulatory Reform Act 2013 has hindered the Act's ability to ensure effective rights of redress and to prevent recurrence of workplace discrimination.
  - The DLA strongly recommends amendment of the EA to restore section 138, the statutory questionnaire procedure, which had been a valuable part of UK equality legislation since the 1970's. Many of our members who carry out litigation comment that the removal of this procedure means that disabled people are not able to gain sufficient detail at an early stage of how their treatment differed from the treatment of others, or how their employer has approached questions of reasonable adjustments in other cases. The process of seeking disclosure of documents and requests for information can be complex and some advocates report a consistent rejection of the types of questions previously routinely asked, and costs threats being made when applications are made because of a respondent's refusal to give voluntary disclosure. Advocates also report an increase in the refusal of respondents to provide any form of voluntary disclosure in response to questions on policies practices, records and equality monitoring and the necessity for hearings with the additional expenses and use of resources.
  - The power of employment tribunals after making a finding of discrimination to make a recommendation requiring an employer to take steps to prevent future discrimination across the whole or a relevant part of the workforce had

become an important tool in the prevention of future discrimination. The DLA strongly recommends amendment of the EA to restore s.124(3)(b).

21. The following is an example of the need to ensure consistency in secondary legislation:

- Much public transport remains inaccessible to people with sight loss. This is largely due to a discrepancy between regulations covering trains and those covering buses. The variation of regulations to ensure that all public transport is covered by regulations requiring audio visual announcements systems in a uniform way would be a significant improvement to the ability of disabled people with visual impairment and audio impairment to travel.

**Q3 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?**

22. Whilst the structured definition of reasonable adjustments is helpful, the concept of ‘reasonable adjustment’ is sometimes hard for the lay person, whether claimant or employer or service provider fully to understand.

23. The definition of a “reasonable adjustment” can be difficult for disabled people and for service providers to understand, and even in some contexts for an ET to operate. For example, where a person develops a disability or discovers one (in the case of dyslexia for example) later in life, members report incidents of dismissal; disbelief, blame and marginalisation in the work place, rather than support to remain in work. In a significant number of cases the employer assumes that the person will not be able to do their job, because they focus on what a person is no longer able to do, rather than considering what they can do, with adjustments in place, and remain wholly focussed on the difficulty of them having to make the adjustments and the inconvenience to them as an employer, rather than the duty to the disabled person.

24. For example, one member reports representing an employee in a civilian role with a police custody unit lost 90% of his sight through MS very rapidly. He had previously driven to various sites and used computer programmes to manage the HR staffing functions for the Police. He wanted to remain in post, using a driver service, assistive technology and remote working. He demonstrated that this would be possible, but was refused because of concerns around his safety and the requirement that everyone be able to assist in the event of an altercation in the unit. It was possible to adjust this aspect of the job, but it was not until the full hearing that the employer accepted that the health and safety aspects of the work did not trump the claimant’s rights to adjustments. The employer remained wholly focussed on the disadvantage and difficulty for them of making the arrangements.

25. Guide dog owners report that reasonable adjustments for people with a disability are often ignored and that service providers do not understand the specific needs of

people with sight loss<sup>91</sup>. For example, people with visual impairments report their treatment in restaurants: *“I get no end of people handing me the menu and then walking away”*<sup>92</sup>

26. We have many reports of employers refusing to follow advice from occupational health advisers and employers failing to grasp the way that the duty operates in cases of hidden disabilities such as dyslexia and other learning difficulties, or in cases of mental health disabilities. Advisors report that a large percentage of their case work on disability in the workplace involves persuading employers to adjust their capability procedures, to take account of the disability.
27. Our members report that both disabled people as litigants in person and lawyers representing disabled claimants in employment tribunals far too often have serious difficulty applying the stages of the definition of reasonable adjustments to the facts of their case, which is something they are required to do at case management preliminary hearings or at the start of the full merits hearing. This is particularly the case where the adjustment asked for is to vary or change a provision, criterion or practice rather than to provide an auxiliary aid or alter the physical premises.
28. Wrongly formulating this can limit the claimant’s arguments and prospects of succeeding. This would include identifying correctly what ‘provision, criterion or practice’ was applied and/or identifying what the substantial ‘disadvantage’ was (is it the disabled person’s inability to perform the requirement of the job or is it the respondents’ reaction to their inability to perform the job requirement?).
29. Where the provision, criterion or practice is the sick leave policy employees and their advisers continue to report a refusal to treat absences caused by disability, or necessitated to treat a disability differently to any other form of absences. There is no standard practice although many policies do expressly state that disability absences will be discounted, specific guidance would be beneficial.
30. Our members’ experience is that ‘hidden’ disabilities and mental health conditions are still difficult for many employers to understand. An individual with such a disability is often likely to be unfairly labelled as a ‘trouble maker’.
31. The law in this area is complicated because it applies the reasonable adjustment duty differently to different situations, so that what is required by an employer will not be the same as what is required by a service provider, a school, a landlord or a provider of different forms of transport. We are concerned that the differences make it harder for a disabled person to appreciate the adjustment they should receive and what steps, if any, they need to take to secure or attempt to secure the adjustment they believe they need. It is our experience that whilst the duty to make adjustments is generally known, it is not well understood by employers, service providers or transport providers.

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<sup>91</sup> Minutes of the Guide Dogs Access All Areas focus group, Nottingham, August 2015,

<sup>92</sup> Minutes of the Guide Dogs Access All Areas focus group, Nottingham, August 2015,



32. As one of our members comments: “There is still a lack of awareness in non-employment areas, where the anticipatory nature of these duties has often not sunk in. Also, the need to alleviate a specific disadvantage is often missed; for example, where a bank makes its statements available in some accessible formats, but not others. The impression you get is that the company feels that it has made an effort, and that should be enough.”
33. The particular provisions in s.36 and Schedule 10 regarding a landlord’s reasonable adjustment duty put a particular burden on the disabled tenant or prospective tenant. We have the same concerns set out above regarding the enforcement mechanisms available to the disabled tenant.
34. In relation to the operation of the duty in the exercise of public functions, our concern is that public bodies are failing to anticipate the needs of disabled people. One example is planning consent given to developments which are inappropriate for people with sight impairments rather than anticipating the adjustments which should be put in place from the outset. We believe that in part this is due to a reduced level of consultation with groups of disabled people.
35. The DLA recommends that there should be more advice and information available about the duty in a variety of formats and through varied sources. We consider that there is a need for a review and update of the guidance in the statutory Codes of Practice to ensure that the Codes adequately reflect the purpose of the EA provisions. There is also a need for further statutory Codes covering education, housing/other premises and transport to be issued. The Codes should draw on case law specific to the EA to illustrate how the duty applies in different situations as well as providing guidance on common situations.
36. On the question of adjustments in public transport areas such as Taxis, we are not satisfied that the duty to make adjustments is either well understood, or properly implemented. We remain very concerned about accessibility of transport to the disabled. Recent legal claims ( See Pauley) have highlighted the difficulties faced by a disabled wheelchair user, and the fact that the case progressed to the Court of Appeal before an answer was provided is indicative of some of the shortcomings of the legislative framework.
37. In part our criticism is that the enforcement of adjustments to public transport still relies upon an individual bringing a claim against a provider. 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.
38. We do not consider that accessibility to transport is something that should depend on the will and abilities -- financial and physical -- of the individual. Access and availability of transport to all disabled people who need it is fundamental to the ability to access many other benefits and aspects of civic life and the enforcement of sensible

adaption's to all vehicles and enforced access to taxis should be the responsibility of the state, or an enforcement agency and not the individual users.

**Q4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

39. We asked our members how many of the disabled claimants they advise raised concerns about a lack of reasonable adjustments. The response from a law centre worker was 92 % and from an advice agency 87 % and a barrister, nearly all. This reflects both the reality of the utility of the reasonable adjustments provisions to disabled people but also the huge number of cases where there is disagreement between the disabled person and the provider as to what is required and what is reasonable.
40. However, we do not necessarily suggest that the legal definitions should be varied or amended at this stage. We see that part of the utility of the concept of reasonable adjustment is that it is very flexible and can be used to respond to all sorts of barriers and disadvantages faced by disabled people in part because the contours of the duty shift according to the size of the employer or service provider and other factors including current technology.
41. What we do argue strongly for, is much more extensive and up to date guidance on reasonable adjustments, produced to be sensitive to particular disabilities', particular industries and in respect of the various duties to make adjustments. As we state above, the statutory Codes of Practice and other guidance need to be regularly updated. However, novel and unique situations will always occur that guidance has not contemplated. In this respect we would like to see industry specific regulatory guidance from professional and regulatory bodies.
42. We would also welcome a much wider remit for statutory guidance on what constitutes a reasonable adjustment in areas which are emerging as problematic such as mental health disabilities in the workplace; learning disabilities and HIV and related conditions, and on the adjustments needed where the impairment is hidden as opposed to obvious physical impairments. The last is particularly important, and we consider it would assist in addressing prejudicial and stereotypical assumptions amongst service providers, employers, recruiters and even the courts.
43. Our practical experience is that guidance raises awareness, and one member who conducts training for particular professions on the duty to adjust, reports a huge lack of understanding and a frustration with the lack of availability of any guidance, which reflects the day to day issues they experience.
44. We would welcome more specific and targeted guidance on the adjustment of provisions criteria and practices in a range of contexts, as our members report that these are the areas of most common difficulty in employment. Particular problems arise where there is an emphasis on productivity for people with dyslexia, syndromes involving severe pain, severe fatigue or similar impairments; whilst members report

that helpful adjustments are possible, there remains a lack of understanding, particularly in some occupations that the law may require adjustments of their targets as well as their premises. One solicitor member comments: “Most employment matters arise due to the application of a policy or practice by an employer and thus most cases would involve a failure to make reasonable adjustments. An employer would not usually argue expense but would often argue that an adjustment is unnecessary because they have already done enough in their view. “

45. One member in the legal profession illustrates this when he reports that on the second day as a trainee, having disclosed his disability, the practice manager’s response was “Well obviously we don’t want a sick trainee”. There was no sense that the practice manager had any knowledge of the duty to adjust at all or what might be required. The member suffers from chronic pain and chronic fatigue, but the culture in medium-large legal firms involves working very long hours which is not possible for this disabled employee for whom a simple adjustment of shorter hours would resolve the disadvantage. The member states:

“Working the ‘usual’ 9-5 in such firms is simply not acceptable. Unfortunately due to my fatigue working consistently long hours is a requirement I simply cannot meet. Despite high levels of academic attainment from several top universities and the ability to work comfortably between the hours of 8.00 am-5.30pm, I will never be able to advance my career in medium or large law firms. A form of discrimination perhaps that will affect my advancement for the remainder of my career.”

46. Further there is a need for clarification regarding potential conflict between EA provisions on the right to reasonable adjustment and other legislation such as listed building status, money laundering regulations (requirements for identification), health and safety at work laws, etc.
47. In some areas, additional clarity has been achieved through regulations such as the Public Service Vehicle Accessibility Regulations (PSVAR) and the Public Service Vehicle Conduct Regulations (PSVCR). The PSVAR sets out a series of specifications to make public service vehicles more accessible for people with a disability. The PSVCR gives specific direction for bus drivers to accommodate people with disabilities. Similar accessibility regulations would be helpful in other areas, for example, in the area of allowing entry for assistance dog owners in shops, hotels and restaurants. This would remove ambiguity for service providers who no longer would need to rely on case law and precedents to fully understand their obligations.

**Q5. 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?**

48. Our members consider that the public sector equality duty (PSED) is capable of leading to positive outcomes both with and without litigation.

- The contribution of the PSED is significant because people can use it to stop a discriminatory policy without individuals having to bring claims after the event; it makes public authorities think about what the impact will be on disabled people in advance and in some instances, change their minds about a policy or service.
- The duty gives the public an opportunity to raise concerns about equality with public bodies. It gives public bodies an opportunity to reflect on how their policies and decisions impact on persons with disabilities.
- It puts the onus on society to organise itself differently to eliminate barriers for persons with disabilities instead of blaming the individual's disability.
- The impact is much greater than the case law would suggest as many people succeed without ever needing to issue proceedings, since the vast majority of equality duty cases are settled through negotiating with public bodies.
- The duty "*to advance equality of opportunity between people who share a protected characteristic and those who do not*" is particularly useful. There are many barriers that persons with disabilities face that others don't and this duty helps focus decision makers on the need to eliminate those barriers. It also empowers disability groups to voice concerns about equality it addresses the needs of specific groups and does not just solve the problem for one individual. The impact of using it can be significant.

49. For example the PSED has served as a useful tool, in arguing successfully, that a local authority should:

- continue to fund a disability rights advocacy group,
- provide electoral information in accessible formats,
- provide more accessible parking bays,

and that a healthcare provider should fund BSL interpreters at its public meetings.

50. One PSED litigation expert reports mixed outcomes. In a challenge of a local authority policy, when the court quashed the decision because of a failure to comply with the PSED, the policy was dropped by the authority. In contrast, this did not work in relation to proposal to discontinue the Independent Living Fund (ILF). "I still take the view that the Minister for Disabled People didn't meet the PSED; it was clear from the documents that he hadn't engaged with what the duty meant in law, or what was going to happen on the ground to disabled people if ILF closed."

51. While the Equality Bill was going through its parliamentary stages the DLA was engaged with a consortium of disability rights organisations looking for a way 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. An amendment for this purpose was developed by the DLA, supported by the EHRC and introduced during Report Stage in the House of Lords. It would have added to what is now s.149 by inserting after s.149(6) the following

“(6A ) 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 (a), (b) and (c) in subsection (1).”

52. Regretfully, despite a number of Peers speaking strongly in favour, when it was clear that this strengthening of the duty would not be accepted by the Government the amendment was withdrawn. The DLA would encourage the Committee to explore once again an amendment of the EA along the above lines.
53. From their experience, DLA members suggest that there is a difference between central and local government attitudes to the PSED. Local authorities often take this duty more seriously - or are more frightened of litigation, or are dealing with the duty more sensitively more local scale. There are numerous examples of local authorities withdrawing decisions they had made without regard to the duty on the basis of a letter before claim, for example closing a specialist unit without consulting deaf people for whom the unit was established. We are concerned that some local authorities may now attempt to avoid the PSED by arguing that cuts to their services are solely because of cuts imposed by central government. Central government has been and remains far more dogmatic and ideologically driven and far less willing to review or reconsider once they have put forward a policy proposal.
54. A major concern of DLA members is the very significant gap in understanding in organisations that are not “public authorities” under s.150 but are exercising public functions and therefore required to comply with the duty under s.149(2). One member cites as an example a charity/private sector organisation that administers a large fund on behalf of the Government to make grants to disabled people who have shown in their decision-making that they” have no idea about the PSED”.
55. We would therefore recommend an early inquiry into the procurement processes adopted by public authorities in contracting with private and voluntary sector organisations for the carrying out of public functions. It is our impression that successful contractors are not regularly made aware of their PSED obligations under s.149(2), with the result that with increasing privatisation of public functions there is a concomitant decreasing degree of compliance with the PSED, to the loss of disabled people, to other groups defined by relevant protected characteristics and to society in general. In our view there is an urgent need to reverse this trend and to ensure that private/voluntary providers of public services are brought into full compliance with the PSED. So far as the DLA is aware there is no current guidance equivalent to the guidance published in 2007 by the former Disability Rights Commission on meeting the disability equality duty in each stage of public procurement.
56. One of the possible reasons for the PSED not being as effective as it could/should be is the failure by the EHRC to issue a statutory code of practice on the PSED, although we understand a draft had been prepared and submitted to the Government Equalities Office for approval. A statutory code could have assisted public authorities and disabled people to have a fuller understanding of what compliance entails. This could

achieve the real aims of the EA for disabled people without the stress and expense of litigation. Courts must take EHRC statutory codes into account and there are equality duty cases under the previous equality legislation in which the CRE statutory Code of Practice was referred to by the High Court. The EHRC has issued technical guidance on the PSED, which is very useful, but both qualitatively different and lacking the influence of a statutory code.

57. DLA members have provided examples in which current policies or practices may be in breach of the PSED:
- the imposition on disabled job seekers by Job Centre staff of agreements with which they are unable to comply and therefore risk punitive sanctioning. Work by the Ipswich and Suffolk Race Equality Council and local CAB creating a national campaign has identified that what is needed is a “national agreement (by the DWP) and education of job centre staff”.
  - the failures by local authorities to take account of the needs and representations of blind and partially sighted residents, when planning streetscapes, leading to dangerous shared streets. Guide Dogs Association members reported at least two fatalities and several accidents involving partially sighted and blind members of the public where crossings and street furniture have been moved or removed without taking the needs of this group adequately into account. (The Guide Dogs Association is making a separate submission and we do not repeat their evidence in full here).

**Q6 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?**

58. DLA does not have relevant evidence to compare the impact of the different approaches in England Wales and Scotland. Our members in England have responded with regard to the specific duties that apply to the PSED under the EA in England compared to the specific duties that applied to the disability equality duty under the earlier Disability Discrimination Act.
59. DLA members have observed that the emphasis on disability as a distinct area, which needed focus, resources and engagement from service providers, transport organisations, local authorities and public bodies as well as employers to improve the ability of disabled people to take a full part in civic society, has been significantly restricted, and in some areas has taken a backward step, because of the removal of obligations to carry out disability impact assessments.
60. One measure which members have recommended to be included in PSED specific duties is the reintroduction of compulsory disability equality action plans as well as action plans for other relevant protected characteristics. Disability equality action plans, under the former disability equality duty, were important and helpful since they placed an obligation on the organisation to develop the plan, then to consult with the disability communities which they served and then to take timely steps to implement

the plan and monitor outcomes. There is real concern that the loss of this mechanism has had a detrimental effect on the inclusion of disabled people in planning services and in decision making and the resulting decisions. We refer the Committee to the Guide Dog Association submission for some examples.

**Q7 Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?**

61. The DLA cannot comment in detail on the divisions of responsibility within the Executive; what we can comment on is the lack of strong commitment and leadership within central government to achieve the aims of the Equality Act 2010. The Government Equalities Office (GEO), which appears regularly to be shifted from one government department to another, also appears to have been reduced in resources and impact. 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. Further the Office for Disability Issues within the Department for Work and Pensions also appears not to see itself as representing the interests of disabled people when its own department is adopting policies with potential severely adverse impact on disabled people.

**Q8 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?**

62. The recent government cuts to the EHRC's remit and resources have inevitably weakened its effectiveness and its independence. In our view the loss to the promotion and enforcement of equality law far outweighs any financial savings that may have been achieved.
63. In our view it is regrettable that the EHRC did not undertake from the outset to use the full range of its enforcement powers, in particular its powers to carry out investigations (s.20, Equality Act 2006) and the further powers following from investigations or proposed investigations, as well as its powers to take action to secure compliance with the PSED (ss. 31 and 32 Equality Act 2006).
64. We are also concerned that, with less dependence on financial resources, the EHRC has too often chosen not to use its unique position to engage in public discussion regarding policies or practices which their own research or inquiries, or those by other reliable bodies, expose as discriminatory or involving significant disadvantage to disabled people. We miss the strong influence on the public and private sectors which our single statutory equality body should be providing. It is our impression that far fewer disabled people are aware of the existence of the EHRC as an equality body than had been aware of the Disability Rights Commission during its short period of existence.

65. While agreeing that the EHRC's capacity to support litigation is limited, its reluctance to do so -- preferring instead to leave it to potential litigants to find support elsewhere and the EHRC to intervene only at an appellate stage – has been disappointing to individuals and groups often left with nowhere to turn for skilled advice and assistance, especially since the EHRC's helpline was discontinued and the cuts to legal aid and to the funding of law centres and advice centres have taken effect.
66. DLA members advising and supporting disabled people in non-employment discrimination claims have called for re-instatement of the EHRC power to establish a conciliation service, which was repealed under the Enterprise and Regulatory Reform Act 2013.
67. The EHRC used to fund disability rights advocates nationwide in various advice centres. This nationwide project had a real impact in raising awareness about rights and assisting those who experienced discrimination. The EHRC also organised regular casework meetings, which were very effective at highlighting best practice and addressing social policy issues.

**Q9 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?**

68. The EA needs to be seen as the formal commitment by the state to secure the elimination of discrimination and the advancement of equality of opportunity as defined in the Act. The DLA would therefore argue that it is appropriate for all state-appointed regulatory bodies to have a role in maximising compliance. The EHRC has a unique role as defined in the Equality Act 2006. Given the slow progress towards achieving the aims of the EA, we recommend that consideration should be given to ways in which other regulatory bodies can, within their existing mandates or with amendment, take on certain EA enforcement functions. It is undesirable that the ability of disabled people to take a full part in life remains largely dependent upon the finances and willingness of disabled people themselves to push matters through the courts.
69. We suggest that it may be appropriate to consider the potential enforcement roles for other regulatory separately for the resolution of individual (or group) claims and compliance with the PSED. This might fit more comfortably with the existing roles of different regulatory bodies. So the role of ombudsmen might be extended to include resolution of individual (group) complaints within the areas of activity they have a mandate to regulate. For example it might be appropriate for the Local Government Ombudsman to be empowered to investigate and make a finding (and award compensation) on a complaint by a disabled resident with mobility impairment regarding access to a local authority's sports and leisure facilities. The role of other audit or inspection bodies, such as OFSTED or HM Inspector of Prisons might more appropriately take on compliance with the PSED by the institutions they inspect.



70. The EA would need amendment to clarify the relationships between the EHRC and other regulatory bodies and legislation establishing the different regulatory bodies might also need amendment.

**Q10 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?**

71. The consensus of our members is that there are still significant barriers to disabled people enforcing their rights. We know that disabled people with all types of disability are often not willing to take legal action and in part this is because the prospect of litigation, challenging for most litigants, is often a significant further threat to health and wellbeing for a disabled person. Even where a person is able to overcome the barriers to issuing proceedings about disability discrimination, their disability can present an additional barrier in the process and the court room itself.

72. The first concern and the primary issue for the DLA and all of our members is access to justice and the barriers claimants now face with the imposition of employment tribunal fees and increased County Court fees coupled with major cuts to legal aid and the funding of law centres and advice agencies. Thus while the right to redress and enforcement procedures under the EA remain in place, in practice very many people are no longer able to access or make effective use of the mechanisms within the EA to enforce their rights.

73. Good quality advice from advisers who are trained in disability issues and discrimination law is a crucial first step. We would like to see the reinstatement of grants for specialist discrimination law advisers in advice centres and with specialist charities.

74. Our main concern, however, remains that of cost. Our members report many cases where individuals are not able or willing to engage with the employment tribunals, because of the cost of doing so. The cost of even issuing a discrimination claim (£250) is prohibitive for some, and certainly acts as a deterrent for many, for whom the legal system is already intimidating. Far more of a deterrent is the subsequent £950 listing fee and the fear of having to act as a litigant in person at the full hearing if their case does not settle before then.

75. The drastic cuts to legal aid and the limit on income placed on the remission of fees means for many of our members that the greater awareness of rights to which we refer above is not matched by any ability to enforce them in real terms.

76. The following are examples of law centre cases in which clients decided not to bring ET claims because of the fees:

- Client with MS - employer failed to make reasonable adjustments of reducing hours;

- Client with dyslexia - employer failed to make reasonable adjustment of reducing targets
  - Client with fibromyalgia was given a written warning for poor performance
77. We also have examples of problems with the tribunal process itself because of disability. Tribunals depend on paperwork, and documentation, and the formalities often present real difficulties for the disabled litigant. Understanding the papers and being able to read them can and does present problems. One example dealt with one of our members is of a partially sighted claimant seeking reasonable adjustments at work having a claim struck out because he had not complied with court orders over the production of documents. He could not read the court orders or the letters sent from a respondent's lawyer, or sort out the relevant documents needed. Once the claimant got pro bono representation the court was made aware of the need for adjustments, the claim was reinstated, and was ultimately successful.
78. Ultimately the legal process in the ET or in the County Court is a very technical one, and is also confrontational by nature. This can be very distressing for claimants with mental health issues, and an unrepresented claimant with mental health issues is at a serious disadvantage at the outset. No amendment of legal provisions can address the central issue of inequality of arms before the ET and the courts.
79. The effect of LASPO means that few, mainly independently wealthy, clients are likely to bring discrimination claims in the County Court. LAG has calculated a shortfall of 77%<sup>93</sup> in the take up of discrimination advice under Community Legal Advice compared to the Government's estimate under the LASPO legal aid reforms. The fact that after-the-event insurance 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. One welcome measure would be clarification that claims under the EA fall within claims for "personal injuries", allowing qualified one-way costs shifting ("QOCS") to apply.
80. The knock-on effect of these factors is that there is no imperative for employers or service providers or transport providers or educational institutions or persons exercising public functions to change their behaviour, or to take steps to change when potentially discriminatory policies or practices within their organisation are brought to their attention.

*4 September 2015*

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<sup>93</sup> Based on figures for three months in 2013. See [http://www.lag.org.uk/media/164665/legal\\_aid\\_secret\\_service2.pdf](http://www.lag.org.uk/media/164665/legal_aid_secret_service2.pdf), page 3,

Discrimination Law Association, Law Centres Network, Law Society, Bar Council – Oral Evidence (QQ 43-51)

**Discrimination Law Association, Law Centres Network, Law Society, Bar Council – Oral Evidence (QQ 43-51)**

[Transcript to be found under Bar Council](#)

## **Discrimination Law Association – Supplementary Written Evidence (EQD0172)**

On behalf of the Discrimination Law Association (DLA) may I again thank you for the opportunity to present evidence to your Committee alongside representatives of the Bar Council, Law Society and Law Centres Network on 8 September 2015. This short paper includes a few brief matters which I had intended to mention but was unable to do so due to the fullness of the discussion and limited time. For ease of reference I use below the Committee's question numbers.

### **Q 44**

As was discussed with the Committee, the significant fall in numbers of disability discrimination claims in the Employment Tribunals has removed any real imperative for employers to respond to requests for reasonable adjustments and/or to bring other discriminatory practices to an end.

For many disabled workers this offers the choice of paying substantial fees to embark on difficult litigation unassisted or continuing to face impossible work situations. For example, one DLA member has cited a number of disabled clients who because of the fees and lack of legal support were deterred from bringing claims, including a woman with MS refused an adjustment to her hours of work and a man with severe dyslexia refused an adjustment to his performance targets.

The substantial fall in discrimination claims affects even well-meaning employers who undoubtedly have other priorities and/or organisational inertia. Knowing that non-compliance with the Equality Act is likely to lead claims in the Employment Tribunal provides a counter-weight and keeps managers and those with HR functions focused on their responsibilities under the Act.

### **Q 46**

Baroness Campbell is right to be concerned in relation to individuals with regard both to access to justice and to the effectiveness of reliance on enforcement of individual claims. The former was well covered in oral evidence, and in my oral evidence I referred to the greater enforcement role which Parliament has given to the Equality and Human Rights Commission (EHRC). In addition where an individual claimant overcomes the increased impediments to litigation and wins a case in the Tribunal or the County Court, we believe that more could be done to maximise the impact of their successful claim. A main way is by making the outcome far better known while ensuring proper anonymity / confidentiality to protect some, but not all, claimants from future victimisation.

The outcome in detail or in outline could be brought to the attention of other employers/service providers in the same sector and, where appropriate, to trade unions, organisations of students, parents, service users, organisations engaged with particular protected characteristics. The EHRC receives all discrimination case decisions in the Employment Tribunals decisions and is able to learn the outcomes of discrimination cases in the County Courts, and is therefore well-placed to bring successful cases to wider attention. The EHRC already undertakes valuable work following-up successful cases seeking to prevent further discrimination by the employer/service provider concerned and others within the

same sector. While lacking the EHRC's wider enforcement powers, whenever trade unions or NGOs support a case this is a role they should be expected to undertake.

Additionally, the DLA is aware that in other EU jurisdictions publicity is often used as a key deterrent, with courts and/or equality body specifically empowered to publicise outcomes of discrimination cases. Further, in some jurisdictions there are statutory provisions which enable courts to refer the outcomes of decisions against, for example bars or hotels, to relevant licensing or similar regulatory authorities, with the expectation that the court's findings will be taken into account by such authorities.

Baroness Campbell is also right to ask about the potential impact of the Criminal Justice and Courts Act 2015 on the ability of disabled people to access justice. It is sections 84 – 89 of this Act, introducing changes to judicial review for both applicants and interveners, that will be relevant when disabled people seek to use judicial review to challenge breach of the Public Sector Equality Duty and/or breach of the Human Rights Act. In brief, these provisions are likely to deter both applicants for judicial review and interventions by third parties. The Act

- reduces the court's discretion to award relief or a remedy if a case is upheld;
- specifies the matters about which the court must be satisfied before making an order capping the costs for which an applicant will be liable, and changes the rules so an applicants will not know until after the court gives them permission to continue whether the court will grant such an order;
- increases the risk that third party interveners will pay other parties' costs.

The DLA does not yet have evidence of the ways in which these provisions have been applied in relation to application for judicial review in cases under the Equality Act.

Q.47

The DLA regards the Equality Act 2010 as the formal commitment by the state to secure the elimination of discrimination and the advancement of equality. The Committee will have received evidence from a wide range of bodies expressing concern regarding the slowness of progress towards the aims of the Equality Act. Therefore, with regard to alternative, or we would suggest, additional, means of enforcement, all state-appointed regulatory bodies should have a role in maximising compliance within the framework of their particular mandates or, if necessary, with amendment. Of course the EHRC has a unique role. Other regulatory or inspection bodies, consistent with their own obligations under the Public Sector Equality Duty, could be expected to assist in securing fuller compliance by the bodies the actions and performance of which they have oversight. It is our understanding that some bodies, for example OFSTED, already do incorporate assessment of equality performance in aspects of their inspections.

Q.48.

The DLA wishes to draw the Committee's attention to a serious and growing gap in compliance with the Public Sector Equality Duty (PSED). This is the failure by external bodies carrying out public functions to appreciate that the PSED applies to their exercise of such

functions (s.149(2) Equality Act) and then to ensure that in doing so they are compliant; that little has been done by government or the EHRC to secure compliance by relevant external contractors is very much to be regretted. With the increasing role of private and voluntary sector organisations in the provision of public services, the whole purpose of the PSED will be lost if in providing these services the external bodies are never required to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

To begin to rectify this situation, there is a need for full incorporation of the PSED into the procurement processes of public authorities. Where the proposed contract involves the contractor in carrying out public functions and therefore would be bound under s. 149 (2) of the Equality Act to comply with the PSED, this fact should be highlighted at relevant stages of the procurement process so prospective tenderers are aware of the obligations under the PSED from the outset. Once a contract has been awarded then monitoring of contract performance should include monitoring of PSED compliance. Public authorities should also remain aware that contracting out certain of their functions does not remove their liability for compliance with the PSED.

There is also need for wider public awareness of the obligations of private and voluntary organisations under the PSED when they carry out public functions. In the same way that disabled people have challenged failure by local authorities and central government departments where they consider there has been a breach of the PSED, they should feel equally confident to use judicial review to challenge breach of the PSED by private contractors carrying out public functions; in some cases the application for judicial review should include the authority involved in contracting out the functions at issue.

Should the Committee wish for clarification or amplification of any of the above, or any part of my oral evidence, I and/or others within the DLA would be pleased to provide this.

Barbara Cohen  
Discrimination Law Association

*10 October 2015*

## **Discrimination Law Association and the Law Centres Network – Supplementary Written Evidence (EQD0203)**

The DLA and the LCN are concerned to ensure that those who suffer discrimination are able to seek effective remedies through the courts or otherwise. At present there are significant barriers to disabled people bringing challenges to policies procedures and practices which place them at a disadvantage, whether in the work place, in accessing transport or in service provision or education health or travel. The barriers that are of primary concern to the DLA relate to the cost and complexity of legislation, lack of access to legal advice and assistance and the associated concern of the impact of litigation upon an individual.

The enforcement of UK anti-discrimination litigation relies primarily upon an aggrieved individual bringing a complaint against an individual or an organisation. If several people complain of the same type of discrimination, each of them must file a separate claim. There are some limited provisions for them to bring joint action at present as follows:

1. Judicial review. Organisations are able to apply for judicial review on behalf of their members, for example a trade union or the TUC, or on behalf of people whose interests they are established to represent, for example the RNIB or MIND. Many of the challenges to non-compliance with the public sector equality duty by a wide range of public bodies, which in some cases have also included claims of direct or indirect discrimination, have been brought by organisations who are deemed by virtue of their relationship with individuals adversely affected to have sufficient 'standing'. Please see the link to a useful note on 'Standing' by the Economic and Social Research Council. There is also a link below to a guide to judicial review published by the Public Law Project. As the PLP guide explains, judicial review offers a means to challenge actions by public bodies or others carrying out public functions. It cannot assist with the essential private law nature of most discrimination issues as prohibited under the Equality Act 2010.
2. Claims under the Equality Act 2010. The Act provides for two types of claim to be brought by individuals. These are claims for breach of provisions resulting in discrimination in employment, which are brought in the ET or breach of provisions in relation to non employment matters which are brought in the county court.
3. The ET 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.

4. 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.

5. The DLA would distinguish between a representative action and a class action, in the sense that it is used in America, the latter not possible in our court for discrimination claims. 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.

6. Looking to the future, we can see that representative litigation by user led organisations on behalf of members would be a useful additional mechanism for challenging potentially unlawful actions, practices or policies by private or public sector organisations, and would in principle be supported by the DLA. We consider the primary benefit would be to allow user led organisations to interrogate practices and processes of organisations, whether public or private, whether or not an individual is able and willing to be a notional claimant. An Individual would not have to expose themselves to the cost and responsibility of personal litigation.

7. The DLA and the LCN 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. We consider that it may be useful in some indirect discrimination cases, where there is an impact on a class of people but note that 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).

*14 January 2016*



## **Diverse Cymru – Written Evidence (EQD0109)**

### **Organisation Background**

Diverse Cymru promotes equality for all. We believe that we can work together to challenge discrimination in all its forms and create an equitable future for the people of Wales.

Diverse Cymru aims to make a real difference to people's lives through delivering services that reduce inequality and increase independence; supporting people to speak for themselves and to connect with decision makers; creating opportunities for participation and development; raising awareness of equality issues; and inspiring people to take action against inequality.

Our current services include direct payment, self directed and independent living support for both adults and children, including managed banking and software framework development in Cardiff; a BME mental health and befriending service in Cardiff and the Vale of Glamorgan; Health and Social Care Advocacy for BME people with mental health issues throughout Wales; family support, welfare benefit, income maximisation, tribunal, and general advocacy and advice for people in Cardiff and the Vale of Glamorgan.

We produce information resources on a wide-range of equality issues, including for people affected by inequality across all protected characteristic groups and information for organisations and service providers; provide a conduit for service user voices to decision-makers throughout Wales through our consultation and engagement work; run citizen involvement projects for people from protected characteristic groups and for carers; and co-ordinate volunteer placements both with Diverse Cymru and supporting external organisations to recruit, involve and support volunteers from under-represented groups.

We provide consultancy services on integrating equality in organisations, diversity champions, and equality impact assessments and deliver a range of training courses on a wide-range of equality related topics, including the only accredited Personal Assistant training in Wales; accredited Challenging Extremism and Hate Crime Awareness training, and training on BME mental health; Equality legislation; disability; LGBT issues and more. We facilitate forums and groups that work on various issues, from improving disability access and carrying out disability access observations to equality impact assessments.

This response focuses specifically impacts on people from protected characteristic (equality) groups. We would welcome any opportunity to assist with the development of specific work programmes and actions, and with engaging service users in future. We are happy for our response to this consultation to be published.

### **Call for evidence submission**

We have only addressed the issue of reasonable adjustments in this response as this was highlighted as a priority area by our service users. We are confident all other questions will be more than adequately addressed by our partner agencies, across all sectors.

### **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?**

Many disabled people are not aware of the definition of a reasonable adjustment and are therefore often reticent to express what adjustments are necessary in the workplace. This is a particular concern for individuals with poor mental health or with learning or cognitive impairments, as there is still a general perception by employers and the public that reasonable adjustments duties apply in relation to physical or sensory impairments only.

Additionally some individuals are not aware of what is 'reasonable', as this word is open to interpretation. Many have told us that they have not requested some adjustments as they were concerned they would be seen as making a fuss if the request turned out not to be within the definition of reasonable.

Some of our service users have indicated that employers still expect to understand what an individual requires on the basis of their impairment. It is vital that employers and other service providers actively request what would assist an individual and listen to individual requests for reasonable adjustments. One individual stated:

"I think that it should be more explicit on what this constitutes [reasonable adjustments] particularly when it comes to mental health issues. With physical disabilities it can be clearer to employers what adjustments need to be made but with mental health, it relies on supervisors and other senior staff understanding and listening to the individual about what needs to be done.

In my own personal experience, whilst supervisors appear to have listened to me, no adjustments have ever been made. It has led me to feel at times that my mental health issues are not taken seriously which further impacts on my mental health. Simple things that I have requested such as where I sit in a room (I have social phobia) have not been taken into consideration."

#### **4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

We feel that there should be statutory guidance, which is widely promoted on the definition of a reasonable adjustment. This guidance should include a wide-range of examples of different reasonable adjustments including case studies for individuals with physical, sensory, learning, cognitive, and mental health impairments.

The guidance should also clearly explain the need to engage with each individual to determine their requirements and what would support them best in the workplace or service. Requests should always be deemed reasonable if based on impairment and the impact on the business of meeting the request can be mitigated.

There is also a need for a public awareness campaign explaining what a reasonable adjustment is and focusing on the positive impacts of implementing them. This should be supported by Plain English and alternative format information distributed through disabled people's organisations, equality organisations, community groups, County Voluntary Councils, Community Centres, and Council offices. This would ensure that disabled people are aware of the definition and the processes for requesting reasonable adjustments.

*4 September 2015*

## **Down's Syndrome Association – Written Evidence (EQD0115)**

### **Introduction**

The Down's Syndrome Association (DSA) is a national charity providing information, advice and training on all aspects of Down's syndrome to people with Down's syndrome, their families and professionals. The DSA is a Registered Charity established in 1970 and has a membership of over 20,000 and more than 120 affiliated groups across the country. The Association operates in England, Wales and Northern Ireland.

The following submission is based upon evidence gathered from the DSA helpline, email service, training events, information days and projects over the last twelve months. Much of the evidence is in relation to education providers and also includes providers of services to the public, clubs and employers. In this submission we use the term 'service provider' as a general shorthand term. We have concentrated on the questions where we have concrete evidence to support our views.

### **Q 3 Reasonable adjustment duties**

The DSA regularly receives calls specifically related to the provision of reasonable adjustments. Evidence indicates that whilst most callers to the helpline have awareness that the individual they care for is being treated unfairly, they are not aware of the legal duty to provide reasonable adjustments. Families usually seek advice from the DSA following a refusal to their request for reasonable adjustments from a provider (although they do not necessarily use the terminology). The reason for the refusal is generally because:

- a blanket policy is in place
- the service provider does not believe the Equality Act applies to them
- the service provider is ignorant/negligent of their duty with regard to reasonable adjustments.

### **Case 1 Blanket Policy - (FE College )**

A young man of 21 with Down's syndrome and a number of associated medical conditions which affect his stamina and leave him very tired.

The young man was offered a place on a college course subject to his meeting the attendance and punctuality requirements for an initial 6 week period. If these were not met, the place would be withdrawn. The college did not consider whether reasonable adjustments would have been appropriate due to the young man's medical conditions. With support from a DSA adviser, the parent wrote to the college quoting EHRC guidance for FE providers, but the college has yet to respond.

### **Case 2 Blanket Policy – (Moderate Learning Difficulties Special Secondary School)**

A parent and her 11 year old son made a visit to their local MLD school prior to starting the following September. The only other special school in the area was for children with severe learning difficulties and would not have been appropriate for the young man. During the visit

the parent asked a member of staff about toileting issues as her son needed support and was asked 'Have you chosen the right school?' and urged to look elsewhere.

Following a discussion with a DSA Information Officer the family successfully challenged the school's stance and a toileting plan is now in place.

**Case 3 Blanket Policy** – (Exclusion from FE college specialist facility)

A young man of 17 has a history of challenging behaviour which was well managed at his previous school. During his first term in a new college the boy was suspended four times for incidents involving pushing or slapping (the young man has limited communication which impacts upon his ability to express himself). Following the final suspension parents were called in to discuss their son's future placement in line with the college policy. There was no evidence of reasonable adjustments having been made for the young man's disability to support his communication needs and the behaviour which resulted from them.

The parents appealed against a decision to exclude the young man permanently quoting the Equality Act and SEN Code of Practice and won. The father of the young man expressed his concern that not all parents in a similar position would have had the ability or confidence to make a similar challenge.

**Case 4** – (interpretation of reasonable adjustments).

A young man with Down's syndrome has been visiting Butlins for a number of years with his mother and elderly grandmother. This year his mother asked a member of staff if they could go into a wrestling match early before the arena became too busy. This was agreed, however the family were picked up entering the arena by cameras and subsequently approached by another employee who told them they would have to leave and join the general queue as "Butlins treats everyone equally regardless of difficulties". On their return home, the family contacted Butlins to complain and was given the same statement, "Butlins policy is to treat everyone as equal."

The case is yet to be resolved so it is not yet clear if this is a blanket policy by Butlins or a misinterpretation of their Equality Act training by employees.

In all four cases the service provider showed an ignorance of their duties under the Equality Act and failed to gain an understanding of the needs of the young person which would have enabled them to put appropriate support in place.

Preconceived ideas about someone with a disability and their needs, based upon ignorance can often be at the root of a reluctance or refusal to make or even consider reasonable adjustments.

**Case 5** – Barriers to inclusion.

A mother wrote to a local drama group asking if they would consider auditioning her son (who has Down's syndrome). She mentioned his commitment to former drama clubs and workshops and his ability to learn lines and choreography. She also mentioned that his younger brother (by a year) was interested. She asked if the group had an Equal Opportunities Policy.

The response began with the following statement and went on to list a number of barriers:

*'I have made some points below that you might want to consider regarding whether we are a potentially suitable group for your son to join. I have been as honest as I can with regards to our current set up.'*

*For information we don't currently have any members with a disability. This isn't a conscious decision but one that has arisen purely out of circumstance.*

*We don't have any wheelchair access, the rehearsal room is up a flight of stairs and there is no disabled toilet which makes a physical disability impossible to manage.'*

The DSA believes the parent in this case is making her own submission to the Call for Evidence on The Equality Act 2010 and Disability.

In addition to the cases highlighted above, we have regular queries relating to equal access to school trips and to full time education for children in reception class.

### **Positive examples**

Information from the DSA's training and assessment services and its employment programme ([WorkFit](#)) provide some positive examples of the understanding of reasonable adjustment duties.

Prior to employing a person with Down's syndrome all employers registered on the WorkFit programme receive training which includes their duties under the Equality Act and practical advice on how to make reasonable adjustments for the prospective employee. This additional training and support provided by WorkFit has improved outcomes for people with Down's syndrome in employment. Registered employers are more open to suggestions of how they can develop their recruitment practices, be more inclusive and meet the needs of people with Down's syndrome.

However it must be noted that age discrimination still does happen as some employers in the first instance continue to request the candidates' date of birth.

Reasonable adjustments made by WorkFit employers include:

- an accessible two stage interview process which entailed an informal 20 – 30 minute meeting followed by a trial day
- making an individually tailored induction pack in an easy read format
- allowing regular breaks – of particular importance in the hospitality trade as standing for long periods of time can be problematic for people with Down's syndrome
- Most WorkFit employers have provided their new employees with a mentor to help them understand the workplace better.

[This blog written by one of our WorkFit development officers](#) provides evidence of the successful implementation of reasonable adjustments in the workplace and the positive impact this has upon employer and employee.

### **Q 5. Public Sector Equality Duty (PSED)**

The DSA provides training across the country in education, health and social care settings to support the inclusion of people with Down's syndrome. It sees many excellent examples of

environments which support diversity and inclusion. Whilst the DSA has no specific data to measure the effectiveness of the public sector equality duty, it believes its existence can both encourage diversity and inclusion and enable individuals to challenge the actions of public bodies. The pattern of training requested from the DSA over the last year shows some disparity in the uptake of training between sectors of public services and areas within those services

- 79% of training was delivered in education establishments or to education professionals.
- 16% to a mixture of social care providers and social workers
- 6% to health professionals.

This could be an indication of a greater commitment amongst education professionals to their equality duties. However parents are powerful advocates for their children and are more familiar with the education system so more confident when mounting a challenge. There is also additional education legislation to promote inclusion in schools.

The breakdown of the 79% education training by the DSA within phases of education last year is also significant.

- 90% of training requested by primary schools
- 6% by secondary
- 4% by colleges.

This could suggest that primary schools are more likely to look at ways of including and supporting children with Down's syndrome perhaps because the more stable environment and curriculum offered in the primary sector supports greater inclusion or because the main driver in the secondary phase is examination results or because of the additional duties placed on schools.

## **Q 10 Oversight and enforcement**

The high priority given to the Equality Act in the new OFSTED framework is positive but the DSA is concerned that 'short' inspections will fail to gather sufficient evidence of good practice in including students who do not fall into the GCSE (A – C bracket).

Although OFSTED inspections provide parents with the opportunity to report on their concerns, the DSA would like to see a specific reference to the duties of a school under the Equality Act in the OFSTED Guide for Parents which clarifies the responsibility the school in this area. This information should provide practical examples to aid understanding.

If parents do have concerns about the inclusion of their child in the life of the school their first port of call has to be the Head Teacher and the Governing Body. Parents find this a difficult route often because personal relationships are involved or because governing bodies are perceived to be biased toward the head in their decision making. Many parents

would find it easier to make a direct complaint straight to an independent body like the ombudsman.

The powers of the Tribunal 'lack teeth'; schools cannot be fined or parents awarded compensation. For a parent to take a case to Tribunal takes effort and commitment and can be time consuming. The Tribunal should be able to do more than write a letter.

The DSA would like to see a stronger Tribunal with its powers extended to cover colleges where currently claims for disability discrimination are heard in the county court. This would bring colleges in line within the same framework as schools following the Children and Families Act 2014.

### **Q 11 Non-legislative measures**

The DSA would like to see greater stakeholder engagement by the Equality and Human Rights Commission as discussed by Lord Holmes of Richmond (Disability Commissioner) during his submission of oral evidence to The Select Committee on 21<sup>st</sup> July 2015. This would provide a clearer picture of the issues faced by the general population.

An Equality Act Awareness week/day spearheaded by the Equality and Human Rights Commission in collaboration with the Charity sector would raise awareness of the Act and its relevance to the general public.

Training from the Equality and Human Rights Commission for charities like the DSA would enable them to provide practical information and support, and promote awareness of the Act and its practical application.

Better understanding of specific disabilities would support effective implementation of the Equality Act. Public bodies should make better use of the expertise small charities like the DSA can offer to help them understand how best to include people with disabilities. For example it is not unusual for Employment and Support Allowance assessors to ask someone with Down's syndrome how long they have suffered from the condition or to be ignorant of the medical conditions associated with the syndrome. Most learning disability charities have a website, helpline free resources and training available to address the issue of awareness.

The DSA would like to see the reinstatement of the Disability Equality Duty. It believes the General Equality duty dilutes the impact the current Act has in promoting inclusion for people with disabilities. Disability is different from other protected characteristics as there is a duty to treat people with a disability 'differently'.

*4 September 2015*



## **Clive Durdle – Written Evidence (EQD0048)**

Executive Summary, Recommendations and Questions for the Select Committee

I welcome this opportunity to provide comments to the House of Lords Select Committee into the Equality Act 2010 and disability. This submission is focusing on transport and related issues. These are personal comments.

Any journey is only as good as its weakest link

I understand that “any journey is only as good as its weakest link.” A core concept of the disability world is the idea of barriers. These may be physical, institutional and attitudinal. The idea of an equality impact assessment is to think through clearly what issues someone might face and what physical, legal and behavioural changes may be appropriate.

Thinking carefully about someone over their life cycle and on a day to day basis, and looking carefully at what happens, how and why, and how it may be different is very valuable.

My experience is like the curate’s egg. There are parts of the movement and transport systems that are impressive; other parts are in a backwater. It is not obvious that all the players have even received the message that “Houston, we have a problem”.

### **The Equality Act**

The Equality Act uses “boxes” of protected groups and defined “places”.

What effects might liminal matters that don’t quite fit into neat and tidy boxes be having? The latter part of this submission looks at some of these extremely complex issues.

Is the idea of groups of people and objects helping or hindering resolving very complex issues of institutionalization and discrimination? What other tools may help?

Should the categories of the Equality Act be more around power relationships and equality impact?

It is a duty to ‘have due regard’, not to take steps or to achieve equality. Is this an attempt to incorporate a deliberative, reflexive approach to achieving equality, recognizing that a straightforward command and control approach might encounter unproductive resistance? Or does it reflect a fundamental ambivalence as to the importance of equality issues?”

I understand that the Equality Act, by not being accessible itself and sufficiently enabling of change, is at least indirectly institutionalized and discriminatory.

### **Professional Practice**

I understand that there are real continuing complexities and confusions introduced by professional and legal practice and education.

The Cabinet Office is looking at these issues from a built environment perspective.

It is unclear that the issues being discussed and resolved there are transferring equally to the worlds of getting around.

It is not obvious that the excellent possibilities of sustainability and inclusive design are being progressed that effectively.

The meaning of the term “access” is precisely about this. This seems to be causing various professionals to think they are meeting legal and professional standards when in fact and law they are not.

The two main ways seem to cohere around the concepts of “access for all” and “vehicular access”

### **Participation**

I formally ask that looking carefully at how things are done elsewhere, experimentation and participation become key ways of working.

The definitions of the common wealth and what is private are causing continuing complexities and discrimination.

The phrase “nothing about us without us” is precisely about this.

Should properly recorded and designed experimentation be understood as a key part of enabling relevant authorities to show they have properly consulted and enabled participation?

There does not seem generally enough willingness to search out possible solutions, discuss carefully matters, learn and implement in a timely way changes that do make very significant differences.

There is evidence of both extreme risk averseness and ignoring of risks. These types of behavior are well - defined symptoms of institutionalization.

### **Statistics and measuring equality**

I understand there is a critical general issue about the quality of statistics. The numbers of issues and barriers faced daily by disabled and other people is not being recorded properly, although bodies are experiencing high levels of claims for slips trips and falls, but this is not being understood as key equality indicator.

### **Commonwealth and Cooperation**

I understand this principle of all the various parties working together to think through carefully all the issues and propose solutions is critical to actually implementing the Public Equality Duty.

This duty must explicitly apply to all contractors carrying out public services.

Lenin

Paraphrasing Lenin, there is a job to be done.

A major issue is that there seems to be a general ignorance of the poor state of infrastructure from the perspective of access for all, and that this is also institutionalized discrimination.

The costs of change are probably not that significant if tools of high quality design, thought and participation are used that create sustainable and inclusive long lasting infrastructure. But first the detailed issues must be defined clearly.

### **Conclusion of Executive Summary**

This submission discusses the general issues and then illustrates them. There are specific issues in various areas that are highlighted in the main body of this evidence.

### **Barriers**

A core concept of the disability world is the idea of barriers.

These may be physical, institutional and attitudinal.

Comprehensive Equality Impact Assessments aim to think through clearly what issues someone might face and what physical, legal and behavioural changes may be appropriate.

Thinking carefully about someone over their life cycle and on a day to day basis, and looking carefully at what happens, how and why, and how it may be different is very valuable.

My experience is like the curate's egg. There are parts that are impressive; other parts are in a backwater. It is not obvious that all the players have even received the message that "Houston, we have a problem".

### **Institutional Barriers**

I understand there may be two interrelated issues that may be due to the wording of the Equality Act, and that make implementation of its objectives extremely complex.

The first is the list of "protected groups". Is this a complete list? Should for example, pedestrians, cyclists, rowers, sailors and cyclists (users of human powered vehicles?) be protected groups?

Secondly, is there a complete list of "places", are 'work, school, transport and housing' complete?

Where do roads, footpaths, cycleways, bridleways fit? Is "transport" the correct legal term?

Where does the concept of the transport hierarchy fit with ideas of and law about equality?

What effects might liminal matters that don't quite fit into neat and tidy boxes be having?

Is the idea of groups of people and objects helping or hindering resolving very complex issues of direct and indirect discrimination, what other tools may help?

Should the questions to resolve these issues be more around power relationships and equality impact assessments?

There is in East London a footbridge over the River Roding that is currently closed for repairs. No one can work out whose responsibility it is! Options include the City of London, London Borough of Redbridge, London Borough of Newham and probably other parties. There is then a question about which department of these organisations has responsibility – parks, highways....

This is obviously a barrier but it is not clear what actions anyone should take to resolve it! The Equality Act looks like it is relevant, but how would it be used, where?

### **The Public Sector Equality Duty**

[Sandra Fredman](#) Oxford University, has written:

“A key advance of the Equality Act 2010 is its introduction of a single equality duty. The new ‘public sector equality duty’ harmonises the earlier duties and extends its coverage to include other protected characteristics.

In addition, the statutory aims have been deepened to reflect a substantive conception of equality. However, the core of the duty is unchanged. It is a duty to ‘have due regard’, not to take steps or to achieve equality.

Is this an attempt to incorporate a deliberative, reflexive approach to achieving equality, recognising that a straightforward command and control approach might encounter unproductive resistance?

Or does it reflect a fundamental ambivalence as to the importance of equality issues? (Is) the statutory provision is an example of reflexive law(?)

Particular attention is paid to the spate of judicial review cases relying on the equality duty to challenge a range of budget cuts. It is argued that courts have struggled to deal with the regulatory challenges presented by the equality duties.

Nor is it clear that a reflexive approach is appropriate to achieve substantive equality.”

### **The European Transport Ministers**

The European Transport Ministers have written:

“Obvious though it may seem, it is worthwhile stressing that any journey is only as good as its weakest link. There should, therefore, be a conscious effort on the part of government, local and central, to ensure that accessible transport services link together.

The physical process of making a journey should mirror the “chaîne signalétique” approach advocated by COLIAC (formerly COLITRAH)<sup>6</sup> for information; a carefully planned sequence without breaks or interruptions.

Until comparatively recently such an approach would have seemed unrealistic, even irrelevant, because so much needed to be done to make any single link in the transport

chain accessible. This is changing, rapidly so in some countries, but the full value of accessible links will not be realized unless journeys are considered as a whole, rather than as a series of discrete movements. ....

In other words, the physical chain of accessible transport has to be paralleled by an administrative chain.

In further developing their policies for improving access to all modes of transport, government should not lose sight of the over- arching need to provide seamless transport for disabled travellers, and to achieve it by a combination of appropriate regulations and encouragement for collaboration between all the organisations concerned. (International Transport Forum n.d.)

It is not obvious to me that accessible tools are available to resolve these complexities quickly. The Equality Act, by not being accessible, is, I understand, at least indirectly discriminatory.

A related issue is possibly the history of Transport, Railway and related Acts. It is not obvious that these assist enabling equality and the view of the European Transport Ministers that “any journey is only as good as its weakest link.”

The 1949 Transport Act, as well as establishing the legal basis of motorways, also formalized the road split between national and local authorities, with local authorities becoming responsible for footpaths, cycleways and local roads.

This means that there is in existing transport and highways law basic assumptions that contradict completely the concept of the road hierarchy.

Similar issues exist in the Highway Code, which contains discriminatory philosophies dating back to the 1930's. There is a continual assumption that powered vehicles have priority, when actually the concept of the Queens Highway is the converse, that everyone is free to use it. America, with the pejorative term “jay walker” is the classic example of this. Should there not be a right to roam everywhere, including roads? Should 30 be the normal speed in built up areas?

There is a classic science fiction novel that I strongly recommend that illustrates this, *The Revolt of the Pedestrians* (Keller 1928).

In 1959 there were nine million cyclists on Britain's roads.

We do not now have public and private realms that achieve “any journey is only as good as its weakest link.”. To do this includes all parts of all journeys, including getting out of bed, going to and using bathrooms and toilets, getting around a home including up and down various levels, getting out of a front or back door, and using pavements. It includes all public transport being fully accessible and able to carry all types of mobility equipment, including cargo trikes and mobility scooters.

The Equality Act has not enabled the full review and reassessment of all practices and professional thinking that I understand to be basic to taking equality seriously. There are not only physical and administrative barriers but also historical, legal, professional and intellectual barriers.

The following sections illustrate some of these issues.

## **Access**

As well as these real complexities of who is responsible, I understand there are real continuing complexities and confusions introduced by professional and legal practice.

The meaning of the term “access” is precisely about this. This seems to be causing various professionals to think they are meeting legal and professional standards when in fact they are not.

The two main ways seem to cohere around “access for all” and “vehicular access”

The term “design and access statement” may have different meanings to various professionals, leading to further inadvertent indirect discrimination.

A mission to Mars failed catastrophically because different contractors were using different measurement languages.

### **Campaign for Better Transport**

Stephen Joseph, Chief Executive of Campaign for Better Transport has commented to me personally in an email correspondence:

“There are two main uses of the term “access” among transport professionals:

Access for people with disabilities. Access strategies here involve making transport networks and infrastructure accessible to people with all kinds of disabilities. This has involved, for example, a programme of dropped kerbs, of step free buses, and of moves towards making railways accessible through an “access for all” programme.

Access to key facilities and services, which involves mapping people’s travel patterns and needs and seeking to provide services to meet those needs.

This kind of access came to prominence with a report by the Government’s Social Exclusion Unit in 2003 which suggested accessibility strategies by local authorities, and resulted in these being required through Local Transport Plans.

Access in this context is sometime contrasted with “mobility” - in other words, trying to move the focus from simply promoting movement - more miles by more people and vehicles - to promoting access to key facilities and people, as the main aim of transport.

As Campaign for Better Transport, we’ve been involved in both these forms of access strategies.

On the first, we’ve worked with disability groups like Transport for All to promote disability access to transport.

On the second, we have been involved in promoting access strategies and most recently succeeded in persuading the Government to fund pilots of “Total Transport” which will join together procurement of transport services to access different public facilities.

We have also framed this in the context of cuts in subsidised bus services, through our “Save our Buses” campaign.

[http://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_policy/@invest/documents/publication/wcms\\_asist\\_8210.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/@invest/documents/publication/wcms_asist_8210.pdf)

### **Vehicular Access and Access for All**

The website of a major transport consultancy comments below about “access” to a site that includes a school and a retirement home, using a clear vehicular access model, which is arguably discriminatory as there is no evidence at all of any consideration of issues of access for all.

This is only one example of a probably very common discriminatory practice and leads to asking basic questions about do professionals understand their legal responsibilities, and why are they thinking in these ways?

“PJA was appointed to provide transportation and highways advice for the development, and to prepare a Transport Assessment to accompany a planning application. [NAME REDACTED] entered into an agreement with the [NAME REDACTED] Preparatory School to redevelop a large part of their site for housing, including a retirement home. Forming a suitable access into the new site that would meet the approval of the local highway authority was difficult and a number of options were considered. Visibility splay requirements were assessed in detail using vehicle speed surveys. The final option selected involved the partial demolition of the boundary wall to the site, which was considered by the planning authority to be of local importance. Nevertheless, it was accepted as the least intrusive access solution.(Jones n.d.)

Similar limited use of the term “access” also occurs here:

“The designation of the new city of Craigavon in 1965 envisaged the development of a substantial new commercial area between the existing town centres of Portadown and Lurgan. This was to be the principal focus for the new city of 180,000 inhabitants but its failure to grow to anything like its projected population has meant that the new town centre at Rushmere is relatively small in floorspace terms. However, its ability to meet modern retailer requirements in terms of unconstrained greenfield sites, floorplates, mall type environment, convenient car based access and parking together with its role as a shared place has made it much more successful in attracting investment from the high street multiples. PJA was appointed as subconsultant to [NAME REDACTED] to develop a Commercially-led vision for the three centres, with each developing a distinct role. Central to this was the identification of redevelopment sites, mainly in the ownership of the public sector. PJA was required to establish an overall transport vision for the town centres and to specify access requirements” (Jones n.d.)

### **Experimentation, modeling and participation**

There is a related issue here that must also be tackled. Many professionals now use very powerful computer models and have rules that have evolved possibly over decades (more than a century in the case of the railways, since the 1930’s for the Highway Code) that may be leading to ways of working that do not actually enable solutions and may be indirectly and directly discriminatory.

I formally ask that looking carefully at how things are done elsewhere, experimentation and participation become key ways of working.

This has immediate effects, the models have something to test against, if something doesn't work, it can be removed quickly, if it does work it can be honed and implemented generally quickly.

There does not seem generally enough willingness to search out possible solutions, discuss carefully matters, learn and implement changes that do make very significant differences.

The transport professions feel as if they are fashion led.

For example, road closures and road changes can be trialed with plastic and wooden equipment to see what happens to road use patterns, instead of what tends to happen currently is that something is extensively modeled and then implemented permanently. Should properly recorded and designed experimentation be understood as a key part of enabling relevant authorities to show they have properly consulted and met their Public Equality Duties?

There are bits of this in law, but something happens in the implementation. It may be related to misunderstanding hazard and risk.

I am aware of extensive transport changes happening near me in Waltham Forest but I am unclear of how equality issues have impacted these proposals.

### **Risks, Hazards and Near Misses**

A major guide by TFL about cycling "International Cycling Infrastructure Best Practice Study" (Dales & Jones 2014) writes:

"As regards concerns about possible 'dooring', where cars are parked facing the direction of travel on that side of the street, it is only the passenger doors that would open into a nearside cycle lane/track.

Passenger doors usually open less often than the driver's door, because every car has a driver. Additionally, if a dooring does occur, cyclists would be thrown into the adjacent footway, not the carriageway. "

This comment is of note compared with the attitude of the Health and Safety Executive about workplaces, and I must formally ask why are there different standards for workplaces and streets and might this be discriminatory?

The Health and Safety Executive (Slips and trips team - HSE 2009) writes:

More: Near-miss reporting

A simple, and potentially anonymous, system for reporting near-miss incidents is a very important way of identifying problem areas. This will help you highlight some of the less obvious hazards in a workplace, or identify areas where a problem is developing.

Some models suggest that for every accident there are approximately ninety near-misses. If there is a good reporting system in place, the hazard could be dealt with before someone is injured.

It can be difficult to get staff to report near-misses or minor slip accidents, as they are often seen as funny or embarrassing occurrences (until someone is hurt).

It is important to create a culture which encourages reporting of these accidents.

I understand the type of attitude reflected above (about dooring being part of the street scene) by transport professionals is symptomatic of a general issue about the quality of statistics, specifically the numbers of issues and barriers faced daily is not being recorded properly, although bodies are experiencing high levels of claims for slips trips and falls, but



this is not being understood as a key equality indicator. Transport generally records deaths and serious injuries, when the reality is all incidents and near misses matter. There are excellent examples of how to do things from Denmark and the Netherlands, but somehow in Britain I feel we do not quite get to the crux of issues. Is “good enough” or “that will do” actually discriminatory?

### **Commonwealth**

I do not have the legal expertise to define this, but understands this is about duties to co-operate and learn together for the common wealth. There is a very extensive literature about this, including the legal concept of ecocide, and the authors Elenor Ostrom and Lewis Hyde.

The idea of nothing about us without us is precisely about this.

Citizen’s Advice writes: (Advice 2015) “The Equality Act tells some public bodies that they will have to think about what they can do to make their services more helpful to poorer people.

How this might work

A local council in charge of a town’s bus services checks to find out if buses meet the needs of local people. It finds that people in a poor part of town have more trouble than other people getting to the local hospital. The council finds this was because of 3 things.

There are only a few buses to the hospital each day

Most people do not have a car

It costs a lot to park cars at the hospital.

The council works with the hospital to find ways to make it easier for people from the poorer parts of town to get to the hospital. They decide to pay for a free bus service from the town to the hospital.

I understand this principle of all the various parties working together to think through carefully all the issues and propose solutions is critical to actually implementing the Public Equality Duty.

This duty must explicitly apply to all contractors carrying out public services, who must not be allowed to use confidentiality clauses.

### **Parking**

About parking, thinking here may be indirectly and directly discriminatory.

ITDP writes “In the last few decades a growing number of European cities have led the world in changing the direction of parking policy. European citizens grew tired of having public spaces and footpaths occupied by surface parking. Each parking space consumes from 15 m<sup>2</sup> to 30 m<sup>2</sup>, and the average motorist uses two to five different parking spaces every day. In dense European cities, a growing number of citizens began to question whether dedicating scarce public space to car parking was wise social policy, and whether encouraging new buildings to build parking spaces was a good idea. No matter how many new parking garages and motorways they built, the traffic congestion only grew worse, and as much as 50% of

traffic congestion was caused by drivers cruising around in search of a cheaper parking space.

In the cities reviewed here, parking policy has been reoriented around alternative social goals. Some recent parking reforms are driven by the need to comply with EU ambient air quality or national greenhouse gas targets. Other new parking policies are part of broader mobility targets encouraging reductions in the use of private motor vehicles. While London, Stockholm, and a few other European cities have managed to implement congestion charging to reduce motor vehicle use, more are turning to parking.

Every car trip begins and ends in a parking space, so parking regulation is one of the best ways to regulate car use. Vehicles cruising for parking often make up a significant share of total traffic. Other reasons for changing parking policies were driven by the desire to revitalize city centers and repurpose scarce road space for bike lanes or bike parking. (Kodransky & Hermann 2011)

### Street Scene

Henshaw (Henshaw 2011) has fascinating commentary about what happens when footpaths are poorly designed. Although writing primarily about cycling, the issues are identical for disabled people with mobility issues and are therefore a key example of what an Equality Act should be able to achieve. The numbers of slip trip and fall hazards and barriers illustrated is impressive, and these are actually very common street scenes. The changes of level, cambers and kerbs illustrated below are all extremely serious barriers for the “wobblies” and “stickies” of the world.

“One of the many [excuses](#) used by people who oppose protected cycling infrastructure is the ‘but we have driveways’ excuse. There are people who believe that cycling infrastructure, especially a separate protected cycle path, does not go together well with driveways. But of course the two can be combined: as long as the design of both the cycle path and the driveways are well done and follow strict rules.



1. Driveways may not interrupt the sidewalk or cycle path.



2. Driveways may not influence the level of the sidewalk or cycle path.



3. Driveways may not have priority over pedestrians or cyclists.

When a drive way does not interrupt the sidewalk or the cycle path, when it does not change the level of either of those and when it is clear it has no priority over pedestrians or cyclists then such a driveway is no problem at all to separated cycling infrastructure.



Driveways that do not interrupt cycle path nor sidewalk, have no influence on the level of either of those and clearly have no priority.

### **Patient transport**

Patient Transport is another example of a whole system transport problem, albeit moving complex, fragile subjects.

The agenda includes someone getting out of bed and moving them to an operating theatre or MRI scanner possibly in another hospital, transfers and admission processes to other hospitals and journeys to and from home at admission and discharge and for outpatients and all the stops, handovers and waiting in between.

It isn't really only a health problem, nor a transport problem, and requires very careful thought and planning of all stages and issues.

Hospital trusts, care quality commissioners may be looking at the issues too simply and incorrectly using examples from other systems, like “departure lounges”. The term “medical model” possibly applies.

A major hospital trust has recently purchased patient wheelchairs that are commonly used by pulling patients backwards, not exactly a dignified way! This trust was not also able to manage a patient who was able to walk but had been instructed not to sit – ie either lie or stand.

Comments were made about how these types of issues are seen as marginal, cinderella services, when actually any look at systems theory shows they are critical.

This is a further example that the very complex problems actually need to be tackled.

### **Wheelchair services**

The recent launch of a campaign to improve wheelchair services is a further example of how interconnected and detailed issues are. The existing legal structures are discriminatory as they are not enabling matters like these to be resolved quickly and effectively. (Gani 2015) “It is estimated that 2% of our population use wheelchairs to get to work, go to school, buy their groceries, look after their children, contribute to our society and achieve their goals. Sadly many of them don’t fulfil their aspirations because the current wheelchair services fail to meet their needs.

Currently we see great variation in ability to access assessment and obtain service provision, delays in repairs and equipment, poorly thought through provision plans and patient pathways, confusing information, restrictive and inflexible funding and minimal integration of services.

And throughout all of this are the service users struggling to carve out the kind of lives they would wish to lead.

As a group, the Wheelchair Leadership Alliance has committed to make the kind of changes that will truly improve the lives of these service users and their families.” (Wheelchair 2015)  
Autism

There are many conditions that are not obvious, but all of these require equal consideration. Transport for all writes:

I plan all my journeys very carefully. Because of my autism, any changes, no matter how small, causes anxiety and stress. The world is a very unpredictable and confusing place and so I prefer to have a fixed daily routine so that I know what is going to happen. This routine extends to always wanting to travel the same way to and from places. When there are diversions or journey restrictions or cancellations, it doesn’t just irritate me; it can feel like the end of the world. The London Bridge closure has caused me massive amounts of stress. People with Autism may experience some form of sensory sensitivity which affects one of the five senses – sight, sound, smell, touch, taste. I have hypersensitivity to things such as noises (I am unable to cut out background noise), breezes, lights, movements and odours. I also have balance and vestibular difficulties, so I am unable to stand on moving things such as escalators and lifts without being supported, because of dizziness and disorientation. I am too scared to use night buses because of how fast they go. They make me feel very ill and anxious, I can’t use escalators, lifts, tunnels, stairs especially spiral staircases on my own.

I can't just turn up and use any station, it may take up to twenty visits to a station before I can use it. Starting from just going to see the outside of the station to then walking inside, then another visit to go onto the platform. (Lindsay 2015)

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*2 September 2015*



## Elcena Jeffers Foundation – Written Evidence (EQD0108)

The Equality Act 2010 was intended to “harmonise discrimination law and strengthen the law to support progress on equality.” I Buy-The-Money” (BTM) was created to change lives of a whole community, that is still waiting to happen.

Select Committee on Work and Pensions, Session 2005-06 [Written Evidence](#):

Memorandum submitted by Elcena Jeffers Foundation

### REFORMS TO INCAPACITY BENEFITS

1. One of the biggest problems with disabled people getting work and keeping work is the amount of unwanted control that comes with every single scheme. All people who want work should get work)

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmworpen/616/616we56.htm>

BTM and Buying-Back-The-National-Health-Service (BBTNHS) has the Job that Disabled Persons can do. The Queen’s Speech 2015 on Full Employment (further more there is no job in the United Kingdom that not under the NHS Umbrella) **is a way of getting and keeping work for disabled persons using legislations if necessary with other legislations, including the Litigant in person These provisions apply to both the public and private sectors in respect of employment, education, housing, goods and services, public services and transport. To include disabled persons ‘themselves’.**

General;

1. Has the Equality Act 2010 achieved the aim of strengthening and harmonising disability discrimination law? **Not fully.** What has been the effect of disability now being one of nine protected characteristics? ***It makes a real difference in the fact that it is a preventative law in deterrent. Real education has been missing from the disabled community. And Missing Is, a Full Comprehensive Needs Assessment, including Time, Energy, Know-how, feelings and patient (slow people who can’t go fast, need more time to do their job whatever that job is) work employment and paying tax is what every-one is about in democracy.***

2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation? ***Yes, there was not a Full Comprehensive Needs Assessment in place that everyone can adopt or follow, this includes: disabled person themselves. Employers, local government, before the launch of the DWP Work Programme. 2 Reasonable adjustment; this too need to be spelt out clearly to the employer and employees alike to understand what is involved.***

3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them? ***No, the need to be led by disabled people them self in order to maximise how BTM is spent satisfactory to taxpayers and government.*** How does this apply in the specific cases of public transport,

**taxi, education and access to sports grounds? *If there is enough money in the BTM pot to meet the needs of the people's involved choices will be made in a satisfactory manner.***

4. Should the law be more explicit on what constitutes a reasonable adjustment? **Yes, definitely** If so, in what way? **Public Sector Equality Duty and making time a part of disabled person's "Self-Assessment.**

5. How effective has the public sector equality duty been in practice? **Partly** .How do you assess its contribution to the aims of the Equality Act 2010? **BTM and BBTNHS into Self-Assessment**

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? **They are aware of the law, sometimes when it suit them best** Have the specific duties supported implementation for disabled people? Oversight and enforcement , we do not know anyone who do not outstanding issues as a disabled person, for this reason EJF found the answer in **BTM and BBTNHS into Self-Assessment.**

7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability? **Yes, definitely. BTM and BBTNHS into Self-Assessment**

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? **Some, but there is the Litigant in Person Act to argue with the challenges of being a disabled person in need.**

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? **Yes.**

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? **Yes, if the person is to take on the role of Litigant in person**

11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability? **BTM and BBTNHS into Self-Assessment.and Litigant in person Act to create Employment for Disabled persons.**

## **EJF RESPONSE**

### **Work/Employment: in Partnerships**

Based upon my income as described in the "Buy-The-Money and Buying back the NHS Project, using £1.00 for my daily Bread, in one year and a day. Log under legislations to protect Disabled people I will be working for my money after Tax as a way of earning my



living and to supporting my 'Life and Lifestyle'; This is based upon UK Parliamentary pay policy. And HM Treasury Tax system./Summary.

£ 278.00	Welfare	£366.00
£214.00	Health	£366.00
£ 149.00	Education	£366.00
£ 137.00	State pensions	£366.00
£79.00	National debt interest	£366.00
£ 60.00	Defence	£366.00
£50.00	Criminal justice	£366.00
£33.00	Transport	£366.00
£31.00	Business and industry	£366.00
£23.00	Government administration	£366.00
£19.00	Culture (e.g. sports, libraries, museums)	£366.00
£19.00	Environment	£366.00
£19.00	Housing and utilities (e.g.street lights)	£366.00
£13.00	overseas aid	£366.00
£ 9.00	UK Contributions to EU budget	£366.00

Total: £1,134.00 for year 2013-14

Litigant in Person (LiPs) are court-literate and able to navigate the process because they have a legal background or other expertise which equips them for managing their case. The professional and regulatory framework 7. A lawyer's paramount duty is to the court and to the administration of justice. **Where a LiP is a defendant to proceedings and no other pre-action protocol applies, the Civil Procedure Rules (CPR) state that you should refer the LiP to the Pre-Action Conduct Practice Direction and draw their attention to paragraph 4 which concerns the court's power to impose sanctions for failure to comply with the Practice Direction. You can inform the LiP that ignoring the letter before claim may lead to the claimant starting proceedings, and may give rise to a liability for costs.**

The Legal Services Act 2007 s1(3), referring to lawyers as 'authorised persons', provides that: (c) ...authorised persons should act in the best interests of their client, as in Representation of the People Act 1983 (d) ...persons who exercise before any court a right

**of audience**, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice...’.

**NHS and Disabled persons getting work as the welfare to work was meant to be, not to be forced to do work that is not suitable for their needs disabled people are weary of state saying what is what ‘ A Self-Assessment, will clarify what each disabled person want and needs.**

*4 September 2015*

### **Sally Elliot – Written Evidence (EQD0085)**

I serve on the Executive Committee of the CONSERVATIVE DISABILITY GROUP and I am hard of hearing, wearing two hearing aids, adjustable to link into a loop system, and I also carry my own portable loop system.

(1) The provision of a LOOP SYSTEM in public places is somewhat haphazard and, even when stated as being in operation, that is not necessarily the case (system is often not even turned on and no-one, wearing the appropriate aids, has been deputed to check that it is working properly!

(2) SUB-TITLES (for example in television broadcasts) are often missing, or unintelligible or they COVER UP the broadcast description and name on the screen of the person speaking. That is continually irritating in the BBC newscasts day after day. WHY CAN THE SUB-TITLES NOT BE DISPLAYED AT THE TOP OF THE PAGE? The name and competency is of far more importance than visual features.

(3) The provision of public address systems does not always work to the advantage of the hard-of-hearing and my practice is to register in a hotel or cruise ship that although I hear the warning claxon I do not necessarily understand announcements. I was therefore extremely impressed at the MARRIOTT HOTEL in PETERBOROUGH who produced a questionnaire to confirm I was capable of reaching the exit and provided a vibrator under my pillow!!

(4) Train at Waterloo in the Spring with no provision for passengers with disabilities when train crew not found last Spring.. Time given for next trains on other platforms quite inadequate - left stranded - have angina - befriended by passengers on neighbouring train who searched ipads for connections to Bournemouth and suggested Woking!!

*3 September 2015*

## **Equality and Human Rights Commission – Written Evidence (EQD0083)**

### **About the Equality and Human Rights Commission**

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an ‘A status’ National Human Rights Institution.

Find out more about the Commission’s work at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### **Summary**

The Equality and Human Rights Commission presents written evidence on the questions set out in the Committee’s call for written evidence. This supplements a letter to the Committee dated 20 August 2015.

In this submission, the Commission outlines work it has carried out in support of the aims of the Equality Act 2010, including strategic litigation and the production of guidance. The Commission highlights how implementation of the Act could be improved, particularly by full implementation of its provisions and the reinstatement of provisions that have been repealed. The Commission calls for all aspects of equality and human rights to be brought under the authority of a single government department; new powers that would enable the Commission to enforce the Act more effectively, and a comprehensive review of access to justice in discrimination cases.

#### **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?**

- 1.1. The Commission’s view is that the Equality Act 2010 considerably improves anti-discrimination law for the benefit of disabled people, through:
- a simpler, clearer definition of disability;
  - extending the concept of indirect discrimination to disability, which has widened the ambit of disability discrimination law substantially.
  - a consistent and extended reasonable adjustments duty;
  - a new concept of discrimination arising from disability, to fill the gap left by judicial interpretation of previous legislation;
  - a single public sector equality duty, which includes a particular requirement to consider the need to take steps to take account of disabled people’s disabilities;
  - a new provision prohibiting health-related questions during the recruitment process;
  - extending the concept of positive action to disability, allowing employers to take action to address disadvantage or under-representation or the particular needs of

people with particular impairments, and to apply a ‘tie-break’ rule in recruitment and promotion.

1.2. We believe there are benefits in providing protection from discrimination and harassment for all protected characteristics within one harmonised Act; for example the *Moore and Coates* case which related to Roma people helped to clarify requirements under the public sector equality duty in respect of all protected characteristics.

**2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

2.1 Please see the Commission’s letter to the Committee dated 20 August 2015.

***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?**

3.1 The Commission considers that the duty to make reasonable adjustments is fundamentally important to removing barriers that hinder equal participation of disabled people in all aspects of life. Government-commissioned research and surveys<sup>94</sup> indicate that the disability provisions are better understood than the newer protected characteristics, but the extent of understanding varies between different types of organisation and the information we have is not up to date. In our analysis, the duty could be better understood; a quarter of disability discrimination-related enquiries to the Equality Advisory and Support Service (EASS) 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.

3.2 The Commission has produced Codes of Practice and a range of guidance aimed at supporting implementation and improving understanding of the reasonable adjustment duty. This remains in high demand, as evidenced by website views and downloads. We have also delivered bespoke guidance for specific contexts, such as “Equality and Human Rights Law during an Election Period: Guidance for local authorities, candidates and political parties”<sup>95</sup> which includes advice on accessible polling stations for disabled people, and our recent guidance on improving diversity

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<sup>94</sup> Centre for Research in Social Policy and the International Centre for Public and Social Policy survey of over 1800 organisations in 2011; Government Red Tape Challenge on Equalities (May 2011 to May 2012); Government Review of the public sector equality duty 2012

<sup>95</sup> <http://www.equalityhumanrights.com/publication/equality-and-human-rights-law-during-election-period-guidance-local-authorities-candidates-and>

in the TV broadcasting industry, which includes specific advice on tackling the under-representation of disabled people both on- and off-screen.

3.3 The Commission’s work to clarify and improve implementation of the reasonable adjustment duty includes:

- Improving the provision of accessible taxis in Liverpool and other areas (see the *Lunt* case);
- Testing its application to bus transport practices affecting wheelchair users (see the *Paulley* case, currently before the Supreme Court);
- Working with organisations responsible for the rail transport infrastructure to generate more accessible station facilities for disabled travellers;
- Working with a premier league football club to improve practices and facilities for disabled football supporters;
- Working with retailers, banks and hotels to improve their compliance with the duty to make reasonable adjustments;
- Supporting a test case that will help to clarify who is responsible for the duty to make reasonable adjustments when a student on a higher education course is sent on a work placement (the *Blackwood* case);
- Supporting a test case (*MM & DM*) concerning the scope of the Department for Work and Pensions’ duty to make reasonable adjustments for people with mental health issues during the course of the process to assess an individual’s eligibility for welfare benefits; and
- Successfully advocating for a Deaf patient who had no access to an interpreter during a seven-day hospital stay, and supporting all of Scotland’s Health Boards to implement the resulting recommendations.

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

4.1 The reasonable adjustment duty balances the different requirements of individual disabled people (i.e. what the person needs in order to remove barriers to work, access services, education etc) against the weight of responsibility imposed on the duty-bearer (i.e. taking action to change policies, practices, or improve access to premises or the providing auxiliary aids that are effective in removing those barriers). The Commission considers 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.

4.2 The Commission’s Codes of Practice and guidance help to clarify what the reasonable adjustment duty means in practice, and how to exceed the minimum legal

requirements in order to implement good practice. There is scope to improve implementation of the duty by targeting specific messages and guidance to sectors and contexts where evidence shows poor understanding and non-compliance. For example, the Commission partnered with Visit England to produce and distribute guidance on assistance dogs to improve practice in tourist facilities following a series of complaints.

- 4.3 While generally supportive of the flexibility of the reasonable adjustment duty, the Commission considers that in some contexts there may be merit in imposing more prescriptive requirements to ensure that adequate standards are met; this type of approach might help to drive improvements in the public space. For example, the Commission's access to sports project has uncovered a concerning lack of commitment from some sporting bodies to improve access for disabled people at their venues. In particular, our discussions regarding football have indicated some reluctance to take the actions necessary to deliver the improvements needed within a reasonable time scale. We think there may be merit in building more prescriptive accessibility requirements into the Premier League rule book (which is binding for Clubs), with detailed requirements rather than the current statement that 'Each Club shall provide sufficient and adequate facilities for disabled supporters.' The Commission is also concerned that the Government is yet to implement the Equality Act 2010 provisions to set requirements for accessible buses, trains or taxis.

### ***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?**

- 5.1 The public sector equality duty (PSED) is still relatively new, particularly in Scotland and Wales where timescales for implementation of the specific duties have been slightly later, limiting the availability of robust evidence to objectively assess its effectiveness<sup>96</sup>. We will produce a more comprehensive report for the planned review of the PSED which the Government has indicated will take place in 2016.
- 5.2 The aim of the PSED is to ensure public services meet the needs of our diverse society and to engage public bodies in tackling discrimination and disadvantage. The general equality duty is a duty to consider, not a duty to achieve a particular outcome. This means that public bodies must consider thoroughly the impact of their functions on people with particular protected characteristics; in particular whether they might disadvantage particular groups and whether they offer the potential to minimise inequalities. The duty prompts public bodies to consider alternative options and mitigating measures which could help deliver better outcomes for people. However, it does not stop public authorities from taking difficult decisions which may affect some people more adversely than others.

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<sup>96</sup> The Government's review of the PSED in 2013 concluded that it was too soon to evaluate its impact - <https://www.gov.uk/government/publications/the-independent-steering-groups-report-of-the-public-sector-equality-duty-psed-review-and-government-response>

- 5.3 The Commission has used a range of regulatory powers to improve public sector compliance with the PSED, including follow up work from our inquiries into disability harassment and the provision of home care services<sup>97</sup>. In cases such as *Bracking*, we have clarified and protected key legal principles behind the core concept of ‘due regard’. Case law has also established that the duty is 'ongoing', in that it does not stop at the point a decision is taken. In respect of the Independent Living Fund, it is therefore critical that the impact of its closure and the transfer of additional funding to local government are monitored to assess the impact on people who were previously in receipt of this funding. The need for ongoing monitoring also applies to reforms to legal aid (*R (on behalf of Unison) v The Lord Chancellor* (2014)).
- 5.4 The specific duties, which vary in England, Scotland and Wales, are intended to assist public authorities in meeting their duty to pay due regard to the need to promote equality of opportunity, eliminate discrimination and promote good relations. Our assessments of how public bodies in England, Wales and Scotland are implementing the specific duty requirements show that most public bodies in most sectors are implementing the requirements effectively<sup>98</sup>. However, new research suggests that some public authorities, particularly in England, need better guidance on what effective implementation of the general and specific duties entails. We will be looking to improve our guidance and will pilot the production of new sector-specific materials in partnership with the Further Education sector.
- 5.5 There is evidence that the previous equality duties helped to raise the awareness of public authorities in relation to their responsibilities on equality, with research in 2009 finding that over 80% of respondents had seen improvements in the way that their organisations made decisions or allocated resources, and that 97% had seen either “significant” or “some improvement” in at least one specific outcome.<sup>99</sup> There are many examples on our website of how public authorities have used the PSED to identify and deliver improvements for disabled people, as well as other groups, for example:<sup>100</sup>

1. Supporting job applications from disabled people: improving confidence and work experience - Frimley Park Hospital

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<sup>97</sup> <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-disability-related-harassment>  
<http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-home-care-older-people>

<sup>98</sup> For the full findings from our assessments of how public bodies in England are meeting the requirements of the specific duties to publish equality information and equality objectives, please see here (these include non-devolved public bodies in Scotland and Wales):  
<http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/public-sector-equality-duty/monitoring-and-enforcement>

<sup>99</sup> Schneider Ross for the Government Equalities Office, 2009, *Assessing the Cost & Cost Effectiveness of the Specific Race, Disability & Gender Equality Duties*

<sup>100</sup> <http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/public-sector-equality-duty/case-studies>



As part of its work on the PSED, Frimley Park Hospital NHS Foundation Trust, collects and analyses information on its workforce. As part of this exercise, it found that it had received fewer job applications from disabled people than might be expected. The Trust decided to use positive action, working with organisations such as the Shaw Trust to place disabled people with the aim of developing skills and confidence to support long-term employment prospects. The Trust identified three placements for individuals. Assistance with job applications/interviews was given at the end of the placements so that the three individuals could apply for temporary and permanent positions within the Trust. Ultimately all three were appointed to jobs.

2. Saving money by involving disabled people in the decision-making process- Leicester City Council

In response to the duty, the Council assessed the impact of changes made to Leicester city centre between 2006-2008 and found that a number had an adverse effect on disabled people, eg increased walking distances to the shops and a loss of blue badge parking spaces. The Council listened to the experiences of disabled people who used the city centre; and set up an Inclusive Design Advisory Panel (IDAP), to help inform council planners

3. Securing greater accessibility for disabled students - The Open University

Equality monitoring information gathered by the OU in 2011 in response to the PSED showed that disabled students were three times more likely to raise a complaint or appeal, and less satisfied with their overall study experience. The OU committed to increase the satisfaction of disabled students from 82 percent in 2010/11 to 84 percent in 2014/15 as part of its equality objectives. They found that many reasonable adjustments were being made retrospectively once courses had started, which created uncertainty and sometimes delays for students, and often resulted in added costs to the institution. The OU therefore launched a project which would involve considering disabled students' needs before course development. As a result it met its target two years ahead of schedule and it now aims to reduce any differences in satisfaction between disabled and non-disabled students from a three percent gap in 2013 to two percent by 2016.

**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?**

6.1 Please see the Commission's letter to the Committee dated 20 August 2015 [EQD0145].

***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?**

7.1 At present, equality responsibilities are spread across Governments and departments, and this has an impact on our own ability and that of Governments to articulate the equality agenda and advance our important work.

7.2 The Commission believes that responsibility for all equality and human rights should be brought together within the UK Government, and a permanent departmental home found for it. This would increase leverage and develop a core competency in supporting other departments to regulate their own sectors, for example the Department of Transport in respect of accessible taxi regulations. Successive changes in departmental responsibility for equality have had significant costs implications and have diverted resource away from delivering equality improvements for disabled people and other groups.

7.3 We also believe that, to enhance our independence from the UK Government and support our ability to hold the Government to account, we should be accountable to Parliament rather than Ministers. We have already strengthened our relationship with the Joint Committee on Human Rights, and the recent creation of the Commons Women and Equalities Committee provides a further opportunity to increase our parliamentary accountability for the work we do.

**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?**

8.1 The Commission's enforcement powers are strategic in nature, and we decide on whether to take action in relation to a particular case or issue by applying the criteria in our Strategic Litigation Policy<sup>101</sup>. Exercising our enforcement powers is contingent on satisfying necessary conditions; otherwise our action could be unlawful. Our statutory enforcement powers require our enforcement action to be intelligence-led, on issues within our statutory remit, and in response to legitimate concerns about

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<sup>101</sup> <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/strategic-litigation/strategic-litigation-policy>

compliance. In line with the Regulators' Code, we consider and select one the range of levers at our disposal in order to take lawful, proportionate, targeted and effective enforcement action.

- 8.2 The Commission has carried out a range of enforcement work in relation to disability in recent years to improve compliance and secure progress on disability equality, and we have collaborated with other regulators wherever possible.
- 8.3 Much of our pre-enforcement PSED work relates to disability equality. This includes follow-up work on our inquiries into disability related harassment and home care provided to the elderly, as well as matters relating to planning, regeneration and transport. On most occasions, the organisations we contact agree voluntarily to take remedial action to address the problems we have identified, but we cannot always share the information they provide or the outcomes without their agreement.
- 8.4 In some instances, we have reached agreement with organisations under the legally enforceable framework contained in section 23 of the Equality Act 2006 to improve their policies and practices to comply with the law. We have used these agreements effectively to ensure changes are made to policies, practices and premises across a whole sector, highlighting best practice and effecting improvements for thousands of employees, customers, service users. We have entered into three section 23 agreements with retailers and a bank to ensure they improve their accessibility, and one section 23 agreement and 2 voluntary agreements with police, health and local authorities in relation to compliance with recommendations of our disability harassment inquiry.
- 8.5 In respect of our power to provide legal assistance (Section 28 of the Equality Act 2006), disability related matters account for a very high proportion of the formal enforcement that we undertake. In 2014/15, of 16 fully assisted cases under S28, six were disability related; of seven limited assistance S28 cases, five were disability related. In respect of our power to bring forward (and intervene in) Judicial reviews (at section 30 of the Equality Act 2006) 8 of our interventions were disability related and a further 9 were relevant to more than one protected characteristic including disability.
- 8.6 We have also dealt with complaints about pre-employment health questionnaires under Section 60 of the Equality Act 2010, with 45 complaints between October 2012 and May 2015...
- 8.7 We believe there is a good case for considering whether additional powers would help us enhance our regulatory role. For example a power to support individual cases under the Human Rights Act would be helpful in advancing issues of strategic importance; and a power to impose sanctions for breaches of the equality law, along the lines of other regulators, would give us more leverage.

**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?**

- 9.1 The Commission convenes a forum of regulators and inspectorates to take forward work across our mandate. Engaging with these bodies is an important opportunity to extend our reach by embedding equality and human rights in the standards that they set for public services. We have memoranda of understanding with some regulators to promote collaboration and effective implementation of equality and human rights law. In relation to disability our work with the forum has included:
- Work with the British Institute of Human Rights and the Care Quality Commission (CQC) to develop a comprehensive learning programme to enable the identification of threats to human rights standards, and to recognise good practice, in hospitals, care homes and other provider organisations.
  - This year, the Commission is funding training in equality and human rights for CQC staff to ensure the human rights of people who use health and social care services are upheld.
  - Work with the Civil Aviation Authority to update guidance for disabled people and air travel organisations on their respective rights and duties.
  - Work with Ofcom to address under representation of disabled people (among other protected characteristics) on and off screen within the broadcasting industry.
  - Work with the joint criminal justice inspectorates to advance the recommendations of our Disability Harassment Inquiry.
- 9.2 Our work with the College of Policing to train police in unconscious bias when applying their powers of 'stop and search' has also included training about people with mental health conditions and people on the autistic spectrum.
- 9.3 The Commission's view is that bringing together the specific industry and sector knowledge and other legal requirements along with expertise in equality matters is an effective mechanism in driving change through particular sectors, as well as a means for those regulators, inspectorates and ombudsmen to comply with their own equality obligations and duties.
- 9.4 In Scotland, Her Majesty's Inspectorate of Constabulary in Scotland has a track record of integrating the PSED into their inspection work. Other regulatory bodies are less far advanced in this respect and we continue to work to support Audit Scotland, most recently on their performance audit of sheriff court efficiency, because of their potential to have a strategic impact.

**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?**

- 10.1 The Commission notes that there has been a fall in the number of disability discrimination cases at Employment Tribunal since the introduction of fees and ACAS early conciliation. Comparing claims in quarter one of 2013/14 (before the introduction of the fees) and quarter three of 2014/15, there has been a 54% reduction in disability discrimination cases (1801 down to 818)<sup>102</sup>. A current government review of the impact of fees will seek to establish the extent to which it is the underlying cause of the reduction in cases.
- 10.2 Although discrimination cases (including disability discrimination) are still eligible for public funding, the exclusion of legal aid for employment cases could block the most accessible route to advice for victims of workplace discrimination, who often need expert advice to understand whether and how their employment problems engage anti-discrimination law.
- 10.3 Legally aided advice on discrimination must be obtained through a mandatory telephone gateway. Evidence suggests that disabled people may not be accessing this service. Phone calls to the telephone gateway have been much lower than expected and the number of cases referred to specialist advisers has been significantly lower than official predictions suggested. There also is some evidence that the service does not identify people who should be diverted to face-to-face advice because of impairments such as communication difficulties, mental health or mental capacity issues, or because of the complexity of their case; and there is evidence of the service refusing requests for reasonable adjustments (such as support for people with hearing impairments).<sup>103</sup>
- 10.4 The Commission receives notification of discrimination cases commenced in the County Court. Based on these figures, in 2014 there appear to have been 15 cases relating to disability discrimination in services, 14 relating to education and eight discrimination claims against the police. The low number of discrimination cases may be explained by the complexity of the county court procedure combined with difficulties in obtaining legal aid and changes in the rules on costs. As the damages recovered in discrimination claims are usually quite low, there is a risk that they will not meet the cost of an insurance premium needed for a conditional fee agreement. Unlike for personal injury claims, damages based agreements are unlikely to be viable for discrimination claims because they do not benefit from 'Qualified one-way costs shifting'. Thus, damages based agreements are rarely offered by solicitors for these claims.

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<sup>102</sup> Tribunal and gender recognition statistics quarterly: October to December 2014: <https://www.gov.uk/government/statistics/tribunal-and-gender-recognition-statistics-quarterly-october-to-december-2014>

<sup>103</sup> <https://www.gov.uk/government/publications/civil-legal-advice-mandatory-gateway-research-findings>.

- 10.5 The Commission considers that reductions in the scope of legal aid raise issues for the protection and promotion of disabled people’s substantive rights in many areas of social welfare law; and undermine access to redress in relation to these rights. In addition, the repeal of employment tribunals’ powers to make wider recommendations means that, where cases succeed, the benefits are limited to the individual bringing the claim and may not lead to improvements to the working environment for others.
- 10.6 Government figures<sup>104</sup> have indicated that disabled people are over-represented among those needing advice, assistance and/or representation in cases concerning benefits, areas which have largely been excluded from legal aid. The context in which these changes have been introduced is also relevant for disabled people. Budget reductions continue to have an impact on the provision of publicly-funded legal advice by solicitors’ firms and non-governmental organisations. Many non-governmental advice centres are heavily used by disabled people; for example, 37% of Citizen Advice bureaux clients are disabled or have long term health problems<sup>105</sup>. Of 338 citizens advice bureaux, only 21 now offer specialist civil legal aid advice, compared to 200 five years ago. Nine law centres closed in the first year of implementation of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* in April 2013. Similarly, Shelter, a national housing advice centre, had to close a third (nine) of its advice centres a result of £3 million cut in its legal aid funding.]<sup>106</sup>

## **11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

- 11.1 The Commission considers that the implementation of the Equality Act 2010 in respect of disability could be improved in the following ways in order to ensure that the original aims of the legislation are better realised.
- Full implementation of its provisions, including dual discrimination, taxi accessibility and reasonable adjustments to common parts of rented residential premises.
  - Reinstatement of repealed provisions including the employment tribunal power to make wider recommendations, third party harassment provisions, and the EHRC’s power (in the 2006 Act) to make arrangements to provide conciliation;
  - Better intelligence-gathering capabilities, including the Commission taking on the contract management for the Equality Advisory and Support Service helpline;
  - A greater onus on regulators, inspectors and ombudsmen to co-operate with the Commission in respect of matters where there are overlapping remits;

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<sup>104</sup> Disabled people accounted for 58 per cent of the recipients of legally aided advice for welfare benefits in 2009/10. Legal Services Commission. 2011. Memorandum Submitted to the Public Bill Committee LA 46 – Social Welfare Law Client Demographics 2009-2010:

<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la46.htm>

<sup>105</sup> Advice trends: quarterly statistics of the citizens’ advice service in England and Wales. 2014/15 Quarter 1.

<sup>106</sup> <http://www.thirdsector.co.uk/shelter-close-nine-housing-advice-centres-cuts-legal-aid/finance/article/1174095>

- Consideration of a power for the Commission to compel organisations to provide information, which would clarify whether we have the basis to use our enforcement powers (e.g. to enable us to establish reasonable suspicion an unlawful act has occurred); alternatively to reinstate the question and answer procedure and extend it to enable the Commission to ask questions about systemic issues where there is no identified victim;
- Clearer and better guidance produced by the Commission, including guidance co-produced with specific sectors such as guidance we are planning to trial with the HE sector, and guidance produced with the Information Commissioner’s Office on data gathering for the PSED. We are also reviewing our website and making sure our guidance is clear on what duty holders must or should do.

11.2 Finally, steps are needed to ensure the rights in the Act can be realised in practice for disabled people. A comprehensive review of access to justice for discrimination cases is needed to make sure that disabled people can access good quality, cost effective advice and dispute resolution in light of recent changes in the civil justice system. This might include looking at ways of resolving cases without the cost and stress of going to court, and enhanced powers for the Commission to take action against those who break the law. This would include consideration of enforcement mechanisms available in respect of non-employment cases -given the paucity of cases concerning access to services, education and other non-employment matters over a considerable number of years. One of our priorities this year is to assess the availability of sufficient good quality advice and redress on equality and human rights issues.

## **ANNEX A**

### **OTHER INFORMATION THAT MAY BE OF ASSISTANCE TO THE COMMITTEE**

#### **The Commission’s relationship with disabled people**

- 12.1 As a national expert body with strategic enforcement powers, and not a campaigning organisation, the way we work with and involve disabled people focuses on building a two-way dialogue in which we listen to a range of views and use our expertise to inform debate. It is important for us to retain a level of independence that enables us to form our own position, in light of the evidence and the different and sometimes conflicting views of disabled people and their organisations.
- 12.2 One barrier to better engagement is lack of resources and capacity within the voluntary sector. When we conducted a survey of our stakeholders, many said they were not able to engage with us for this reason.
- 12.3 The Disability Committee is made up of nine members, each with a significant profile within the disability community and an established network of disability stakeholders which they use to promote the work of the Commission and to feed back intelligence to the Commission through the Committee.
- 12.4 As part of the Committee’s new engagement strategy the first engagement event was held in Cardiff in May 2015. The next was in Manchester at the end of July 2015 and started with visits by individual Committee members to local disability

organisations in the morning, followed by a panel of speakers to discuss Housing, the Built Environment, and regeneration. We will continue to consult and engage disabled peoples organisations regionally on a three-month rolling programme, focusing on thematic issues such as independent living, access to justice and other key priorities to disabled people that will allow us to feed intelligence back into and strengthen core Commission work.

*3 September 2015*



## Equality and Human Rights Commission – Oral Evidence (QQ 27-42)

### Members present

Baroness Deech (Chairman)  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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Baroness Wilkins

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### Examination of Witnesses

**Baroness O'Neill of Bengarve**, Chair, **Lord Holmes of Richmond**, Disability Commissioner, and **Rebecca Hilsenrath**, Chief Legal Officer, Equality and Human Rights Commission

**Q27 The Chairman:** Good afternoon, Lady O'Neill, Lord Holmes and Ms Hilsenrath. Thank you very much for coming to see us this afternoon. We are very appreciative. I should tell you that this session is open to the public, and a webcast goes out live as an audio transmission and is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check it for accuracy. If you could advise us of any corrections as quickly as possible, that would be helpful.

If, after this evidence session, you wish to clarify or amplify any points you made during your evidence or you have any additional points to make to us, you are very welcome to submit supplementary evidence to us. In fact, as you well know, our time is limited, so if there is straightforward material or something that is better in writing, do send it to us rather than spending our valuable time, which we would like to use on your opinions and your evidence, especially since it is quite likely that there will be at least one Division, if not two. As you well know, we will have to adjourn for a few minutes if that is the case.

Can I ask you, if you want to, to make a brief opening statement before I put the first question to you, Lady O'Neill and Lord Holmes?

**Baroness O'Neill of Bengarve:** Let me say that we are very pleased to be in front of this Committee and very pleased that the Committee has been established. We think it could be extremely constructive to take a look at the working of the rather complex Equality Act 2010

and to consider the present realities and how we might go forward. I do not wish to say more than that. You will know what questions you want to ask and we will, I hope, have answers for them. I shall throw them to Chris Holmes or Rebecca Hilsenrath. Rebecca is our chief legal officer, and there are some questions that she will be best placed to answer. Chris is the disability commissioner, and there will be other questions that he is best placed to answer.

**The Chairman:** Of course, you do not, all three of you, have to answer every question. Whoever is most appropriate should answer.

**Lord Holmes of Richmond:** I will just say that it is a great pleasure to be here and to put on record a commendation to Baroness Thomas of Winchester for being the inspiration for this Committee coming into being.

**Baroness Thomas of Winchester:** Thank you.

**Rebecca Hilsenrath:** Good afternoon. I would just like to make one specific comment, which is not entirely relevant to the subject matter of this Committee, but I am very well aware that we are here to consider the Equality Act. As you are aware, we are the national human rights institute for Great Britain. As such, we want to draw to the attention of the Committee that a lot of the work that we do in relation to disability actually lies outside the scope of the Equality Act. There is a sort of added value that we bring as an NHRI with our engagement with the UNCRPD, as part of the United Kingdom independent mechanism, as chair of the CRPD working group for the European network of NHRIs and in our work with the special rapporteurs in that field.

I wanted to put that on record as something that is outside what we are going to be talking about but is part of work that we are very engaged in.

**Q28 The Chairman:** Thank you. Has the Equality Act 2010 been a success for disabled people? How does the position of disabled people under the Act compare with their position under the Disability Discrimination Act 1995?

**Baroness O'Neill of Bengarve:** We have a piece of work going on at present that should give us some useful empirical information about disability and changes. This is our *Is Britain Fairer?* report, which will be published in late autumn this year. It will be very comprehensive. It will look at a whole number of equalities, inequalities and changes across time. It will not look at particular cases in order to judge whether specific inequalities are the result of discrimination or, in particular, of unlawful discrimination. We hope that it will be the evidence base for a lot of work by us, but also by many other bodies.

There is no single “success or not success” answer to that question: it is a very granular picture that we will be presented with when this information is fully available.

**The Chairman:** This report that you mentioned has the title *Is Britain Fairer?*. Is it specifically about disability or is it about all the protected characteristics?

**Baroness O'Neill of Bengarve:** No, it is about all nine protected characteristics.

**The Chairman:** That actually focuses on our concern. We have picked up from the evidence so far that some disabled people feel that they are not getting their fair share of attention, because there are so many other protected characteristics for you to take care of. I am not saying it is your fault if that is the case, but the question really is: are they better off with the challenges of disabled people being rolled into everything else, or was their position better safeguarded under the previous Act?

**Baroness O'Neill of Bengarve:** Perhaps I could give you the elementary financial and legal framework within which we are now operating, because the question “better or worse” is probably, in the end, not a question that anybody could answer.

The Disability Rights Commission, when it existed, in the first seven years of the millennium, ended up with a budget of £21 million and 205 staff. That covered the helplines. The core funding for the Equality and Human Rights Commission this year is £17 million, with access to additional discretionary programme funding of £6 million. The cost of the helpline, which of course was removed from the commission after 2010, the conciliation and the grants functions was £10 million. If the budget reductions that were applied to the Equality and Human Rights Commission had been applied to the Disability Rights Commission, its budget this year would have been down to £5 million. That is the context in which one has to understand changes.

Our budget is adequate for us to fulfil our functions, but we have to look very carefully at the most effective and affordable ways of intervening in particular cases, so the mix of what we do has changed. We do a great deal more of what you might call partnership working: that is to say, trying to get certain institutions—be it the police, parts of the health service, schools—to pay better and closer attention to their legal responsibilities. We also, of course, bring cases, and most of our case workload is still on disability issues. Certainly the most costly cases in recent times have been on disability issues. Just to give you some numbers, last year of a total of 41 Section 28 and Section 30 cases, 19 were disability-related. On the legal cases, it still has the majority of our attention.

Perhaps you would like to know about the other changes. There have been changes in our powers, and there are a number of legal provisions that have not been commenced.

**The Chairman:** We are aware of that. I wonder if some of this material, which is very valuable, could be submitted to us in writing.

**Baroness O'Neill of Bengarve:** Indeed, yes.

**The Chairman:** On the face of it, I think what you are saying is that disabled people now do not actually have as great an access to resources and focus as they did before. That is the impression that I get from your figures, but we await the report.

**Baroness O'Neill of Bengarve:** There was a slightly different point on my figures, which was that the access that disabled people would have under the cuts that have taken place would be less than it is under current provisions, where they are in with the other range of protected characteristics and the human rights work.

I wonder if I could ask Ms Hilsenrath to speak a little about the legal aspects of this.

**Rebecca Hilsenrath:** If I could just come back to your question briefly on two grounds, first, some specific protection is offered to disabled people under the Equality Act 2010 that was not there before under the disability discrimination legislation. Touching briefly on some of those points, there is now a more flexible definition of “disability”, a more consistent definition of “reasonable adjustments”, a new provision in relation to discrimination arising from disability, a coherent cross-protected-characteristic public sector equality duty, and a provision making pre-employment health checks unlawful. There is positive action in relation to disabled people, and indirect discrimination now applies to disabled people.

Those are very specific things, but I would like to make an overriding point, which is that the ability of the commission to support people sharing any protected characteristics enables us to strengthen our activity and the law in relation to cross-cutting provisions. There are numerous examples of this, relating to disability and others. A recent example was a case in which we intervened at the High Court in relation to the public sector equality duty as it applied to a decision to recover planning applications in the green belt relating to Gypsy and Traveller sites. That was a very strong win for the commission in terms of the court’s treatment of our submissions on the nature of the public sector equality duty and the duty

on Ministers to comply with it, but it applies across the board, including, of course, in relation to disabled groups in other contexts. There are numerous other examples along those lines that we could provide you with substance on.

**The Chairman:** Perhaps you could write to us about those. Lady Jenkin, much of this has been answered.

**Q29 Baroness Jenkin of Kennington:** It has. I suppose, if there is anything else that you have not already commented on, it is what activities the commission has undertaken recently in meeting the duty to monitor the effectiveness of the Act and what, if any, amendments you would like to see that you have not already covered.

**Baroness O'Neill of Bengarve:** On amendments, we would like to draw your attention to the fact that there are a number of clauses and provisions that have not been commenced. There is socioeconomic duty, caste discrimination, dual discrimination. That is very relevant. There are things that happen in ships. There is transport accessibility, taxis in particular, and the majority of bus and coach accessibility provisions. There is the requirement on political parties to report on diversity and the repeal of third-party harassment provisions, but the one that we would particularly like to point out is the repeal of employment tribunals' powers to make wider recommendations. The impact of bringing a case can be very much greater if that power is in place, which it is not.

**Rebecca Hilsenrath:** In terms of the activities that we have undertaken to monitor the effectiveness of the Act, Baroness O'Neill has already mentioned *Is Britain Fairer?*, which is our major piece of work in that regard. However, it is also true that everything that we do monitors the effectiveness of the Act in terms of the inquiries that we carry out, the research that we carry out, the casework that we do, briefing parliamentarians, and our work in liaising with the EASS. It is key to what we do.

I would also like to mention that because of very tight timeframes, we were not able to comment on the GEO submission in relation to the post-implementation review of the Equality Act, but we will be engaging in that review going forward.

**Lord Holmes of Richmond:** *Is Britain Fairer?*, the report coming out later this year, should not just demonstrate a picture across the whole of Britain. Through specific issues and a thread running through the whole of that report, you will be able to take a slice out, which will be the disability slice. Although it is integrated and connected across that piece, you will be able to say from that report, "Is Britain fairer (for disabled people)?".

**Q30 Lord Foster of Bishop Auckland:** I have no declarable interests. Are you confident that the disability provisions are addressed in sufficient detail in existing codes of practice? Why did the Government decide not to lay three of the codes of practice before Parliament? Do you have plans to issue any other specific codes of practice or technical guidance, for example on the premises provisions, and, if not, why not?

**Baroness O'Neill of Bengarve:** In many contexts, there is something to be said for some flexibility in the requirement. As to the question of the status of the codes, which, I take it, is what you are really concerned about, we believe there are cases where it would be more effective to have a statutory code and less effective to be in our present situation. However, we have argued the case with our sponsoring department. You will remember the Red Tape Challenge and the concerns about regulatory burden. Although we have been keen to see that change, it has not happened. We have therefore issued codes that we hoped would have been statutory as technical guidance. I will ask Ms Hilsenrath to speak on that a little further.

**Rebecca Hilsenrath:** We have produced codes of practice on employment and on services and public functions, all of which touched quite closely on disability issues. They were subject to very effective consultation and did address a lot of issues that arose at the time. It is our view—and that is very much informed by the stakeholders that we work with—that codes of practice reduce regulatory burden by adding clarity and information. That is perhaps particularly true in relation to issues such as the duty to make reasonable adjustments, which is very fact-specific.

We obviously cannot comment on the stance of the Government in not laying before Parliament the codes that we have produced. We have scoped further codes on housing and transport. We have not proceeded with them. We are in a position now, particularly in the light of the last code that we produced, which was a supplemental code on age and has not to date been laid, of not knowing whether that is likely to be a productive area of work for us.

**Q31 Baroness Campbell of Surbiton:** What are you doing to push the Government to lay these codes? It is all very well saying, “Well, they will not lay them”, but we all know that you can push government from time to time. Can you give us any examples of where you have been giving them the little nudge that they probably need?

**Rebecca Hilsenrath:** We had quite a serious degree of correspondence with them 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.

**Baroness Campbell of Surbiton:** That is it so far.

**Rebecca Hilsenrath:** That is at a ministerial level. We have also engaged in an awful lot of official communication on the subject.

**Baroness O'Neill of Bengarve:** I would say that it is a topic that we raise quite often when we see Ministers. We will come to this, no doubt, but we see a number of Ministers for different purposes. My sense is that the Government’s opinion is quite divided. There certainly are people who think there would be merit in certain statutory codes; there are people who think, “No, that is red tape”. I do not regard this as an entirely closed door. I do appreciate what the idea was behind the Red Tape Challenge, and we have failed so far to convince that in some ways there may be less red tape if you achieve greater clarity.

**Rebecca Hilsenrath:** Another example is that a colleague and I gave evidence to the Women and Equalities Committee last week, and we raised the matter of the age code then. It is a subject that we keep on the agenda.

**Baroness Campbell of Surbiton:** Could you please provide us with details of the occasions on which you raised it? It would help us.

**Rebecca Hilsenrath:** Yes, of course.

**The Chairman:** The Red Tape Challenge has not necessarily been beneficial for the clarity and assistance needed by disabled people, then.

**Baroness O'Neill of Bengarve:** Not necessarily, but I will make this comment on behalf of the public sector equality duty. Some people think, “Well, that is a rather oddly vague duty, because it is a duty to have due regard”. I have come to appreciate that its power lies in the fact that you have to have due regard when you are making a decision. That is the moment when people need to think about issues such as access and race. It is when they make decisions. 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.

**Q32 Baroness Wilkins:** How public do you feel you can make those disagreements that you have with Ministers?

**Baroness O'Neill of Bengarve:** Our task, like that of any arm's-length body, is not to embarrass our sponsoring department, but—and we shall come to this—we have a very high degree of operational independence. This is essential as a national human rights institution, but it is also important as the equality body that we have that degree of independence. We have a framework document that is an agreement between us and DCMS, which sets out the areas where the department will not seek to interfere.

We try to be effective in our discussions with Ministers and civil servants, but confrontation is, I suspect, not always most effective.

**Q33 Baroness Pitkeathley:** I have just one interest to declare as vice-president of Carers UK. I want to ask you about monitoring the impact of the Equality Act. How do you go about monitoring its impact on disabled people? Does the monitoring include assessing what percentage of your time is spent on disabled people as opposed to the other protected characteristics? Does that monitoring show up any differences between the public sector equality duty in the different countries of the United Kingdom, England, Wales and Scotland?

**Baroness O'Neill of Bengarve:** I am just deciding whether I am the best person to answer that. Perhaps I am going to lob it to Chris and Rebecca first—I am sorry to be informal, to colleagues first—and then I will come back, if you want.

**Rebecca Hilsenrath:** I will start and colleagues can join in. I will not repeat what has already been said about *Is Britain Fairer?* other than to say that it is a huge part of our work. We have put a lot of resource into it over the last 18 months and it is a very important statutory mandate. In fact, over the past 10 days, as it happens, we have held three very large stakeholder consultations on the outline of the report, which will be laid before Parliament in October. That has involved a large number of disabled organisations, and it is a cross-cutting exercise across all protected characteristics. That is how we monitor the impact of the Act. As Lord Holmes said, there will be a protected-characteristic-specific report that comes out of that on disability.

I said this before, and I will not repeat it too heavily, but it is important to understand that the work that we do is integrated across all protected characteristics. We do work on things like access to justice and we have a headline project this year on attitudes and values, how they influence behaviour, how regulating behaviour changes values and how that could help us to shape future interventions. These are projects that we undertake across protected characteristics, and they make that a richer engagement but obviously touch on disabled issues quite specifically. It would be quite difficult to find too many pieces of work that we do that do not touch on disabled issues.

In fact, if you look at our case work—Lady O'Neill has already touched on this, but obviously it is a particular issue for me—in the past year, out of full funding that we have given under Section 28, 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. Obviously, if we were not working in relation to other protected characteristics as well, some of that work would fall away. The fact we do an integrated body of work is quite important in understanding the value that we add in terms of disability.

In relation to our work on the public sector equality duty, again, it is not work that we target in relation specifically to disability issues, but a lot of the work we do does show its impact on the disabled community.

I have some information particularly in relation to 2012. In England, we found that 78% of public authorities had up-to-date published equality information, of which 90% consisted of information on disabled staff and up to 75% on disabled service users. Seventy per cent of them had one or more equality objectives published, except in relation to schools, where we found that there was poor compliance but that in fact schools were making headway in addressing the particular needs of people with differing characteristics, including disability. In Scotland, we found that 83% of public authorities were mainstreaming reporting both in relation to information and outcomes. Ninety-three per cent of them provided information on protected characteristics of staff, and of those, disability was the most frequently mentioned protected characteristic and was relevant to 62% of outcomes that were published. We found that only one in three of them had clear and measurable outcomes, and we worked with them in our Improving Equality Outcomes project.

**Baroness Pitkeathley:** These are very interesting statistics. I hope you will be able to provide them to us.

**Rebecca Hilsenrath:** I am very happy to do that.

I will just finish off in relation to Wales, where the specific duties give greater clarity in relation to the work of public authorities, and in fact all of them had published strategic equality plans and objectives. We found that their consultation and engagement work had improved, and that was including the disability sector.

**Lord Holmes of Richmond:** Taking it slightly wider, we get a considerable amount of intelligence on this through, for example, our legal panel, who bring prospective cases to us, which gives us a very clear understanding of what is happening out there. Also, through the real, detailed engagement with disabled people and organisations of and for disabled people, of which we will be talking about later in the questions, we have various levels to ensure we have a pretty clear picture of what is going on, both in terms of all aspects relating to disability and obviously with the specific elements raised with the Equality Act 2010.

**The Chairman:** Before Lady Campbell puts her question, I will just read for the record her relevant interests, which are: patron of Just Fair, patron of the National Disability Archive, founder and member of Not Dead Yet UK, recipient of a social care personal budget as well as DLA and access to work, Disability Rights Commissioner throughout the life of the Disability Rights Commission, and Commissioner of the Equality and Human Rights Commission for three years. It is a long list.

**Q34 Baroness Campbell of Surbiton:** Thank you. I have always been quite interested in enforcement. As you have heard, with my experience of being both at the Disability Rights Commission, on the legal committee, as a Commissioner, and on the EHRC, I am very interested in enforcement strategy. It is, after all, what people want to know. This morning, I was on your website, having a little look at your material, and it really does not appear to publish the details of its enforcement strategy—for instance, statistics, types of cases—which is really important when you want to push employers, et cetera, forward on their understanding. I guess my question to you all is: what strategy do you employ to ensure that the disability provisions in the Act are fully enforced? How do you choose the cases you intervene in? How do you monitor the effectiveness of your approach? I do not want a lot of

statistical information, please: I want to know more about your strategy and how well you think it is working. Why do we not know about it?

**Baroness O'Neill of Bengarve:** The first thing to note is that it is the courts that enforce, not the Commission. That is quite fundamental. We are a strategic regulator and, in that respect, the tools we have are not the tools of enforcement. There would be perhaps a different model of doing these things, whereby enforcement lies with a Human Rights Commission or Disability Rights Commission, but that is not what we have.

We have a strategic litigation policy, which is crucial for decisions about where and how we support cases. Naturally, given the budget, as it really is, there is no question of being able to support every single case that comes up. However, we have a set of criteria: obviously, it has to be within our remit; we have to look at its chances of being successful; we have to look at how far we, the institution, are best placed to achieve change. That is where partnership working is highly relevant, because we may not always be the institution best placed to achieve change, and sometimes we are uniquely able.

Let me give you an example of a change. As you know very well, there are certain activities, such as stop and search, that have been particularly burdensome to people with various protected characteristics, including of course ethnic minority people, but also including disabled people, and people with mental health conditions in particular. The way to get at that has not been enforcement; it has been by demonstrating what is known as the disproportionality of the use of stop and search, and then moving on to look at the treatment of people in the custody of the state. In particular, we published a report on unanticipated deaths of people who were in prison, in hospitals or in police stations. Many of these people were suffering from clear disability, often mental health disability.

We have been having conversations with the Minister for Policing, Mr Penning, about these very issues. It is an example of how sometimes you get at what is the sharp edge by addressing not the courts but other institutions, and, in particular, the question of the adequacy of police procedures, police complaints and a lot of things that go on from there.

**Baroness Campbell of Surbiton:** Could you give me an example of a disability-specific case that you have intervened in that has actually made a difference—that is, it has changed habits or changed behaviour?

**Lord Holmes of Richmond:** Let me try a couple on that. To take one step back as well, it is important to note that the strategic litigation plan was drawn up in full consultation with the Disability Committee, so there was the correct input at the stage of constructing the strategy and disabled people were involved at that stage of building the strategy. There was also a lot of consultation across our stakeholder groupings.

No case with a disability element or completely concerning disability can be taken, or indeed not taken, without consultation with the Disability Committee, not least through me as Disability Commissioner. I receive all the regulatory decision-making panel's papers ahead of the meeting. 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.

If we look at two cases, both concerning transport, which is an incredibly significant area for all disabled people, the *Stott v Thomas Cook Tour Operators Ltd* case we took was the largest piece of litigation we funded last year. I will not go into the details—we can send you more information on it—but, effectively, what we were challenging was the fact that this case was going through and it would mean that, even though Mr Stott could claim damages under UK law's interpretation of the European directive, he was effectively prevented from



receiving any remedy because of the operation of the Montreal convention that governs air travel. Effectively, you have an international convention, derived from the Warsaw convention, which obviously was put together at a time well before discrimination was on many people's agendas. That was an incredibly strategic case for us to take to enable people to assert their rights in that environment. The work going forward from that is to seek to amend the Montreal convention to ensure that the will of Parliament, the will of Europe, is not able to be stymied through international convention on air travel.

The second case involves Mr Paulley.

**Baroness Campbell of Surbiton:** We are all aware of that case.

**Lord Holmes of Richmond:** You are aware of that. Again, that case is significant in terms of transport, but it has much wider impact, because it goes to the whole question of reasonable adjustments across the whole operation of that incredibly important element of the Act.

**Rebecca Hilsenrath:** First of all, following on from what Lord Holmes said, we can always provide you with other cases, and we would be happy to do so. Following up on my earlier comments, we have also taken a number of cases in relation to disability issues under the Human Rights Act.

You asked about monitoring the effectiveness of the casework and we do that through reporting quite regularly and robustly to Lord Holmes, as Disability Commissioner, and to the board. That is about looking at the cases and exactly what you said about their impacts on lives and numbers of lives and so forth.

Also, I will come back on what Lord Holmes said about transport cases and echoing comments made earlier by Baroness O'Neill about the provisions in the Act not being commenced in that area. That is a very important piece of work for us in terms of that area generally. If those provisions could be commenced, it would very much help us in taking that whole area of access to transport forward.

**Baroness Thomas of Winchester:** Could we have a list of the provisions that have not been commenced?

**Rebecca Hilsenrath:** Yes, we will send those to you. May I make one quite important point before I stop? All the enforcement regulatory work you will find on our website would be restricted to cases taken, inquiries held and so forth. The vast amount of work we do is pre-enforcement, and that is as it should be under the regulators' code and simply in terms of the most effective and efficient use of our resources. We do an awful lot of work before we even get to that stage. It is about trying to make society more compliant, which is of course the impact of the guidance that we issue and the codes of practice, but it is also about nudge work and everything on a line from persuading someone that there is a better way forward, all the way through to having a Section 23 agreement. On a number of occasions, we have persuaded organisations to enter agreements to effect a better, more systematic approach to the discrimination legislation in a number of areas.

**Q35 Lord McColl of Dulwich:** Vis-à-vis the whole question of enforcement, I understand that you do not have powers of enforcement; you have to act through the courts. Could you say how these powers sit alongside the ability of individuals to take action in courts and tribunals? What is the appropriate division of responsibility for enforcement of the Act? Could you say how successful your influence has been, compared with individual litigation?

**Lord Holmes of Richmond:** That is a big question. Have a shot.

**Rebecca Hilsenrath:** Then you can tell me a better answer. The big difference between our role and that of individuals is that we are not a front-line organisation, neither by resource

nor by objective. We are a strategic regulator. We will look at cases that help clarify the law and provide a stronger framework, so individuals are more likely to take up cases that benefit them directly at a lower court or tribunal level. Having said that, our strategic litigation policy, to which Lord Holmes has already referred, among many other criteria, looks at the work that colleagues are doing elsewhere in the commission. Therefore, if there is a particular project looking at, for example, our disability harassment inquiry, we would have an interest in taking lower-level cases in that area to reinforce the work done elsewhere.

We also, this year, as part of our business plan, have a key project looking at access to justice. That is about understanding that, of course, it is more difficult for individual litigants to take cases up. The most effective way forward is not about turning ourselves into a front-line agency, both for resource reasons and in terms of what our purpose is. However, it is important for us to look at a strategic overview of what the position is for individuals like that.

We have been working on a report that identifies the specific issues arising from recent reforms for people with particular protected characteristics, and that does focus largely on the disabled community. As the second part of that project, we will be looking to see what the commission's role ought to be there. It is fair to say that, looking at the problems that arise in particular for those who are on the receiving end of issues arising out of discrimination, we think it is important to look at possible solutions that are outside the court, which might be a quicker and more effective way of addressing access-to-justice issues. We know that, in other jurisdictions, national equality bodies have ombudsman-type functions, which we would be very interested in exploring with the Government, obviously subject to resourcing and scoping it in more detail.

I would just add there that we also think it is very important to look at mediation services going forward. That, as you know, was a function we had and was repealed.

**Lord McColl of Dulwich:** That is very helpful. Why are trade unions not allowed to take up cases?

**Baroness O'Neill of Bengarve:** You mean in the employment tribunals?

**Lord McColl of Dulwich:** Yes.

**Baroness O'Neill of Bengarve:** They are the places where most employment cases will be heard in the first instance.

**Lord McColl of Dulwich:** What about trade unions?

**Baroness O'Neill of Bengarve:** Trade unions will support some cases but not others.

**Lord McColl of Dulwich:** They are not actually allowed to take the case to court. Is that right?

**Baroness O'Neill of Bengarve:** I think the individual has the choice there.

**Rebecca Hilsenrath:** Trade unions often support cases going to court. In fact, we have been involved in intervening in some of those cases or, in fact, part-funding them with trade unions, where it has been appropriate.

**Baroness O'Neill of Bengarve:** We are aware of other models in other European countries, but it is interesting to reflect on whether they would achieve more. The Netherlands has an equality and human rights commission, which I visited, and it is much more like an ombudsman service. All the commissioners are career judges in the Dutch system, but they do not take any disability cases, they told me, because they regard that as something for the welfare organisations. That was rather a striking view of the matter, which was not quite what I expected when I began the conversation.

**The Chairman:** Lord Faulkner, this is a question really just for Lord Holmes.

**Q36 Lord Faulkner of Worcester:** Yes, but I would be delighted if Lord Holmes's two colleagues want to comment as well. May I first thank Lord Holmes very much indeed for the speech he made on Friday in support of my Private Member's Bill? Four speakers in that debate are in the room this afternoon, so we are reasonably well represented. I wonder, Lord Holmes, if I could ask you what your view was on what the Minister said in reply, particularly her suggestion that, as no disabled spectator, she said, has brought a case under the reasonable adjustment provision of the Act, it is untried and untested. That is at variance with what I understand the situation to be.

I should, at the beginning, declare my own interests, in that I am a vice-president of the charity Level Playing Field and I have a number of unpaid appointments as trustee of two museums and an involvement in public transport, which are relevant to other parts of this inquiry.

**Lord Holmes of Richmond:** There are indeed four of us in the room who participated in the debate; we are still one short of a five-a-side team.

May I put on record, first of all, my respect, congratulation and thanks to Lord Faulkner of Worcester not just for coming up with such an inspired Private Member's Bill but for coming so high in the ballot that we could have the Second Reading so early in this Parliament? The noble Lord's commitment to this area over decades means it is well worth putting thanks from all of us on the official record. It was a good debate. It was good to see agreement right across the House over what we are trying to achieve. There is clearly a distance to go and work to be done with the Government. What is clear is that there is commitment from the Government to enable change in this area. The Private Member's Bill that Lord Faulkner of Worcester brought to the House is a very interesting and effective way of achieving the aim we are all after. If the Government do not share that view then, as I put the question to the Minister on Friday, they are very much beholden to come up with amendments or, indeed, a subsequent piece of legislation seeking to address this matter.

There are other elements that came up in the debate worth putting on the record as well. The Premier League rulebook, which is binding on all Premier League clubs, has one rule, which is one line, on disability access. It is rule K.34, if anybody is interested in going and consulting it. It merely talks of "sufficient and adequate facilities" that should be provided for disabled spectators. There are pages and pages of rules covering the specific details of the provisions for the media. As a start, it would be incredibly helpful if there was additional detail in the Premier League handbook that was more specific on provision for disabled spectators, but, as everybody who spoke in the debate on Friday appreciated, this has gone on far too long. Change is required. There are only three clubs in the Premier League that meet the minimum standards. Some of the largest clubs are well below 50% of the minimum provision. I recommend all members of this Committee consult the league table that Level Playing Field prepared, which shows the 20 Premier League clubs not in order of how many points they got last season but in terms of their relative league table position based on the number of accessible seats they provide. We know who lifted the Premier League trophy in this league table based on number of accessible seats. Chelsea are in 12th place, Liverpool 15th place and Manchester United 16th place. It is clear that work is required. Friday's Second Reading was an excellent step on that journey.

**Lord Faulkner of Worcester:** Thank you for your kind comments to the Committee. Do you think the EHRC has a part to play in getting the improved deal for disabled sports supporters that we all want?

**Lord Holmes of Richmond:** The EHRC absolutely has a part and I believe we are playing our part. We began our sport inclusion programme piece of work last September, working with Premiership Rugby, the England and Wales Cricket Board, and then looking to work in football, to drive change, to increase opportunities for participation across other protected characteristics and to drive accessibility and inclusion for disabled people across those three sports, not least in respect of their stadia.

We certainly do have a role to play. The work with Premiership Rugby is going incredibly well. We had the formal launch with the England and Wales Cricket Board at Lord's yesterday. The ground was not being used for anything else, as it turned out. Football, as we suspected at the outset, has proven to be far more difficult. We have had a number of pieces of correspondence with individuals and organisations that suggest prima facie legal cases. Where we are right now, all options remain on the table, including litigation.

**Lord Faulkner of Worcester:** It is possible the Commission may take up the cases that have come to you, then.

**Lord Holmes of Richmond:** At the heart of your question is a really important point, which is worth illuminating here a little, if I may. You hit the nail on the head when you talk about individual spectators bringing cases. This is why sport, particularly football, is different from a number of other areas. If you go to your local supermarket and you, as a disabled person, are discriminated against or not allowed into that supermarket, that is bad. It is discrimination; it is against the law, but, even in that situation, you have the choice, potentially, to stop going to that supermarket and to go to another. In football, you cannot change your club. You are born with your football club; that is that.

That is why there is a significant issue here and why it is so difficult—and understandably difficult—for individuals to bring cases. We have a number of potential cases that we are considering. All options remain on the table. There are a number of other legal powers, as you know, which we may choose to deploy in this area. At this stage, it is being given serious consideration and a lot of management time. As I say, all options remain on the table, including litigation.

I do not know if you want to add anything as chief legal officer.

**Rebecca Hilsenrath:** I could not possibly top that.

**The Chairman:** The whole Committee is really anxious to push this one forward.

**Baroness O'Neill of Bengarve:** We are very much on the case on this one. It is remarkable. Far be it from me to say anything about the politics of football, but you will notice that Lord Holmes gave a different sketch of issues in the other two sports.

**Q37 Baroness Thomas of Winchester:** I have to declare a few interests. I receive DLA. I am a trustee and vice-president of Muscular Dystrophy UK; I am a member, as I said on Friday, of the Lord's **Disability Access Users Group**; and I am a patron of Thrive. My question is financial.

**The Chairman:** We will pause. For the record, we are adjourning for ten minutes.

*The Committee suspended for a Division in the House.*

**The Chairman:** In view of the time we have spent on this—and there may be another Division—could you be as concise as possible in response to Lady Thomas and the succeeding questions?

**Baroness Thomas of Winchester:** Have you seen any improvements in the application of the public sector equality duty for financial decision-making since the publication in 2012 of your

assessment of the Treasury's spending review? Perhaps I can just explain where I am coming from on this particular matter. I am very concerned that, in the Budget that we have just had, that employment and support allowance is being cut, so that there will be only one group of people who receive it, called, at the moment, the "support" group—people who are much too ill to work. There are also people who are acknowledged to be not available for work at the moment, which is now called the WRAG group, or the work-related activity group. That is going to be abolished. They are going to have to take their chances with JSA. A lot of those people are disabled. They might have Parkinson's; they might have MS; they might have ME; they might have all sorts of disabilities, but they might not be at the very end of the spectrum. I just wonder whether the commission has any duties under the public sector equality duty in regard to that matter.

**Baroness O'Neill of Bengarve:** As I am sure the Committee knows, we did an inquiry into the decision-making of the Treasury in the 2010 comprehensive spending review. 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. We thought it was feasible—not simple, because these statistical things never are simple, but we thought it was feasible.

**Rebecca Hilsenrath:** To come back to the assessment we carried out in 2012 under Section 31, it is fair to say that we found quite a lot of positive when we reported back on progress in March this year. We found there had been a lot of good progress overall on collection and use of equality evidence and systematic improvement on data collection. I am talking about things such as templates for qualitative submissions.

**Baroness Thomas of Winchester:** I do not know what that means.

**Rebecca Hilsenrath:** It is about being able to provide a better system so that you can look at submissions coming in from departments on spend in key areas to make sure they are looking at reporting back on the appropriate places, and looking at early reporting instead of waiting until it is too late. Toolkits are produced for departments to report back in particular systematic ways. The Treasury produced a summary note on equality impacts of spending reviews, and they were also monitoring the impact of the spending review 2010 in relation to people with particular characteristics.

Having said that, we also thought that there was room for improvement. When we published in March, we looked at areas for further improvement that were the subject of ongoing conversations with the Treasury but also with stakeholders. These included: clarifying a single point within government with formal responsibility for monitoring and assessing cumulative impact of future spending reviews on those sharing different protected characteristics; continuing to make improvements in the quality of data collection to be able to support the assessment of impacts on different groups; developing a cumulative impact model for use with future spending reviews and fiscal events; looking at producing summary reports of fiscal events alongside the report that the Treasury have produced on the spending review 2013; looking at improving scrutiny, both by including equality as one of the things the Independent Challenge Group is mandated to consider; and looking at an independent body, possibly, to scrutinise the impact of spending reviews and fiscal events on those who share protected characteristics.

We would characterise that as a glass half-full, a glass half-empty, but a lot of progress has been made and we are working with the Treasury to look at continuing improvements going forward.

**Baroness Thomas of Winchester:** That sounds to me completely bureaucratic and does not impinge on anything I thought I had said. I am sorry. I just could not cope with that reply.

**Rebecca Hilsenrath:** Could I come back on the specific point of a cumulative model to look at the impact, which I think you are talking about?

**Baroness Thomas of Winchester:** I was very specifically talking about one thing. I am sorry. I just do want to know. Have you done anything with the Treasury about this proposal around the cutting of ESA, or will you do anything?

**Rebecca Hilsenrath:** I am not actually entirely sure. May I write to you about that?

**Baroness Thomas of Winchester:** This is going to impact on disabled people a great deal. That is why I am worried about it.

**Baroness O'Neill of Bengarve:** We would all be worried if that is the impact. Most of us have not even managed, with the in-year budget, to work out what the cumulative impact of various commitments, taken additively, is. It was like being on an up and a down escalator simultaneously. Of course, the comprehensive spending review is the area where this is going to be at its most important.

**The Chairman:** Lord Harrison will continue on the same theme.

**Q38 Lord Harrison:** Please say if you think you have exhausted what you want to say in public on the cumulative impact on disabled people. Rebecca Hilsenrath, early on and then later in a reply, you talked about opportunities that arise from the cross-cutting nature of what has now been brought about by the Act. Are you saying that that is now a clear advantage and something that we should very steadily recognise in this Committee? If I may say to Baroness O'Neill, when you were parsing, as you were so usefully, the budgets that now exist, the implication was that, even if the quantum of the budget was going down, that which was apportioned to the disabled side of the other nine protected areas was actually quite reasonable. Is that what you were saying?

**Baroness O'Neill of Bengarve:** It is, but I cannot give you a quantitatively precise answer on that. Let me give you an example. Pregnancy and maternity is one of the characteristics. Disability intersects with pregnancy and maternity in quite strong ways. The fact that you can consider these two characteristics and the way they intersect is an advantage, because people do not come, as it were, neatly pigeonholed with one aspect of their life. We think there is advantage, but we cannot quantify it precisely because you would say, "Was it more their pregnancy or their disability that was in mind in making this adjustment?". That might not be open to a precise answer.

**Lord Harrison:** Perhaps, Rebecca, you could reply to, broadly, the same point, about the opportunities that arise.

**Rebecca Hilsenrath:** There is a significant advantage in covering all the protected characteristics and, in addition, human rights issues, and that is partly about quantum. It is about being able to use resources as effectively as possible and not, I may say, having to liaise with other commissions working in associated fields and therefore adding a whole layer of communication issues to the work that we are doing.

However, it is also about being better informed. An example I can give is that we recently had to advise about the lawfulness or not of not permitting wheelchair access to Hindu temples, because the floor of temples is sacrosanct to religious use. Because we work in relation to religious belief as well as disability issues, we actually have information and expertise on both points and we are much more able to take a view and give effective advice than if we were a single-issue commission.

**Lord Holmes of Richmond:** Can I just raise that to a conceptual level? If one believes in equality, if one believes in inclusion, it is quite difficult then to suggest that a start point now would be to have individual commissions to cover each of the nine protected characteristics and then another commission for human rights. We are all multilayered individuals. Disabled people will also have a gender characteristic; they will have an age characteristic, and so forth.

It has to be a logical start point, and it has to be the right start point, if one believes truly in equality and inclusion, to have one commission. The disability strand is the only strand that has a specific commissioner representing it, the Disability Commissioner. It is the only strand that has a specific statutory committee, the Disability Committee. It is certainly legitimate for any of us to engage in a discussion around resource, the quantum of resource, the allocation of resource. That is all legitimate to discuss, but, conceptually, to have an integrated, connected Equality and Human Rights Commission with a Disability Commissioner and a Disability Committee potentially puts the disability strand in good stead. It is not that disability should have more coverage, but it is right to note that disability is different. You see that in the statutory framework around disability; it is different to other equality strands, and that needs to be recognised. To take it to one specific practical example, if we look at the largest legal spend on a case last year, and more than likely this year, it will be on a disability case. That hopefully is useful context.

**Q39 The Chairman:** Perhaps I can address this to Lady O’Neill. I understand, of course, the ideology and the theory of the Act, and what you said, Lord Holmes. I remain concerned that the neatness, tidiness and fairness of it may not actually give the disabled people, with whom, of course, this Committee is concerned, the feeling that they are getting empowerment support, that you are reaching out to them and helping them, now that they are just one of eight or nine protected characteristics. I do not feel I have got to the bottom of that.

**Baroness O’Neill of Bengarve:** I do not know we could give any group of people who share a protected characteristic that reassurance. There may be people who think we are not taking sufficient account of age, people who think we are not taking sufficient account of sexual minority status, and there certainly are. Disability is a uniquely diverse set of conditions under one protected characteristic, but many of the others are also quite diverse. Some of them, of course, relate—particularly when you get to ethnicity and race—to quite small numbers of people with very specific issues. We will try, by clear and direct communication, to do what we can to enable people to judge us, but we cannot, as it were, do more than that.

**Lord Holmes of Richmond:** To help you, Chair, ultimately, you could have a Disability Rights Commission of, say, 500 people; you could have an Equality and Human Rights Commission of 500 people with a large budget. Ultimately, I believe, if we get it right somewhere, really effectively working as a strategic regulator, that has to be how change is delivered. No matter how many people any commission had, be it an equality commission or, indeed, a disability-specific commission, it is ultimately going to come down to the work that happens with our partners, with organisations that need to be on the hook for this. If we go back to Lord Faulkner of Worcester’s football example, we have a key role to play, but it is ultimately for the Premier League and football to make that change, through us making a strategic intervention to change a sector, a system or a piece of our society.

If we consider the work we do with the RIO group, as it is called—regulators, inspectors and ombudsmen—we gather all those groups together to go to exactly this point: to be, if you

will, resourceful as well as resource-rich, to really enable the regulators, the organisations, the bodies, the institutions to be on the hook for this.

**Baroness Campbell of Surbiton:** Lord Holmes, that is exactly what its predecessor body did as well. It did not do anything other than what you have said: it worked with partners; it was very much an empowering organisation. What we are trying to get to the bottom of in this Committee is why so many disabled people are saying to us, “We do not know what the EHRC are doing. We used to have a dynamic relationship with the predecessor body. We understand it does not have as many resources and is not able to do as many things, but, quite frankly, we do not have a feel for what they are doing for us and how we can then take that forward”.

We are trying to get to bottom of this. We would like you to help us to do this, not just by telling us that you have a lot less resources and you have nine characteristics. How do you think we can re-engage that dynamic approach, rather than what seems to be a highly strategic intangible approach?

**Lord Holmes of Richmond:** Let me take that. This may be covering ground from a question that we have not come to yet, but I will certainly address it. I agree with you: in no sense was I suggesting that the Disability Rights Commission did not take that approach, not at all. I was merely comparing different organisations at different times, so I do not disagree with anything that you have said there.

If we look at what we have done to remodel the work of the Disability Committee at the Equality and Human Rights Commission, 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 two-way debate and dialogue. For a series of reasons, it has taken some time to get to that. We had the appointment process to appoint new members to the Disability Committee to build on the work that the previous committee had done, when their terms came to an end. I believe we have a very high-calibre group of people around the table of the Disability Committee. They only came on stream fully in February of this year. 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.

It is absolutely critical that we do re-engage. I take your point entirely on the voices of disabled people’s user-led organisations and individual disabled people. We need that intel. I am very committed to that level of engagement. I hope that is demonstrated through the restructure of the Disability Committee, taking the committee around the country to engage. In fact, we had the first very good session in Cardiff, in May, and at the end of next week we go to Manchester to engage with organisations of disabled people and also the local authority and all of the organisations and the health authority up there, to get that intel from them, on the ground.

**The Chairman:** Lord Northbrook is going to follow up on a similar issue.

**Q40 Lord Northbrook:** Part of my question has already been answered, so I am going to slightly edit my question. Will this change if the committee moves to a non-statutory footing in 2017?

**Lord Holmes of Richmond:** My intention and the intention of my fellow board members is that the change, which is due to take place in 2017, from statutory to non-statutory, should not impact the work of the committee, or indeed the work of the commission, as pertains to the disability strand. The Minister determined that the committee should come to an end in its statutory form in 2017. What I wanted to achieve, with the appointments process and



indeed the restructuring of the committee, coming off some of the recommendations of the report that Agnes Fletcher did into the Disability Committee five years after its establishment, was to ensure that I was not just putting people in place and processes in place, not least the engagement strategy, which would just be things to take us through to the end of March 2017. These would be things that would be just as effective, and just as impactful, post 2017.

**Lord Northbrook:** I have a couple of supplementaries. What internal mechanisms are in place to ensure that the committee is consulted on wider commission work, firstly?

**Lord Holmes of Richmond:** As currently stands, under the statutory requirement for any element of work that concerns disability, the Disability Committee has to be and is indeed consulted. Rebecca's area is a very good example of how well connected, integrated and threaded that is, in terms of the Disability Committee's involvement in the building of the strategic legal plan. In terms of all cases, in terms of some of the more strategic powers, legal comes to the Disability Committee. We have regular connection outside meetings, so there is effective connection. Legal is just one example of that.

That goes similarly for our work on economy and employment and on public services. There is a clear line. I have now connected all Disability Committee members with their relevant director across the commission—be it the director of economy and employment or another director—so each committee member of the Disability Committee has a specific responsibility to increase that belt and braces approach. I will underline again that disability is the only strand to have a specific commissioner and a specific committee.

**Lord Northbrook:** How is the work of the Disability Committee resourced, in terms of staff and finance?

**Baroness O'Neill of Bengarve:** There are many people in the commission who would do part of their work on disability issues, part of their work on non-disability issues, and part of their work on joint issues, which are "disability and". It is quite difficult to factor that out, because it would be misleading simply to take the people who support the Disability Committee or the people who are specialists in disability law. We have those. Could you make it more precise, Rebecca, or is it difficult?

**Rebecca Hilsenrath:** It is important to note, as we have said on a number of occasions and Lady O'Neill just said, that the work we do in the disability field is integrated across the entire commission. In terms of the actual committee itself and servicing the secretariat, the budget is £110,000 on an annual basis, and we do have three dedicated staff posts, which are just reserved for the operation of the committee and its work programme.

**Baroness O'Neill of Bengarve:** That is committee support. It is not disability work support.

**Q41 Baroness Browning:** Could you just tell us a bit about the relationship between the Commission and Government, please? Your sponsoring department is DCMS. The ministerial responsibility rests at the Department for Education. Government policy rests with Work and Pensions, and that is before we even get to the Department of Health, which often plays a key part in disability matters. Government departments are notorious for working in silos and not together. How on earth do you cope with working with all these different departments?

**Baroness O'Neill of Bengarve:** With difficulty, persistence and tact. We have a good working relationship with the Government Equalities Office, but I think it is probably very relevant to understanding the Equality and Human Rights Commission to know that it has been shifted around Whitehall departments during its relatively short life. It has been, for example, with the Home Office. You might ask if there is not a conflict of interest there, as we have to do a

great deal on the policing and criminal justice front. It is presently with DCMS. People have discussed the Cabinet Office and there are other discussions all the time. One member of staff told me she thought that, if you counted the switches, including when GEO had been switched, the Government Equalities Office presently in DCMS, 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. I do not underestimate the importance of this issue.

In fact, I think, in the Commission, we see the question of what we would identify as a machinery-of-government issue as very fundamental for the Commission. To be peripatetic around Whitehall has not been a satisfactory solution. The two departments where we probably should not be, because there would be a conflict of interest, are the Home Office and the Ministry of Justice. Otherwise, there are number of departments where you could say the fit is so-so or so-so. This issue impinges very much on our human rights work, because, under the Paris principles, a national human rights institution has to be independent of Government and should report to Parliament. Now, we have a very useful and good relationship with the Joint Committee on Human Rights. For our human rights work, we think it would probably be a natural thing for us to report on the substance of our work and be cross-examined on it by that committee.

It has hitherto been a very great difficulty that there was no comparable committee of Parliament that covered the equality field. There is perhaps now, in the Women and Equalities Select Committee of the Commons, to be such a Committee. That will alter things. We think that it is very well worth considering what the most effective reporting line for this institution is. Of course, we take it for granted that we have to report to a Whitehall department for pay and rations, just as we would report to the National Audit Office on financial management. By the way, now, I am glad to say that is solid.

We do think there is a machinery-of-government issue here and—this is not this Committee's pigeon—we are just being examined in Geneva by the ICC, as a national human rights institution. I take this very seriously. I think it is important that our human rights body has a status. They rank them A, B or C, and do not ask me to comment on the quality of the ranking. We are an A-ranked national human rights institution, as is the Scottish Human Rights Commission, as is the Northern Ireland Human Rights Commission. Wales does not have a separate one. This is important to get right and I hope your Committee will ask us more about it and think about it.

**Baroness Browning:** Thank you very much. What you have explained to us today I assume you have made known at the highest levels of government.

**Baroness O'Neill of Bengarve:** We have tried. We do not always have access to the highest levels, but we try where we can. We have had very good relationships but, you will understand, we have had relationships with a lot of different Ministers, even in my short time as Chair.

**Rebecca Hilsenrath:** It is important throughout that to note that we are an independent commission, and that is secured under our framework agreement with DCMS and, on a statutory footing, under the 2006 Equality Act. That is very key to how we operate and how we operate with Government.

**The Chairman:** In brief, would your ideal relationship be with one department and one Minister?

**Baroness O'Neill of Bengarve:** It is a very broad remit. You could understand why we find ourselves visiting Work and Pensions, we find ourselves visiting Local Government, we find

ourselves visiting Education and of course we find ourselves visiting the Home Office. Inevitably, we will have relationships with a number of Ministers but, for that permanent relationship, one bit of the government machinery should actually know what we do and think, “Okay, that is important, even if some of it is going over to Work and Pensions”. Of course, we have a lot of relationships with MoJ, although we should not report to them, because we do work on prisons; we do work on stop and search; we do other work on policing; and, above all, we do treaty monitoring on UK compliance with the international instruments to which we are signatory. It is very complicated, but it would probably help the commission to have clarity, and not just very short-term clarity, about these arrangements. As soon as we have one Minister educated to the sheer difficulty of it, and he or she is totally convinced, we get moved or they get moved. That happens too; both happen.

**Q42 The Chairman:** Finally, could I ask you what is the relationship and what ought to be the relationship between disabled people and the work of the Commission? How are they involved?

**Lord Holmes of Richmond:** Not to re-rehearse some of my previous evidence, it is key to understand that we are a strategic regulator. We have that; we are not a campaigning organisation as such, but it is incredibly important that we hear the voices of disabled people and organisations of and for disabled people, right across Great Britain. That is essential information for what goes into our business plan, how we run the Disability Committee and potential legal cases in Rebecca’s area. We have to and it is right that we commit to that level of engagement.

That is why the best example of it is certainly taking the Disability Committee around the country, so the Disability Committee can meet directly with organisations in their local region, in their local devolved nation, not asking people to necessarily engage but have to come down to London to have that engagement. It is similar having all those voices of disabled people and disabled people’s organisations involved in the “Is Britain Fairer?” process. Finally with the UNCRPD examination, our preparation of the list of issues ensures that disabled people are very much involved in that process. As I say, it is not for us to take one particular strand or voice out of that; it is to take all of those voices and views, and for us as a commission, as a strategic regulator, to form an opinion as a result of that engagement.

**Baroness O’Neill of Bengarve:** I have one point I would like to add to that. We used to have a telephone helpline. This was removed from the commission after the 2010 election and it was put out to tender. It has become rather invisible since it was put out to tender. I have had several conversations with members of the Disability Committee, who have told me that people do not know where this helpline is. We have had considerable difficulty in accessing sufficient information about the inquiries coming into them. Those enquiries are very useful data for us about where things are and are not happening. It was put out to tender and we have worked very hard to try to improve the information flow from the company that is running it back to us, but that is where it is. The contract comes to an end next year, I think, and we very much hope that the process for putting it out to tender will take very seriously, first of all, the crucial advice provision function that the telephone line is for, and the secondary purpose, which is to provide us with data on what is coming up. That would be extraordinarily useful for our work on a number of fronts.

**Baroness Thomas of Winchester:** Could I just ask the panel something that has not come up so far? That is about the recent increase in disability hate crime. The Commission did a

report on this some time ago but, since then, this particular phenomenon has probably not improved.

**Baroness O'Neill of Bengarve:** It is not just disability hate crime; it is other sorts of hate crime. I have been to the APPG on these sorts of things, on hate speech, and listened to evidence there. We are hearing of a lot more gender and race hate crime. There are two stories you could tell about this: it is only evidence of complaints made. Is it that there is more to complain about? That would be the bad story, or is it that people are feeling more empowered to complain? That would be the slightly more encouraging story. When we get to some very nasty things, like violence against women and girls, which is a central concern for the commission, of course, we probably cannot tell. We take the evidence with a pinch of salt. You have to look at the particular evidence for particular cases. I do not know whether there is more prima facie disability hate crime or whether it is being better recorded.

**Rebecca Hilsenrath:** Coming out of our disability-related harassment inquiry, we had a programme going forward monitoring outcomes, called Manifesto for Change, which reported against that. I know that time is short, so we would be more than happy to write to you about the latest outcomes under that programme.

I would also say that, as I mentioned earlier, our current business programme focuses on attitudinal change. The relationship between that and behavioural regulation is very key in this area.

I would also just add to what my colleague was saying, in terms of what our relationship looks like with disability groups. We are an independent national expert, which by necessity involves a two-way dialogue with all groups, but particularly disabled people. That involves understanding that there are different views. It is not a sector that necessarily speaks with a homogenous voice, and that is something that has come out of early work in "Is Britain Fairer?". It is about us understanding what different priorities look like.

Sometimes, it is part of the dynamic involved in being an equality commission across all strands. We have stakeholder events and consultation, which involve disabled people being in a room with those representing many other different strands. That involves a particularly dynamic interchange, where you can see disabled people's organisations informing the outlook of other people's organisations and other groups, and vice versa. Coming back to what Lord Holmes was saying about what the nature of inclusivism really is, that is a very important part of what we do.

**Baroness Browning:** Very briefly, I just wanted to ask Lady O'Neill about the contracting-out of the helpline. Does that contract require them to feed back information to you? Are they obliged to or is this something you have just asked them for?

**Baroness O'Neill of Bengarve:** They are required to; it was just that the information was not at the useful level. We have improved it, I believe, but we are essentially waiting for this to be re-contracted out. There were some among us who thought it would be ideal if Citizens Advice had managed this helpline. People know that address, but it was not to be. I believe they tendered, but it did not happen.

**The Chairman:** You have given us a very deep and clear picture of the difficult work you do and all the challenges you face. It is very complex indeed and we do appreciate it. We are very grateful to you indeed for all the work you have done and for coming and telling us so frankly about it. At various points, you said you would write in and give us more information, so do, please, because all of that will be very helpful to us in our report. We noted the various difficulties that you have expressed, for example about the helpline. Thank you very much indeed.

**Baroness O'Neill of Bengarve:** Thank you. We will provide information, and please ask us if you think there are gaps in that information, and we will try to fill it in.

**The Chairman:** We will. Thank you.

*21 July 2015*

## **Equality and Human Rights Commission – Supplementary Written Evidence (EQD0145)**

Thank you again for giving the Equality and Human Rights Commission the opportunity to present oral evidence before the Select Committee.

During the session we undertook to provide further evidence in writing on a number of issues. I have appended to this letter more information on the following:

1. Some comparisons of the budgets and effectiveness of the Disability Rights Commission (pre 2007) with the current budget and work of the Equality and Human Rights Commission. We can provide more detail on these issues if it would be useful.
2. Gaps in the law – the Commission’s proposed amendments to the Equality Act 2010, including some comments on provisions that have been enacted but not commenced
3. Comments on negotiations on the Equality and Human Rights Commission’s proposed Statutory Codes of Practice,
4. Some comparisons between the requirements and effects of the Public Sector Equality Duty in England, Scotland and Wales
5. Some comments on the effects of the removal of Employment and Support Allowance from people in the Work Related Activity Group
6. A summary of the most recent outcomes from our Disability Harassment Inquiry
7. Examples of legal cases which the Commission has intervened in or supported that have had significant impacts for disabled people

We will also be providing further information in answer to the questions in the Committee’s call for evidence.

I hope this additional information is helpful to the Committee.

Yours sincerely

Baroness Onora O’Neill

Chair

### **Appendix 1**

#### **Some comparisons of the budgets and effectiveness of the Disability Rights Commission (DRC) (pre 2007) with the current budget and work of the Equality and Human Rights Commission (EHRC) (see page 3 of the transcript of oral evidence)**

You asked about the funding of the EHRC compared to that of the DRC and I thought the Committee would find it helpful to have more information about this.

The EHRC’s core funding for 2015-16 is £17.1m, with access to additional discretionary programme funding of £6.5m. We were subject to a budget reduction due to the Comprehensive Spending Review in 2010 followed by a comprehensive budget review in 2012, which between them meant a 75 per cent reduction in our original budget. This included removing the cost of the EHRC’s helpline, conciliation and grants functions (the total amounting to £10.2m).

In the current year we have also been subject to an in-year budget reduction of 5 per cent as a result of the emergency budget, which will be absorbed into uncommitted discretionary programme funding.

The DRC was in operation from 2000 to 2007, and in 2006/07 had a budget of £21.2m and 205 staff. This included funding and staff for its helpline. 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.

I have enclosed for the Committee's information a copy of independent research organisation OPM's evaluation report for the DRC, which outlines the impact that the DRC achieved in its short lifetime. The DRC worked in a particular context, i.e. before the introduction of the Disability Discrimination Act 2005 or the Equality Act 2010. Reviewing the report, there are many parallels with the EHRC's approach and impact (in terms of both strengths and weaknesses). The OPM report says, for example:

- The DRC's approach involved collaborative work wherever possible, which the report says was undoubtedly more effective than more adversarial ways of working.
- However, in the longer term, awareness of a high-profile advocate with power at its fingertips is important, and a still more visible DRC would have built still stronger confidence among disabled people.
- Part of the price of focusing on joint working, support and awareness-raising seems to have been a perceived downplaying of enforcement, according to the OPM report.
- The DRC directly supported legal cases in the courts and tribunals at an average of some 55 per year. It was widely recognised that the DRC chose strategic cases well, was very successful in terms of case outcomes and interventions, and clarified (and thus improved) the law. By comparison, last year the EHRC was involved in 41 cases, 19 of which were disability-related while another nine concerned more than one protected characteristic including disability. The EHRC is proud of its achievements in litigation, and more information about significant disability-related cases is provided in Appendix 7.
- Formal investigations (roughly the equivalent of EHRC's inquiries) were felt to be underused by the DRC. The EHRC has conducted ten inquiries on various topics, averaging more than one per year.
- The DRC was an important driver in influencing legislation, as was the EHRC in the development of the Equality Act 2010.
- Individuals who had direct contact with the DRC gave very positive feedback. However the OPM thought that, to raise awareness of the DRC, closer partnering with local-level voluntary and community organisations would have been desirable. The EHRC, with wider responsibilities and significantly reduced resources, is also

taking steps to increase its engagement with disability organisations across Britain through the Disability Committee’s engagement strategy.

## **Appendix 2**

### **Gaps in the law – the Commission’s proposed amendments to the Equality Act 2010, including some comments on provisions that have been enacted but not commenced (see page 5 of the transcript of oral evidence)**

Baroness Jenkins and Lord Faulkner asked what amendments to the Equality Act we would like to see. We have taken it that the question covers both the implementation of provisions that have not yet been commenced, and areas where further measures should be considered.

Provisions that have been repealed or have not been commenced:

- the socio-economic duty- sections 1 to 3
- caste discrimination - section 9 (5)
- dual discrimination – section 14
- ships and hovercraft – section 30
- reasonable adjustments to common parts of rented residential premises - section 36 and Schedule 4 (England and Wales only)
- taxi transport accessibility – sections 160 to 165 (Chapter 1 of Part 12)
- the majority of bus and coach accessibility provisions (Chapter 2 of Part 12) exempted until 28th February 2017 with the possibility of further exemption
- the requirement for political parties to report on diversity of candidates – section 106
- the employment tribunal power to make wider recommendations (repealed)
- third party harassment provisions (repealed).

Areas where further measures should be considered:

- Protection against discrimination is not provided for workers who do not fall within the definition of an employee, contract worker or agent of the employer. This means that people deemed to be self-employed, and potentially others in new and evolving working arrangements, are not protected. In some cases these new working arrangements might be intended to avoid discrimination and other employment law responsibilities;
- We are seeking to address the gap in protection for disabled air travellers that emerged from the judgment in the *Stott* case, by seeking to secure changes to the Montreal Convention through cooperation with other National Equality Bodies and



National Human Rights Institutions so that damages can be awarded for discrimination experienced on-board aircraft;

- Court cases (see Upper Tribunal decision in the case of *Mr and Mrs X v Governors of a School*) have set precedent on how the ‘tendency to physical abuse’ is interpreted, thereby excluding some children from the definition of disability. This could effectively deprive many children of protection against disability discrimination during the course of school education;
- The extent of protection available for workers when there is a transfer of business owner/operator is unclear (see, for example, the *South Central Ambulance Service NHS Trust v L Gunn* case);
- Volunteers are not protected against discrimination under equality law (see Supreme Court judgment in the case of *X v Mid-Sussex CABx*). For many people who have experienced a long period of unemployment, voluntary work can provide an essential route into work, so access without discrimination is important. However, there is a potential risk that extending discrimination protection to volunteers might affect the number and type of opportunities available by introducing more formality into volunteering arrangements.

### Appendix 3

#### **Comments on negotiations on the Equality and Human Rights Commission’s proposed Statutory Codes of Practice (see page 7 of the transcript of oral evidence)**

Baroness Campbell asked for more information about how we have raised questions about our Codes of Practice with Government, including in particular the draft Age Supplement to the Services, Public Functions and Associations Code (the Age Code). The Government’s reasons for not laying before Parliament our draft Codes of Practice on various matters would need to be explained by the Government, but we understand their position to be that they have concerns that Codes of Practice might impose additional regulatory burdens on public and private sector organisations – a view with which we do not agree, since Codes of Practice explain, rather than add to, existing law and can provide greater clarity and simplicity for those who have to comply.

The draft Age Code was submitted to the Secretary of State in June 2014, and we are still awaiting a decision on whether it will be laid before Parliament. The events were as follows:

- June 2014 - the Commission Chair wrote to Sajid Javid, Secretary of State for Women and Equalities, asking him to lay the draft Age Code before Parliament. Before being laid, the draft Code needs to be approved by the Minister and cleared by two regulatory committees.
- The status of the Age Code has been raised as an agenda item at formal meetings between the Commission and GEO - on 8 September 2014, 8 January 2015 and 5 February 2015.

- October 2014 – we were informed that progress had stalled as the draft Code was in the 'regulatory policy machinery'.
- November 2014 - emails were exchanged between officers to confirm there was still no news, but that GEO had asked the Minister's Private Office to follow up.
- December 2014 - email from Commission officer to GEO asking about timescale for submitting the draft Code in time to meet the April 2015 Common Commencement Date.
- June 2015 - letter from the Commission Chief Executive to GEO expressing concern about the lack of progress and asking for a formal response.
- July 2015 – GEO advised that there have been no recent developments, but they are ensuring that Ministers are aware of this outstanding issue.

In relation to the case of our draft Codes of Practice on the public sector equality duty (PSED), schools and further and higher education, the events were as follows:

- November 2011- GEO informed us they had concerns about undue regulatory burdens associated with Codes.
- December 2011 – meeting between the Commission CEO and GEO to discuss concerns.
- December 2011 - we wrote to GEO stating we remained keen to publish the outstanding Codes, and that we had collaborated closely with GEO and other departments and invested considerable resources.
- January 2012 – GEO responded that, having consulted Ministers, their aim was to reduce bureaucracy associated with PSED. They raised concerns about the length, tone and positioning of the PSED Code.
- January 2012 – the Commission Chair met with Minister and discussed the issue of Codes.
- February 2012 – we responded that there remains a strong appetite for Codes among public bodies and that, rather than creating a regulatory burden, Codes help make clear what is needed to comply with the law; but agreed that in the circumstances we would move to publish non-statutory codes.
- April/May 2012 – our Regulatory Committee decided to publish the draft Codes as 'technical guidance'.

## Appendix 4

**Some comparisons between the requirements and effects of the Public Sector Equality Duty (PSED) in England, Scotland and Wales (see page 9 of the transcript of oral evidence)**

Baroness Pitkeathley asked for statistics on the relative performance of England, Scotland and Wales in respect of the PSED.

As you will be aware, the general equality duty is the same in England, Wales and Scotland, but the specific duties, which are the steps intended to help public authorities to comply with the general duty, are different in each country.

In 2012, in England we found that 78 per cent of the public authorities assessed were publishing some up-to-date equality information. Of these, over 90 per cent had information on the number of staff who were disabled, and almost three quarters had information on service users who were disabled. We also found that almost 70 per cent of public authorities in England (excluding schools) had published one or more up-to-date equality objectives. These assessments provide a snapshot of how public bodies are meeting the requirements of the PSED and considering the needs of disabled people.

All public bodies in Wales had established Strategic Equality Plans, set equality objectives and action plans. Evidence suggests that consultation and engagement with service users has improved and become more frequent. Where there was scope organisations had conducted community involvement events or consulted specific protected groups and forums. In some cases that had involved existing or new user panels. Others were still in the process of building and trying to maintain the contacts they needed. Equality Impact Assessments are being widely used to improve decision making and service delivery.

In Scotland, 83 per cent of authorities had published a mainstreaming report, employment information and equality outcomes in April 2013. 93 per cent of the listed authorities reviewed had published information about the composition of their staff, broken down by protected characteristic. We found that disability was the most frequently referenced protected characteristic, mentioned in 62 per cent of the equality outcomes set by the reviewed listed authorities.

However only one in three Scottish authorities had published robust equality outcomes that were clear and measurable. The Commission helped to address this through an [Improving Equality Outcomes](#) project, following which a significant number of authorities said that the support from the Commission had helped to improve their equality outcomes and that their revised outcomes were now clearer and more specific to the problems identified.

**Appendix 5**

**Some comments on the effects of the removal of Employment and Support Allowance from people in the Work Related Activity Group (see page 19 of the transcript of oral evidence)**

Baroness Thomas asked whether the the Commission had spoken to the Treasury about this proposal. We are currently assessing the implications for equality and human rights of the Welfare Reform and Work Bill. We would expect to see evidence that the Government has had due regard to the aims of the PSED in developing its proposals. We will consider in due course whether we consider that any amendments to the Bill would be desirable and will brief parliamentarians as the Bill progresses.

## **Appendix 6**

### **A summary of the most recent outcomes from our Disability Harassment Inquiry (see page 28 of the transcript of oral evidence)**

Baroness Thomas was interested in the outcomes of our Disability Harassment Inquiry. Achievements to date include:

- Briefings in support of amendments to the Criminal Justice Act 2003 (so that murders motivated by hatred or hostility towards disabled or transgender victims have the same sentencing uplift as those for murders aggravated by other legally recognised bias).
- The publication of three government action plans to address disability hate crime (England, Scotland and Wales).
- An agreement by HMCPsi, HMIC and HMI Prisons to undertake a joint inspection of actions to address disability hate crime, as recommended by the Commission.
- A consistent definition of disability hate crime used throughout the criminal justice process, as recommended by the Commission.
- Voluntary legal agreements in three geographical areas to improve preventative measures and actions to address disability hate crime following past significant failures (ongoing). We have agreed action plans with each of the police and local authorities concerned to improve their performance.

## **Appendix 7**

### **Examples of cases which the Commission has intervened in or supported that have had significant impacts for disabled people (see page 12 of the transcript of oral evidence)**

Following Baroness Campbell's question about our casework, Rebecca Hilsenrath offered to provide more information. We have taken many cases that bear on benefits for disabled people, and a fuller account of relevant casework is set out below.

In addition we undertake a significant amount of 'pre-enforcement' work, whereby we write to an employer, service provider or public authority seeking their agreement to comply with the law and/or desist any discriminatory practices and, if necessary, warning them that we may start an investigation or commence other enforcement action. Evidently such 'pre-enforcement' activity is often more effective and always cheaper than taking legal cases.

- ***Definition of disability***

#### **1.**

**J v D Oct 2010 – May 2011**

**Sector:** Employment

**Issue:** What constitutes a disability?

**Legal Involvement:** Section 28 at Employment Appeal Tribunal

**The case:** A job offer to the claimant was withdrawn, allegedly as a result of her disclosing a history of depression.

**Impact:** After the Commission became involved, the case settled on strictly confidential terms. The guidance given to the Tribunal clarified the meaning of disability.

2.

**Mr and Mrs X v Governors of a School** January 2015

**Sector:** Education

**Issue:** What constitutes a disability?

**Legal Involvement:** Section 28 – Upper Tribunal

**The case:** A child with autism had been suspended from school as she had displayed a ‘tendency to physical abuse’. This tendency does not constitute an impairment under the definition of disability. On the facts, the case was unsuccessful.

**Impact:** The Upper Tribunal provided valuable guidance on how to assess if an individual has a ‘tendency to physical abuse’ and is therefore excluded from the definition of disability under the EA2010

- ***Discrimination arising from disability***

3.

**Akerman –Livingstone v Aster Communities Feb – March 2015**

**Sector:** Housing

**Issue:** In possession proceedings, should the court approach a defence based on disability discrimination under s15 of the EA 2010 in the same way as it would approach one based on A8?

**Legal Involvement:** Section 30 – Supreme Court

**The case:** Mr A-L had PTSD. The court ruled that in any proportionality exercise carried out in possession actions brought by social landlords, the Equality Act is relevant.

**Impact:** The Commission’s intervention ensures more protection for vulnerable tenants

- ***Employment***

4.

**X v Mid Sussex CAB - December 2012**

**Sector:** Employment

**Issue:** Volunteers

**Legal involvement:** Intervention (unsuccessful) - Supreme Court

**The case:** The Court did not agree that “occupation” within article 3 of the Framework Directive (2000/78) covered unpaid work/volunteers. Instead it took the view that occupation refers to work or access to work in a particular sector. (This is a slightly wider approach than that taken in the lower levels which said it related to the narrower professional qualification).

**Impact:** Clarification that volunteers fell outside the scope of protection from disability discrimination under the Disability Discrimination Act 1995 (subsequently carried forward into the Equality Act 2010).

5.

**G v NCC Dec 2013 – April 2014**

**Sector:** Employment

**Issue:** The degree of knowledge of the disability of an employee required by an employer

**Legal Involvement:** Section 28 – Court of Appeal

**The case:** G was signed off sick with work related stress. His employer asked occupational health if G was disabled and was told 'no'. G was dismissed without any thought given to reasonable adjustments. The Court of Appeal decided that G's employer knew of the existence of G's symptoms and knew why he had been absent from work. Therefore the employer had knowledge of G's disability.

**Impact:** The Commission provided greater clarity on the issue of the requisite degree of knowledge needed by an employer of a disabled person..

**6.**

**South Central Ambulance Service NHS Trust v L Gunn April – May 2015**

**Sector:** Employment

**Issue:** Who can claim disability discrimination?

**Legal Involvement:** Section 28 – EAT

**The case:** Ms G objected to a TUPE transfer which involved working 15 hours a week, whereas her current contract was for 8.5 hours a week, which suited her disability. But, unless she could prove she was an 'applicant' for the job under the EA2010, she did not have a claim. As she had received an email offering her different terms, the tribunal found that she was an applicant.

**Impact:** Protection from discrimination extends to those who are workers who have been made a fresh offer of employment, which means that they are an applicant.

- ***Goods, facilities and services***

**7.**

**Richards v Santander (formerly Abbey National Bank plc) Oct 2010 – May 2011**

**Sector:** Banking - Goods, Facilities and Services

**Issue:** What were reasonable adjustments in the banking sector?

**Legal Involvement:** Section 28 - County Court

**The case:** This matter concerns the failure by Santander to make reasonable adjustments to its 'telephone banking' procedure to make it accessible to Mr Richards - who is hearing impaired and has BSL as his first language. The result was that a series of protocols was put in place to permit Mr. Richards to use the telephone banking service.

**Impact:** The involvement of the Commission in this case highlighted an entrenched problem that the Commission has been tackling through extensive work with the banking sector using formal agreements.

**8.**

**D v S and U – January 2013**

**Sector:** Goods, Facilities and Services

**Issue:** What adjustments are reasonable for a nightclub?

**Legal Involvement:** Section 28 – County Court

**The case:** Wheelchair user refused entry to a night club; failure to comply with the duty to make reasonable adjustments in respect of the club's toilets and failure to provide ramp access into the building. Case settled.

**Impact:** To maintain and maximise protections provided by the equality and human rights legislation.

- *Air travel*

9.

**Stott v Thomas Cook Air Tours PLC, joined with Hook (by his Litigation Friend) v British Airways June 2011 – May 2012**

**Sector:** Air Travel – Goods, Facilities and Services

**Issue:** What compensation can disabled people seek from an airline?

**Legal Involvement:** Section 28 – Supreme Court

**The case:** Mr Stott is disabled and had brought claims under Regulation 9 of the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations which were introduced in the UK to bring into effect Regulation EC No1107/2006. The issue was one of statutory construction - whether the Montreal Convention has world-wide exclusive application such that compensation for events that happen airside can be awarded only in respect of physical injury or death or loss of baggage (i.e. no compensation for injury to feelings). Our submission was that the Montreal Convention has to be construed to conform with Union law obligations and not the other way around, and thus cannot be used to trump or read down either the provisions of the EC Air Regulation or the UK Regulations. The court however, dismissed the claims. The judges decided that international rules on air travel – the Montreal Convention – should take precedence over domestic law on accessibility and discrimination onboard airplanes.

**Impact:** Disabled people cannot seek compensation from the airline if they are discriminated against during a flight.

- *Train travel*

10.

**W v FKT Oct 2010 – May 2011**

**Sector:** Transport - Goods, Facilities and Services

**Issue:** What are reasonable adjustments required of a train operating company?

**Legal Involvement:** Section 28

**The case:** The claimant has MS and uses a mobility scooter. Her local station is unmanned. The defendant refused to provide a taxi to transport the claimant to the nearest accessible manned station. She alleges a failure to make reasonable adjustments or to provide auxiliary aids and services that would enable her to use the services at the station. This case settled. Respondent paid compensation and agreed to change their policy to make access easier.

**Impact:** The Commission's support of this case emphasised the importance of reasonable adjustments for train operating companies.

- *Education*

11.

**CW v NLC April – August 2013**

**Sector:** Education

**Issue:** What reasonable adjustments should be provided to help with pupils' healthcare needs?

**Legal Involvement:** Section 28 – Additional Support Needs Tribunal (Scotland)

**The case:** A disabled pupil's school withdrew support previously provided by a teacher for checking his blood sugar and administering insulin injections in respect of his diabetes. Thanks to the Commission's support, NLC arranged for a trained assistant to administer insulin and check blood sugars.

**Impact:** The Commission is seeking a review of government guidance on administration of medicine in schools.

- **Public functions**

**12.**

**MM and DM v Secretary of State for Work and Pensions July 2014**

**Sector:** Healthcare – Goods, facilities and services

**Issue:** Judicial review alleging failure to make reasonable adjustments (in the form of obtaining extra medical evidence) for persons with a mental health impairment when assessing eligibility to receive Employment and Support Allowance).

**Legal Involvement:** Section 30 – Upper Tribunal

The case: the Commission intervened in this judicial review before the Upper Tribunal and Court of Appeal and was successful in both. The claim concerns the process by which the Secretary of State (SoS) assesses people with mental health, cognitive and intellectual function impairments (MHPs) for eligibility to receive employment and support allowance (ESA) (formerly incapacity benefit). The tribunal and court considered that the work capability assessment puts people with a mental illness at a substantial disadvantage. It noted that people with mental health and cognitive impairments had unique vulnerabilities which affected them as a class.

**Impact:** Although there was no need for adjustments for these particular claimants, the litigation secured decisions from the UT and Court of Appeal that the DWP has to make adjustments for persons with a mental health issue if they need it. So, for example, if a person had suicidal thoughts, the DWP should obtain extra medical evidence.

- **Public Sector Equality Duty**

**13.**

**R (Bracking & Others) v SS for Work & Pensions September – November 2013**

**Sector:** Government Policy

**Issue:** Abolition of the Independent Living Fund

**Legal Involvement:** Section 30 – Court of Appeal

**The case:** The Claimants in this case argue that there had been a failure to comply with the PSED in making this decision. The Court found that the decision was unlawful and agreed with the Commission that what was needed in this case was consideration of the impact of the proposal on all disabled people.



**Impact:** The Commission’s intervention emphasised the need to comply with the PSED, and the result was a clear statement that equality considerations of the PSED are to be placed at the centre of formulation of policy by public authorities.

**14.**

**R (Pepper and Aspinall) v Dept for Work and Pensions Nov – Dec 2014**

**Sector:** Government Policy

**Issue:** Abolition of the ILF

**Legal Involvement:** Section 30 – Administrative Court

**The case:** A fresh decision had been made to close the ILF from 30 June 2015. The judicial review was unsuccessful. The CRPD right to independent living was held not to enhance the level or extent of the PSED ‘regard’ that must be paid.

**Impact:** The Commission’s intervention highlights usefully that decision makers ought to show their reasoning in respect of the PSED

**15.**

**Hotak v Southwark LBC, Kanu v Southward LBC, Johnson v Solihull MBC April – May 2015**

**Sector:** Housing

**Issue:** What analysis should be made by a public authority housing officer when considering whether a disabled homeless person is “vulnerable” under part 7 of the Housing Act (and therefore has a priority need); specifically does the PSED add an additional obligation?

**Legal Involvement:** Section 30 – Supreme Court

**The case:** In cases brought by disabled Claimants, the Court found that that the PSED is complementary to the provisions under the Housing Act. It is not the case that the Equality Duty ‘adds nothing’ to the duty of an authority when determining whether an applicant is vulnerable. So while a conscientious officer carrying out his duties will very often comply with the equality duty despite being ignorant that the duty was engaged, there will also be cases where a review that was otherwise lawful, will be held unlawful because it does not comply with the equality duty.

**Impact:** Housing officers will need to consider any equality impact when assessing priority need. Specifically, each stage of the decision-making exercise as to whether an applicant with an actual or possible disability or other relevant protected characteristic is “vulnerable” within the meaning of the Housing Act must be made with the equality duty well in mind. This means exercising the duty in substance, with rigour, and with an open mind

**16.**

**Fife Council v Miller April – May 2015**

**Sector:** Education

**Issue:** What are the duties of a local authority in respect of disability and education?

**Legal Involvement:** Section 28 – Court of Session

**The case:** the local authority had threatened to remove M’s care package on his 18<sup>th</sup> birthday. This would mean he could not stay for an extra year in school, which would benefit his neurological condition. The court found that there had been no assessment of M’s needs and there had been no impact assessment of the likely effects of the threatened decision.

**Impact:** Local authorities have to evidence their reasoning for making decisions involving people protected by the EA 2010.

- ***Human rights and disability***

**17.**

**FB v CPS January 09**

**Sector:** Criminal Justice

**Issue:** Credibility of person with mental health impairment

**Legal Involvement:** Section 28 – High Court

**The case:** FB, who had a mental health impairment, had his ear bitten off in an assault. The CPS dropped the case against his assailants because it was felt that FBB would lack credibility as a witness because of his disability. This finding was reversed on appeal after the involvement of the Commission.

**Impact:** This case, which was decided using the HRA shows the dangerous assumptions made in relation to those who are disabled and the way in which HRA and equality legislation are complementary.

**18.**

**London Borough of Hillingdon v S Neary (by his litigation friend, the Official Solicitor) and M Neary June 2011 – May 2012**

**Sector:** Deprivation of Liberty

**Issue:** Was Mr Neary unlawfully deprived of his liberty (Art 5) and right to a family life (Art 8)?

**Legal Involvement:** Section 30 – Court of Protection

**The case:** The Commission intervened to emphasise the need for a supervisory body to make its own decision as to whether to authorise depriving someone of their liberty. It was not enough to follow the findings of a best needs assessment. The Court decided that the council had breached Mr Neary's human rights by accepting him into respite care for a few days but subsequently keeping him in care for over a year.

**Impact:** The Commission intervention clarified the law. Publicity over this case was discussed in a House of Lords select committee report, which said the deprivation of liberty safeguards (DoLS) were not fit for purpose. The Law Commission is reviewing DoLS with a view to considering whether the law needs to be changed and expects to publish a consultation paper in the summer of 2015 and a final report and draft legislation in the summer of 2017.

**19.**

**McDonald v Royal Borough of Kensington and Chelsea  
June 2011 – May 2012**

**Sector:** Local authority statutory duty

**Issue:** Did an authority act unlawfully in seeking to amend a care package?

**Legal Involvement:** Section 28 – Supreme Court

**The case:** The local authority substituted M's night time carer by providing incontinence pads instead, when M was not incontinent. The court found that there were two ways of meeting M's need and the local authority was entitled to meet the need in the most economical manner.

**Impact:** This decision suggests that some older or disabled people may have their human rights to privacy, autonomy and dignity put at risk.

**20.**

**ZX v Met Police February 2013**

**Sector:** Criminal Justice

**Issue:** Treatment of boy with autism

**Legal Involvement:** Section 30 Court of Appeal

**The case:** A boy with autism refused to get out of a swimming pool. Seven police officers unlawfully restrained and imprisoned him. The Court found that they had breached equality legislation and HRA

**Impact:** Shows how equality legislation and HRA are complementary and how misunderstanding disability can lead to serious breaches of individuals' rights to be treated with dignity and respect.

**21.**

**R (DR Michael Antoniou) –v- (1) Central and Northwest London NHS Foundation Trust and (2) Secretary of State for Health; and (3) NHS England (The NHS Commissioning Board)**

**Interested party: HM Coroner Andrew Walker Sept – Nov 2013**

**Sector:** Mental Health Act

**Issue:** Whether the failure on the part of the NHS Trust to commission an independent investigation after a suicide of a patient detained in a hospital under the Mental Health Act constituted a breach of Article 2 of the Human Rights Act and discrimination under the Equality Act.

**Legal Involvement:** Section 28 – Judicial Review

**The case:** The court held there were no legal grounds for a system for independently investigating the deaths of detained psychiatric patients.

**Impact:** The Commission has tested the law in this area and though the judicial review was lost, the Court suggested in its decision that the UK may wish to create a system of independent investigations on grounds of public policy.

**22.**

**Tracey v Cambridge University Hospitals NHS Foundation Trust May-June 2014**

**Sector:** Healthcare – Goods, Facilities and Services

**Legal Involvement:** Section 30 – Court of Appeal

**Case:** A 'do not resuscitate' notice was placed on a patient's notes without her involvement or consent. The Court found that this was unlawful and incompatible with Article 8, and that doctors have a legal duty to consult and involve patients in such a decision. The court found that the use of DNCR notices in the absence of a clear and accessible policy would not comply with human rights law, as this would undermine the right of patients to be consulted. It said that policies should be directed at patients and copies automatically given to them and their families.

**Impact:** The Commission's intervention meant the court concluded that the decision about whether a life is worth living does involve Article 8; there is however still a need for accessible and consistent guidance to medical professionals about how properly to involve patients and families in the use of DNCR notices.

**23.**

**P and Q v Surrey County Council and (2) P v Cheshire West and Chester Council Dec 2013 – April 2014**

**Sector:** Deprivation of Liberty

**Issue:** What amounts to a deprivation of liberty where the person concerned lacks capacity to consent to or object to their care placement?

**Legal Involvement:** Section 30 - Supreme Court

**The case:** The three applicants in this case were all deprived of their liberty. Lack of objection, consent, the relative normality of the placement and the beneficial purpose of the

restrictions were all irrelevant to the objective question of whether they were deprived of their liberty.

**Impact:** Disabled people are entitled to regular independent checks and cannot be deprived of their liberty in their care placements without proper safeguards.

*20 August 2015*

## **Equality and Human Rights Commission – Supplementary Written Evidence (EQD0190)**

Thank you for your letter of 24 November. We are grateful to the Committee for giving us the opportunity to comment on issues which have been raised in its evidence sessions. Please find below our reply to your specific questions.

### **Disability Committee**

The Commission is committed to ensuring that work to protect and promote the rights of disabled people and to tackle the barriers and inequalities they face is embedded across all our work. Our Board will continue to listen to the views of the Disability Committee regardless of its status, using the expertise of Committee members to help shape and deliver our work programmes. We believe there are significant benefits in our ability to address common issues – such as pay gaps, prejudiced attitudes, and hate crime – in a coherent and joined up way across different protected characteristics and building in human rights considerations, while at the same time ensuring we maintain a specific disability focus.

We have a strong focus on working with disabled people, disabled people’s organisations (DPOs) and experts to ensure we understand their concerns and priorities and to help us make interventions which have real impact, such as our work with Level Playing Field to improve access to sport. DPOs made an important contribution during the development of our recent *“Is Britain Fairer?”* report, and we have been talking to them about the development of our new strategic plan. We consulted DPOs on our first report on monitoring the UK’s implementation of the Convention on the Rights of Persons with Disabilities, published in November 2014, which brings together the available evidence, research, legal casework, treaty monitoring and policy work, as well as disabled people’s views and experiences, to set out the key issues that disabled people face in the UK. The Disability Committee is leading a major programme of engagement with disabled people. In meetings in England, Scotland and Wales, disabled people have shared their experiences and views on housing, transport and the built environment, and the launch of the consultation of the Scottish Disabled People’s Strategy. At our most recent event, disabled young people talked to us about choice in education and the importance of accessible transport and the right equipment to enable them to participate in social activities. Our firm intention is that the removal of the Disability Committee’s statutory status in 2017 will not impact on the valuable work it does. This will also be supported through stronger relationships between the Committee members and Commission officers and more effective staffing arrangements. This includes a Director with lead responsibility for disability issues within the Commission whose role includes developing expertise and stakeholder relationships and applying a “disability lens” to our work.

### **Helpline**

We are aware of, and have sympathy with, concerns about the effectiveness of the Equality Advisory and Support Service (EASS) contracted by the Government in 2012 in place of the Commission’s helpline. In our analysis, these concerns are part of bigger questions about the best way to ensure that people with discrimination and human rights complaints can access good quality information and advice; that there are mechanisms which provide effective

access to redress; and that disputes are resolved proportionately and in ways which deliver value for money. Rights without access to redress are no rights at all, and our [access to civil law justice literature review](#) indicates growing concerns about people’s ability to access their rights effectively. 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.

Access to justice for equality and human rights cases is an important area of work for the Commission, which we propose to develop under our new strategic plan. We wrote to all political parties before the last election to request additional powers, and we have already started to engage with the Civil Justice Council to explore options for improving the way discrimination disputes are resolved.

On the EASS itself, 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. As an illustration of the problem, although the demographics are very different, the in-house helpline of the Equality Commission Northern Ireland (ECNI) receives around 3,000 calls a year, generating approximately 300 applications for assistance, about 100 of which then become cases. The EASS has been unable to provide us with the same level of potential cases. Nor does it provide us with the level or quality of information about the calls it receives to deliver the evidence we need about key issues on the ground to inform our wider work.

We have made clear to Government that, when the EASS contract comes to an end next year, we would like to take back responsibility for it or, at the least, have a greater level of control over its operation. Key improvements we would like to see include providing more user-focussed and less complex routes to good quality information and advice, a reduction in the number of onward referrals, better data collection and an increase in the volume and quality of strategic case referrals.

### **Cumulative Impact Assessments**

The Commission 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?”.

The research we commissioned to explore the cumulative impact of tax, spending and benefit changes in 2010-15 found that modelling cumulative impact assessment by protected characteristic is both feasible and practical.

Information about our research and the actions we recommend is available on our website at

<http://www.equalityhumanrights.com/publication/future-fair-financial-decision-making> .

We continue to have discussions with Treasury officials to stress the importance of making progress in this area, although as yet have had no positive feedback from Government to suggest they might start to carry out cumulative assessments.

We are currently considering how to further develop our work to improve the effectiveness of the Public Sector Equality Duty in narrowing key inequalities as part of our new strategic plan, and we plan to feed our proposals into the Government's review of the Duty which is planned to take place next year. In particular we've identified, through stakeholder conversations, concerns about the quality and effectiveness of Government equality impact assessments and we will engage on this going forward.

### **Response to criticisms**

We are looking at the detail of comments about the Commission made by witnesses, and as discussed we will write to you separately with any further points we would like to draw to the Committee's attention. However, there are some specific matters mentioned in your letter which I would like to address here.

I have set out above our thoughts about the loss of our power to arrange the provision of conciliation services for non-employment cases, along with our observations on the helpline.

Some witnesses have suggested a reluctance on the part of the Commission to use our statutory enforcement powers. You will be aware that we have already provided the Committee with a good deal of information about our projects, inquiries and legal cases relevant to disability. From this, you will be aware that disability cases form a large part of our strategic litigation work.

Our approach to enforcement is to take action which is appropriate and proportionate, in line with the requirements of the Regulators' Code. Our initial approach in most cases is therefore to write to those we believe may have breached the law, informing them of their legal obligations and of our guidance and advising them to cease any unlawful act or to make changes to their practices. Where such action does not result in the changes required, we then progress to warn them of likely enforcement action, followed by escalation to formal enforcement where necessary.

In the vast majority of instances, businesses, public bodies and others subject to legal duties agree to make the required changes at or before the stage when we threaten enforcement action. Thus, although we send on average 200 regulatory letters each year in England and Wales, in the vast majority of cases compliance is achieved through negotiation and agreed resolution. It is thus rare for us to need to invoke our formal enforcement powers.

For example, in response to complaints regarding access to banking services for British Sign Language (BSL) users, we have recently negotiated informal agreements with two major retail banks, including outcome-focused action plans that we will monitor. The action plans require the banks to improve access through online BSL services and other technological solutions as well as to provide staff training and to make more information available to customers who are BSL users.

Our disability-related cases are published on our website at <http://www.equalityhumanrights.com/legal-and-policy/legal-updates/legal-cases> . We are currently undertaking a significant programme of work with the Disability Committee to rework our case summaries so that the outcomes are relevant to different users and the website and products are accessible. We agree with your witness who felt that it would be helpful if a summary of all cases related to disability were to be published in one place. This information is already in the public domain and we will need to consider whether this is something the Commission should lead on.

Last year we established a new inquiries and investigations unit, which has 6.3 FTE dedicated staff, as well as drawing on resource from across the Commission. The unit delivered our Adult Death Inquiry and is currently conducting a formal investigation into the Metropolitan Police Service's grievance and disciplinary processes. We are also scoping a new inquiry for launch in 2016, and, while we have not yet formally agreed a topic for the new inquiry, we are considering a number of possible issues with a disability focus.

I would also like to take the opportunity to respond to the perception of one of your witnesses that the Commission is not engaging sufficiently in public discussions about matters of concern to disabled people.

I would draw the Committee's attention to just a few examples of our success in highlighting issues in the public consciousness. First, in March, the publication of our inquiry into the detention of adults with mental health issues, which featured across all national broadcast outlets and newspapers. And this autumn, pressure and public comment from the Commission resulted in Premier League Football agreeing to include Accessible Stadia Guidance as part of the Equality Standard for their clubs. More recently, Lord Holmes and our Scotland Director made keynote speeches about the social isolation of disabled people and proposed a series of national summits. The press release on our website resulted in 49 retweets within an estimated reach of 77,000 people. We are considering further work in 2016/17 on what is clearly a very relevant issue for disabled people. In addition, through our extensive and authoritative parliamentary briefings on legislation, such as the Care Bill and the Welfare Reform and Work Bill, we seek to influence improvements which will address concerns for disabled people.

Please do not hesitate to contact me if you would like more information on any of the points raised.

Yours sincerely  
Rebecca Hilsenrath  
Chief Executive

*9 December 2015*



## **Equality and Human Rights Commission – Supplementary Written Evidence (EQD0196)**

Further to our letter of 10 December, and in addition to the other evidence we have provided to the Committee, we would like to respond to some additional points made during the oral evidence sessions.

### **Pay gaps**

Reference was made during the evidence sessions to the focus of our work to address the disability pay gap. The Commission has undertaken extensive work on tackling pay gaps, access to work and retention and progression into senior and board level roles. This year we launched a major new project to address pay gaps in relation to gender, disability and race. We are currently carrying out a significant piece of research – involving literature reviews, new data analysis and modelling – into the size and relative causes of pay gaps and into any policy and practice interventions effective in closing these gaps. In November, we held workshops, with employers, policy-makers and stakeholder organisations to discuss emerging findings, with a focus on good practice on strategies and interventions to close pay gaps. The research will be completed in March 2016.

This work will inform the Commission’s development of a strategic approach to tackling pay gaps in future. This will include a specific disability focus.

Improving education outcomes for disabled young people is key to improving work and pay opportunities. To support that, in January 2016 we will launch our ‘Unlocking Opportunities’ on-line training resource to support schools in providing reasonable adjustments across the curriculum.

### **Mandatory assessment of cases**

It was suggested during the evidence sessions that it should be mandatory for the Commission to assess all the cases we receive. Our Strategic Litigation Policy<sup>107</sup> governs our approach to the work we do to support individual cases. Given the nature of the Commission’s role as a strategic regulator with limited resources and the need to use public funding in the most effective way possible, the policy aims to support cases which raise matters of public interest or those which may set a precedent to help prevent future breaches of the Equality Act 2010 or of human rights law.

Our Strategic Litigation Policy lists the factors which the Commission will consider when determining whether to exercise its statutory litigation powers under s24, s28 and s30 of the Equality Act 2006.

In summary, we consider a range of issues including whether the case involves a possible breach of the Equality Act 2010; the prospects of success of the case in terms of its factual and legal merits (we normally support cases where the prospects of success are assessed to be more than 50 per cent); and whether supporting the case is the most appropriate way to

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<sup>107</sup> Available at [www.equalityhumanrights.com/publication/strategic-litigation-policy](http://www.equalityhumanrights.com/publication/strategic-litigation-policy)

address the issue in question (involving, for example, consideration of whether there is an opportunity to clarify or strengthen the law or to extend or test compliance).

We do not have the remit to provide legal funding for individuals in cases that raise a potential breach of human rights law, except where there is also an identifiable breach of the Equality Act. A power to provide legal support would indeed be useful in enabling individuals to rely on human rights law even where there was no corresponding breach of the Equality Act.

The Strategic Litigation Policy was shaped by the responses received to a three month public consultation from September to December 2014. The consultation sought to harness the experience and perspective of the legal and advice sector in determining priorities. We received 168 responses, mainly from advice centres, law firms, service providers, the voluntary sector and non-governmental organisations.

We acknowledge the limitations on the volume and nature of cases we are in a position to support but we believe this strategic approach to the assessment of cases enables us to have maximum impact within the resources available. The need for improvement to access to justice generally is an issue distinct from the assistance that the Commission can offer. We have already provided evidence on our views in this regard.

We are grateful to the Committee for giving us the opportunity to comment on these issues, and are happy to expand on any of the points raised here.

Yours sincerely  
Rebecca Hilsenrath

*21 December 2015*

## **Equality and Human Rights Commission – Supplementary Written Evidence (EQD0200)**

### **Section 28: Legal Assistance**

Thank you for your email dated 22 December offering us the opportunity to comment on concerns raised by the Discrimination Law Association (DLA) about the Commission's approach to providing legal assistance under Section 28 of the Equality Act 2006.

The DLA was one of the consultees to our strategic litigation policy and it accepts that the policy does not rule out first instance cases although it will have the effect of the Commission tending to fund more appellate level cases.

Our experience shows that there are a number of reasons why supporting an appellate case may provide a better use of limited public resources:

- Between 80% and 90% of first instance cases settle. Most respondents demand a confidentiality clause in the settlement agreement. This is our experience of providing support for first instance cases, including three pregnancy cases relating to discrimination in employment which we supported last year. Where cases settle, individual claimants are provided with compensation. However, the substantial legal resources deployed in reaching a settlement frequently amount to months of work and do not provide any public benefit. The confidentiality of the settlement also largely removes the opportunity of using the case to raise awareness of equality law with a view to securing better understanding of rights and obligations. (This is a criterion for accepting a case under paragraph 4.2.5.2 of the strategic litigation policy.)
- 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. 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. Nor will the majority of first instance cases raise a novel or contentious legal point. Thus they are much less likely to present an opportunity to clarify or strengthen the law or to extend or test compliance.
- Having said the above, the Commission continues to seek strategic first instance cases through its stakeholder engagement. For example we actively seek strategic cases in goods and services and in the education sector, 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. We also seek cases that provide the opportunity to address widespread or systematic breaches of the 2010 Act – for example through judicial review of the policy or practices of a public body. We are particularly interested in such cases where litigation by others has failed to resolve the issue. In the event of making a decision as to whether to intervene or to support a case, a factor will be the existence of alternative sources of funding for the applicant. However, identifying appropriate first instance cases has been challenging since the helpline was removed from the Commission's management.

In addition we make use of the findings of the Employment Tribunal. We receive all ET judgements relating to breaches of the Equality Act and engage with employers to prevent further discrimination.

I trust that this clarifies the Commission's position. Please do not hesitate to get in touch if you require any further information.

Yours sincerely

Rebecca Hilsenrath  
Chief Executive

*6 January 2016*

## **Equity – Written Evidence (EQD0064)**

Equity is the trade union representing over 39,000 performers and creative workers. Our membership includes actors, singers, dancers, comedians, theatre directors and designers, stunt performers, stage managers and variety artists working across all areas of the entertainment industry.

A number of our members are deaf or disabled. Some of those who have visible impairments are high profile performers and we believe that it continues to be important that these performers and many others like them should have equality of access to employment opportunities in the media with non-disabled performers) as well as advancing the visibility of disabled people across the media for the good of all.

Equity also has members with non-visible disabilities. Employers are required to make reasonable adjustments for both groups to do their work and in order to have a successful career. The media and entertainment industries are highly competitive and involve challenging working practices including touring, long and unsocial working hours and short term contracts. It can often be difficult for our deaf and disabled members to access sufficient support to enable them to remain working in the entertainment industry.

### **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?**

The introduction of the Equality Act 2010 has been crucial in both strengthening the law on equality and in equalising protection between different protected characteristics. The legislation has also brought clarity and simplicity to what was a cluttered and confusing legal landscape.

The Equality Act 2010 also helpfully reversed some of the implications of previous court decisions in order to uphold protection from disability-related discrimination and ensured the duty to make reasonable adjustments is consistent across service delivery and employment and to make it an anticipatory – rather than solely a reactive - responsibility. The proposed harmonisation of the law did raise concerns that bringing different characteristics together would result in the dilution of focus and attention given to individual characteristics. However, in terms of protecting disabled people from discrimination, we believe that the Equality Act 2010 provides disabled people with enhanced legal protection in comparison to the Disability Discrimination Act 1995.

However, we are concerned about the extent to which these changes – and the law in general - are sufficiently well understood among employers and workers. For example, erroneous references to the ‘DDA’ still abound and we are concerned that too many employers – particularly in the entertainment industry, often operating in a very informal environment, either do not know or understand their obligations. While having the law in place is fundamental, that alone doesn’t prevent unlawful practice.

### **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

The interaction of employment and equality legislation can lead to difficulties for Equity members. The Equality Act does not apply to the self-employed. Tax case law has established that actors/entertainers should be classed as self-employed for tax purposes and recent changes to the national insurance regime also put actors and entertainers into the self employed categorisation.

However, for employment law purposes, Equity members are workers as their contracts of work are similar to a contract of service. They are also eligible job holders under pensions auto enrolment legislation. As workers, the Equality Act applies to them, however our members frequently report that misunderstandings about their employment status have led to inconsistencies and confusion when they are interacting with bodies such as DWP or when trying to use the Access to Work Scheme or other services.

In submissions to a number of bodies, including the Low Pay Commission, HMRC and DWP Equity has argued there needs to be a much greater understanding and recognition of the employment status of entertainment industry workers, particularly by Government Department services which have in the past advised businesses that performers are not workers.

We believe it is deeply unfortunate that the socio-economic duty, originally included in the legislation was subsequently removed. A responsibility on public bodies responsible for making strategic decisions to consider the impact on socio-economic disadvantage would have maintained an important link between poverty and the protected characteristics.

We know that those who face discrimination are also more likely to be on low incomes and that propensity is starkest for disabled people who we know are two and a half times more likely to be out of work compared with non-disabled people and twice as likely to be living in poverty.

**3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and other who have duties under them? How does this apply in the specific cases of public transport, taxis, education and access to sports grounds?**

We don't believe that there is sufficient awareness among employers about reasonable adjustments in general – either in terms of the basic legal requirements or in terms of levels of competence to judge what might be reasonable in a given circumstance. Moreover, the entertainment sector is characterised by significant levels of informal employment practices including networking and using casting techniques as the main recruitment mechanism. The casting process is no exception. Our members frequently audition for work and our disabled members routinely share their experiences of audition spaces not being made accessible and being auditioned in inappropriate spaces as a result – including on pavements – putting them at significant disadvantage compared to their non-disabled peers. This is further compounded by the reluctance of many of our members to challenge this formally - for fear of victimisation both in that and future castings. Inappropriate questions relating to members' personal characteristics, including age, ethnicity, marital status and parenthood status are often put during auditions further demonstrating the very low level of awareness of the law and good practice in this area.

Therefore, we are concerned that this environment is particularly difficult for disabled performers to navigate. It can often be difficult for disabled performers, especially those who have less visible impairments, to disclose that they are disabled. They do not necessarily have confidence that the Act will apply to them (or even know that they are protected) and can be concerned about making requests for reasonable adjustments. They are also concerned that any information they provide to engagers and employers should remain confidential.

In this respect we believe it would be helpful if further guidance were made available and publicised widely to both employers and workers about rights and responsibilities under the Act. We recognise that some guidance on providing reasonable adjustments has been

provided through the Code of Practice on Employment. However, we are concerned that the message is not getting through – particularly in the entertainment industry. We welcome the publication *Thinking Outside the Box* – joint EHRC and Ofcom guidance on increasing diversity in TV. Perhaps sector specific guidance would be useful across the entertainment industry and beyond. Guidance would be particularly useful in the entertainment industry as a means of building confidence among employers. Information about available schemes to support employers who may have costs, such as travel, accommodation and touring expenses would also be beneficial for our sector.

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

We recognise that this may not be straightforward given the significance of the concept of ‘reasonableness’ in the law in general. It is difficult to see what changes could be made to the law itself to improve its implementation. We appreciate too that the Code of Practice on Employment already contains information and guidance on this topic.

However, we are conscious that the current EHRC guidance on the Equality Act 2010 is very lengthy and difficult to navigate for employers and workers, particularly those who do not have access to specialist legal, human resources or diversity advice.

In the entertainment industry, and particularly among smaller employers in the live performance field, achieving reasonable adjustments can be very difficult whereas larger employers in film and television have many more resources at their disposal in order to meet their obligations under the Act.

That said in our experience, too often the employer’s instinct is to look for an exhaustive set list of reasonable adjustments – without understanding that what may be reasonable will be dependent on the circumstances and that as a result there is a degree of judgment – not specialist technical expertise – involved in deciding what is appropriate and feasible in any one situation. Accessible and practical guidance which can assist employers to understand their responsibilities in this area and to help them to develop and exercise their own judgment in order to meet their duties could be really useful.

Schemes such as Access to Work are important mechanisms which can bridge the gap between smaller, unfunded and larger organisations in the media and entertainment sector. As the majority of performers are self-employed, there is no ‘employer’ upon which the Reasonable Adjustment duty should be considered both in accordance with the Equality Act and the AtW scheme. With respect to self-employed workers, AtW expects the self-employed disabled person to pay for business costs in the same way that a non-disabled person would, for example in order to supply their own equipment. AtW will only pay for costs if the disabled person demonstrates that they have additional needs or expenses that a non-disabled self employed person would not have if they were in the same situation. This means that a disabled performer may be able to access help to pay for adapted accommodation nearer to a performance venue, but they would not be able to get help with their start up costs such as producing a showreel.

One actress who is a person of restricted growth (aged 34) contacted Equity for help in her claim for assistance in order to take up a theatre role. Her condition causes her to have a low immunity, mobility difficulties, chronic pain and fatigue. She is unable to use public transport safely at most times. She lives in the Midlands and was offered an acting role in a West End London show. She was the only disabled member of the cast playing a non-disabled role. Unable to find accessible digs she applied to AtW for the costs of accommodation as she

would be unable to travel to her adapted home each day due to (among many other factors) the unpredictable nature of theatre/show timings, her mobility related pain/fatigue and risks to her personal safety on transport, especially travelling at night.

It took several months of what she felt was ‘bartering’ with AtW in order for them to accept her request which caused her considerable stress. She was initially told by AtW that accommodation costs could not be given as they could only provide for the costs of aids or adaptations or special equipment. This appears to be contrary to AtW’s own guidance, which allows for such an item to be considered under a ‘miscellaneous’ category. In addition, the same theatre had applied for the same costs previously for another actor. The decision also appeared to fail to take into account the member’s self-employment status, imposing a mandatory cost share on the theatre, contrary to the self-employed rules outlined in the AtW guidance. The performer in question would not have been able to take up this important work opportunity if the theatre had not provided the accommodation costs upfront while she was waiting for AtW to approve costs.

Given the working reality for our members, we believe that a passport-type scheme should be developed whereby an assessment of our members requirements could be agreed between the individual and AtW – which they could then take with them from job to job – reflecting the nature of their work experience of successive short term contracts and ensuring greater consistency of decision-making.

**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?**

The public sector equality duty (including the race, disability and gender equality duties which preceded it) is both symbolically important as a legacy of the murder of Stephen Lawrence and a potentially powerful instrument. It is one of the few aspects of the legislation that requires public sector employers to act positively by tackling systemic inequality - and not just avoiding individual incidents of discrimination.

We believe that the public sector equality duty is potentially powerful and we recognise that there have been high profile examples where the duty has been used as a campaigning tool to challenge key decisions – for example government budget announcements. However, we are concerned that public bodies are required only to give ‘due regard’ to the need to advance equality – resulting all too often in decisions that will have adverse effects on protected groups which are justified retrospectively as risks that must be carried.

There are also additional shortcomings with the duty as it stands which we believe warrant attention:

- The lack of a statutory code of practice for the public sector equality duty which both limits access for public bodies to unequivocal advice on implementation and gives the message that the duty is a less important part of the law compared with other provisions in the legislation
- Much weaker monitoring arrangements are in place to support the public sector equality duty compared to the individual race, gender and disability equality duties – which ensured greater transparency and accountability. More prescriptive monitoring arrangements can also ensure particular issues are brought to light – and tackled as a result
- The exclusion of the private sector from the duty has limited the ability of the duty to meet the aims of the Equality Act by reducing the importance of tackling structural inequality to the public sector - giving the message that equality is not a relevant consideration for business



- The repeal of the socio-economic duty on strategic bodies has further limited the potential impact of the duty. As stated earlier, given the interrelationship between poverty and inequality it is unfortunate that these issues are not required to be considered more in tandem

**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?**

While we don't hold particular evidence on this, we do believe that a review of the different arrangements in each of the nations to identify any differentials in equality outcomes would be useful. It is significant that the devolved administrations chose to impose a higher standard of specific duties to accompany the public sector equality duty and is something of concern that we point to above.

**7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 on people with disabilities?**

We believe it is unhelpful that responsibility for different characteristics is divided across a number of government departments – seemingly for historical reasons as opposed to conscious design. The current approach promotes a silo-based approach to equality. We expect government to demonstrate greater leadership in this area. One way to begin to do this would be to consolidate both expertise in the civil service and ministerial responsibility across all protected characteristics – not least to reflect the rationale behind the Equality Act itself. This approach would enable the government to deliver greater consistency in this area and to develop a more sophisticated insight in addressing intersectionality and multiple forms of discrimination.

The cases we cite below show how this arbitrary division of labour undermines the government's own practice.

We have several examples of poor practice which in our view impede the effective implementation of the Act including the case of a 58 year old actress with hearing impairment from birth who came to Equity for help following a series of communication failures with HMRC and DWP. She was employed for 17 hours a week earning £6,200 per annum. Generally her self-employment work varies – she has earned extremely well in the past (working for a TV soap), but in recent years has earned between £4,000 and £10,000 from self-employed acting work. Her expenses are above average due to her disability; although she can lip-read she requires BSL interpretation in order to fully understand instructions and in order to respond and move properly on set/stage, at least initially. She has continually experienced difficulties communicating with government departments and their private service providers. She does not use text phone as this doesn't work on mobiles, she doesn't have a home phone and many acknowledge that text phone is an outdated medium. Most service providers initially refuse to communicate by email due to data protection issues.

This member requested a face to face appointment at the HMRC as a reasonable adjustment – this didn't happen. Instead the member had to call upon Equity in order for one of the members of our welfare and tax advice team to act as an advocate and a conduit for information. DWP have allowed our member to communicate by email after a long process which concluded with asking her to sign an electronic data protection agreement. In

instances such as this, it would be helpful if communications policies adhered to by government departments were consistent, relevant to the communications technology actually used by disabled people and brought more in line with the reasonable adjustment duty.

We also have experience of our members facing different self-employment tests being applied to them across different departments. One such member, a severely disabled actress and writer who works mostly in theatre and came to Equity for advice about remaining in work in the industry following complications arising from her employment status. Currently this member receives the highest rate of Disability Living Allowance. She does not claim Employment & Support Allowance as she wants to continue working which she does for just over 16 hours a week on average however she does experience ill health frequently as a result of her condition which limits her earning power. She earns on average £4,000 to £5,000 per annum net profit (after expenses).

As a single severely disabled person, if she were to claim the out of work benefit, she would be £70 per week better off. She is claiming in work benefit (Tax Credits – administered by the HMRC) however it is likely that her tax credit award will be investigated (potentially disallowed) in due course as she is reporting under the NMW x 16 hours per week and under new rules regarding self-employment, she will need to demonstrate that her self-employment is commercial with a view to profit if she is reporting net profit under NMW x 16 hours per week. In contrast she has been registered for self-employment with the HMRC income tax section (and therefore legitimately trading as a self-employed person) for over a decade.

She has also been refused AtW funding recently because ATW guidance currently requires the payment of class 2 NIC in order to be eligible as a self-employed claimant (despite the fact it is not an income or contribution based benefit but a grant scheme). For tax and NI purposes, she is not obliged to pay class 2 NIC if her net profit is under the Small Earnings Exception threshold – currently £5,965 net profit per annum (below her annual net profit). Our members also report not being able to remain in work because they cannot access help from the welfare system. Claimants currently have to demonstrate that they cannot perform a certain set of basic functions in order to be regarded incapable of work and to be entitled to the out of work benefit. Some of these tests, however also apply to disability benefits which can be claimed whether or not a person is in work, no matter how much they earn.

Entitlement in these instances is based on whether or not you can perform an even more basic set of physical and mental functions.

For example, claimants need to show that they cannot mobilise more than 20m in order to get the high rate of PIP mobility component (£ 57.45) which can be used to buy a mobility vehicle. Many disabled people, including many of our disabled members do not meet this threshold yet one of the biggest obstacles to our members with disabilities getting to work is difficulty with transport. At the same time schemes such as Access to Work are putting in place a cap due to increasing costs in areas such as taxi transportation.

An Equity member who is a person of restricted growth and has endured severe and continual joint pain from birth experienced a similar problem with accessing help with mobility assistance. Her mobility is limited and she uses a wheelchair. She applied to AtW for a lightweight wheelchair that would enable her to independently mobilize on stage and screen. She was refused on the basis that it would cost too much compared to the costs of employing a support worker to wheel her around. The member reports that it took 6 months of reasoning with the DWP until it was finally accepted that support work assistance would

not be appropriate and would interfere with her performances on stage and screen. The same member has also described difficulties with persuading AtW to give her a taxi/cab allowance to travel to her place of work. The member reports that the decision maker working on her case insisted that as she receives DLA at the highest rate for mobility, she should use this to pay for and use a mobility car, ignoring the fact that our member is often called to shoot at short notice and may not be able to drive as her pain levels may be too high.

**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?**

Equity has been concerned for some time that due to funding cuts the ability of the EHRC to help people via a helpline/casework has been severely restricted and would encourage the Government to commit extra funding to such services. We are alarmed by the level of cuts to the funding of the EHRC over time. By 2014-15 the EHRC's budget had been cut by 62% and had lost 72% of its staff compared to when it was set up in 2007. Any questions over its effectiveness and contribution must be seen in the context of the resources it is provided with to discharge its duties. A strong and independent body is needed to monitor and enforce equality law.

**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?**

Equity has logged two complaints with the Independent Case Examiner about the way in which Access to Work decision makers are exercising their discretion in relation to the scheme as there have no other method of appeal. One complaint was sent in February 2015 after all internal routes had been exhausted three months after the initial claim was made. ICE has recently notified Equity that 'although we have now received the case papers we are still not in a position to commence work on this case.' In this case our member was unable to pay for a support worker to assist with performance work in October (a mere £80). She needed a positive decision quickly so that she could take up the work opportunity at short notice. The other complaint (lodged in May 2015) has not been dealt with as yet either.

In general work opportunities in the entertainment industry arise and turn over very quickly and adequate support for disabled performers must be accessible and flexible to meet the needs of the industry. We are also concerned about ICE as an independent route of appeal given that they are a body administered by the DWP.

While it is right that all inspectorate bodies play their part in advancing equality by ensuring it is a mainstream consideration of their inspection regime, we believe that the EHRC – if properly resourced – could bring its specialist expertise to bear by assisting inspectorates in this area by providing expert opinion. In addition we wonder whether the EHRC - or another part of the judiciary - could develop a tribunal system which could be used to hear relevant cases, including those administered by central government departments such as Access to Work.

**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?**

Employment tribunals remain an essential means of enabling all workers to enforce their rights including disabled workers however changed imposed by the last Government effectively prevent the poorest and most vulnerable workers from ever being able to access justice. In order to lodge a discrimination claim a worker must pay £250 up front followed by a hearing fee of £950.

Fees of this magnitude effectively exclude many workers from being able to access justice. Equity's most recent survey of members, including members with disabilities, found that 11% earned nothing from their work in the entertainment industry and 67% earned either nothing or under £10k per year. Nearly half of respondents (46%) had worked in the entertainment industry for no pay in the past twelve months and of those who had 51% received no expenses.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

Equity is in favour of bringing the Access to Work Scheme into legislation with proper regulations and guidance and moving away from its current model which uses discretionary guidance for decision makers to work from. AtW is a much valued scheme and its discretionary status is intended to provide for flexibility for disabled workers however in practise we have found that there are several contradictions contained within the guidance that have led to erroneous decision making. We believe it would be possible to bring the scheme into legislation whilst retaining flexibility – for example, Personal Independence Payment (formerly Disability Living Allowance) is a benefit designed to cover all disabled claimants.

Guidance notes on AtW are very frequently updated by the DWP – so far we are aware of 26 versions which have been produced without consultation and/or feedback from service users or interested groups. This means that not only are claimants/advisers unclear as to the parameters of the scheme, there is no mechanism by which it can be effectively tested. Currently the ultimate mechanism would be a Judicial Review brought against the DWP if it were found to have not exercised its discretion properly regarding Access to Work. There should also be a formal appeals route put in place with an independent body or tribunal to oversee disputes/appeals.

We also believe that a new AtW guidance document for decision makers is urgently required, written in consultation with working disabled people and their representative bodies, with independent expert input on specific issues such as self-employment. The Work and Pensions Select Committee Report into Access to Work (published in December 2014) strongly emphasised the need for improved guidance and more extensive information to be published about all aspects of the scheme. Access to Work Staff and Decision Makers should also receive thorough training, the extent of which could be made public in order to inspire confidence in the scheme as a whole.

*3 September 2015*

## **Essex County Council – Written Evidence (EQD0039)**

Essex is one of the largest counties in the UK, with a population of nearly 1.74 million people, with Colchester and Chelmsford being the largest conurbations. It is socially, culturally and economically diverse, benefiting from close links to London. As a County Council, we achieved ‘Excellent’ for the Equality Framework for Local Government accreditation through the Local Government Association.

Based upon the 2011 Census, there are variations of the age profile of Essex residents. 18.3% of the population are aged over 65, but this varies across the County. For example, in Tendring, 27% of the population are aged 65 years and over, compared to 15% in the Harlow district. We also expect this age group to grow to 28% by 2033. It is estimated that of the people in Essex with a physical disability, 60% are aged 65 or over. It is estimated 32,724 of Essex residents has a learning disability, while around 150,000 residents will be living with a mental health disability.

We therefore need to ensure all services Essex County Council offer are accessible to disabled people, especially if they can create independence and improve outcomes for disabled people. The Public Sector Equality Duty allows us to think about the needs of residents and employees with different protected characteristics, including disabled people. Below outlines some of the ways we have adopted innovative approaches to the Duty, as well as some of the challenges we have experienced.

### ***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?**

The Equality Act 2010 has helped incorporate disability within the other protected characteristics. This has potentially helped public bodies identify the cumulative impact of decisions, e.g. the experiences of disabled women are likely to differ from disabled men. The Act has also maintained and strengthened the specific requirements around the provision of reasonable adjustments within the workplace as well as service provision.

#### **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

The Act could be strengthened by making it a requirement for public bodies to report on outcomes of equality objectives, but not in a burdensome way.

### ***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 sportsgrounds?**

Essex County Council has a number of innovative approaches to making reasonable adjustments for employees and service users. The examples below demonstrate how these reasonable adjustment duties are practically understood and delivered.

### **Inclusive Communications**

We have the [Inclusive Communications Website](#) (part of Essex County Council's - Family Operations Service) which aims to improve accessibility of communications disabled service users and employees. The website provides a range of tools and training packages to make services communicate effectively with people who have learning disabilities. The site provides support to Essex County Council internal departments, as well as wider community services, such as care homes and resource centres across Essex. It has won a number of national awards, including an Employee Network for Equality and Inclusion Award for inclusive communications.

### **Annual Health Checks:**

As part of the national health check programme, this project aims to identify best practice and research on accessible information and processes locally and nationally.

In 2015, The Inclusive Communications Essex team conducted 'formal' interviews with 37 people with a learning disability who are not engaged in any way with Essex County Council or the NHS. They discussed the Annual Health Check, Health Action Plans and Health passports to try to increase take up for people with learning disabilities due to health inequalities. As a result of the engagement, the team designed an easy read survey, and took the best examples of the above to reader groups for evaluation. We spoke with carers, parents and friends in order to gain substantial insight.

The outcomes of this engagement were:

- identifiable needs for accessible information, including video information
- the available information was suitable for everyone
- lack of knowledge about the annual health checks

The main recommendations were:

1. Clear processes were required for communicating the annual health checks for those with disabilities
2. Essex wide Easy Read information (using a combination of existing formats and information)
3. Video information regarding health checks
4. Promoting and raising awareness of the benefits of the checks with everyone, including those with learning disabilities, families, staff and carers

### **Disabled Employee Network**

The Council facilitates a Disabled Employee Network which meets 4-5 times a year and provides a space for disabled employees to share issues in the workplace. Employees are encouraged to attend meetings and take part in the network. Essex County Council recognises that the Network has been successful in advising on improving the working environment for disabled people, for example, advising on bullying and harassment through focus groups.

#### **4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

Essex County Council understands the complexity that can exist around the consideration of providing reasonable adjustments for employees due to the individualised nature of adjustment requests. The Council also recognises the wider need to address societal prejudices. Reasonable adjustments should be timely and receive appropriate management

intervention. It would be beneficial for public bodies to have greater clarity of understanding, as well as direction, around managing employment capability issues, particularly relating to those incidences where the employers has not been notified by the employee that reasonable adjustments should be considered.

### ***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?**

In practice, the Public Sector Equality Duty has been effective in a number of ways. Examples of how the Public Sector Equality Duty has been implemented in practice and where Essex County Council have paid due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations are listed below.

#### **Coproduction and ethnography**

Within Health and Social Care, we have started to use ethnography and coproduction within the areas of:

- Mental Health
- Learning Disabilities
- Dementia

For example, ethnographers engaged with people with learning difficulties and their carers in Essex, and with their consent, filmed and recorded their experiences in the community and in engagement with Health, Social Care and related services. Those films and experiences were shared with Essex County Council commissioners and wider organisation leads, many of whom were surprised and concerned by citizens experiences in engaging with public services, particularly those with learning disabilities . As a result of this work, services are more responsive to meet the needs of disabled people. For example, new contracts for personal support for people with learning disabilities were shaped by this approach.

This approach has helped Essex County Council to identify where there may be indirect **discrimination** based upon disability, as well as help us develop services which improve the outcomes for disabled people. The approach is in its infancy but is being adopted by People Commissioning as a standard engagement method. This also includes partnership agreement with Health Watch to adopt a citizen based approach to commissioning.

#### **Children and Adult Mental Health Services**

We involved them at every stage from consultation on their current experience of services, service design and throughout the commissioning and evaluation process.

Young people told us that the new service needed to be easier to access in places of their choice, have the right staff with the right skills to support them, use digital media better and communicate better to young people and families about the support on offer. This was built into the new service model, which is focused on accessible support within schools and communities. The new model will also use routine outcomes monitoring and regular feedback from children and young people so that in the future, we will have a much better understanding of what young people's needs and priorities are and how effectively these are being met.

Young people designed their own questions for the evaluation, engaged in competitive dialogue with bidders and evaluated answers. Their preferred provider was the successful bidder and is now working with young people to agree how they will continue to influence and feedback on the new service.

Priorities for this are:

- engaging in a dynamic way, ensuring that young people who would not normally engage do so
- building the skills and confidence of young people through engagement in services
- developing better informed and emotionally resilient young people

By taking this approach, we are attempting to ensure that we are reducing discrimination by ensuring that the service is meeting the needs of its service users.

### **Work Placements**

The Inclusive Communications Essex Team provides employment opportunities for people with learning disabilities. An employee with learning disabilities has been mentoring two young people with Autism on placements with the team; both are now more 'work ready'. This example provides opportunities for people with learning disabilities who are generally underrepresented to play an active part in the workplace. This helps promote equality of opportunity through positive action and again improves outcomes for people with learning disabilities.

### **Sensory Walls:**

Essex County Council currently has two sensory walls within a number of its libraries. Sensory walls aim to help with memory and anxiety for disabled people.

There are a huge amount of benefits to providing this specialist service within a universal service. The wall enables inclusion and access for children with disabilities in a public space and for children with disabilities to mix with non-disabled peers, play and learn together. It helps parents to socialise and meet other parents, provides a respite space (Basildon Sure Start use it for their crèche) as well as Basildon run 'back to work' sessions for parents whilst children are using the wall. Chelmsford Library also use it with dementia groups.

This demonstrates that we are taking steps to encourage people with learning disabilities to **participate** in activities run by Essex County Council library services.

### **Workplace Bullying and Harassment:**

Essex County Council performs well compared to comparative local authorities in regards to overall staff perceptions of bullying at work, improving by a number of percentage points from 11% from 2010-12, down to 9% in 2014 and 7% in 2015. Building on anti-bullying and harassment work and feedback from surveys, we now run regular 'Don't stay silent' electronic and poster campaigns, supported by:

- an in-house mediation service launched in summer 2014 which has helped resolve at least 2 disputes



- a dedicated anti-bullying helpline/email service, with 58 direct referrals to trained ECC anti-bullying links since July 2012. Options are available to speak to someone with the same protected characteristic, including someone with a disability
- an informal discussion facility with HR, taking 13 enquiries in the past financial year
- existing in-house counsellors
- guides on our intranet on addressing bullying, harassment and stalking.

We still have work to do on perceptions of disabled employees, although improved from 19.3% in 2014 to 15.7% and in line or better than national trends (and much improved from our lowest score of 24%), we are aiming for even greater improvements.

This demonstrates that we are taking steps to eliminate harassment in the workplace.

**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?**

At Essex County Council, we have used the Council's Equality Strategy 2015-18 to strengthen equality and diversity within the organisation, and in turn implement the duty. The focus of the equality objectives set out within the strategy has been to mainstream equality and diversity throughout the organisation. Within the strategy there are specific references to improving services for children and young people with special educational needs and disabilities, improving disability employment with the council and across Essex, as well as improving consultation processes.

The specific equality duty requires public bodies to publish equality objectives, however there is no requirement to monitor or publish outcomes of these objectives. For the purpose of transparency, it would be beneficial to require public bodies to publish outcomes of objectives before setting new objectives.

***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?**

No opinion

**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?**

The Equality and Human Rights Commission has been effective in inquiries, such as an inquiry into disability-related harassment. However, the Commission would benefit from improving communication of the results of these inquiries in order to share good practice.

**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?**

It would be helpful if there was synergy between the various inspectorates such as the CQC, Ofsted and HMI of Constabulary in terms of how effective agencies were in terms of monitoring outcomes for those protected characteristics under the Act.

**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?**

Tribunals should be wheelchair accessible and information be obtained in alternative formats on request. A textphone service is also available. When a claimant pursues a claim in the employment tribunal they can note on the claim form if they are disabled and they can request adjustments which are then approved by an Employment Judge. However, it is difficult to find any information on the gov.uk website about reasonable adjustments offered to disabled users which may deter potential disabled claimants. More could be done to explain what services are available to assist disabled individuals when using the courts and tribunals service.

Legal remedies are available but proceedings can be costly. There can also be confusion as to whether someone can bring a public law challenge instead of a private law action under the Equality Act 2010, as *Hamnet v Essex CC* demonstrated.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

Other non-legislative measures may improve the implementation of the Equality Act, for example, something on dealing with disclosures of those with disabilities in the work place – balancing out the need to offer reasonable adjustment with the understanding that employees may not be willing to disclose some disabilities.

*1 September 2015*

## **Clive Evans – Written Evidence (EQD0010)**

### **Submission to the Call for Evidence by the House of Lords Select Committee on the Equality Act 2010 and Disability**

1. My research has been examining the problems faced by wheelchair passengers when attempting to board London's buses, and ultimately anywhere in the UK, took a different approach to most research. It was assumed that the problems faced by this group of passengers existed, although evidence was obtained of the type of complaints they were making. Instead I identified and examined the policies of the Mayor of London with respect to disability and London's transport network.
2. London was specifically chosen because the bus network was controlled by a public body, Transport for London (TfL), and as such is governed by the Freedom of Information Act 2000. This meant that, in theory, I should be able to find the evidence required either from their website or upon request.
3. The research was also conducted using the principle of 'Due Regard' introduced in the Equality Act 2006, and continued in the 2010 Act.
4. The two key Mayoral policies identified as causing problems for all disabled passengers were those of reliability and accessibility.
5. When the first Mayor of London, Ken Livingstone, came to office in 2000, the bus network within London was viewed as unreliable. The reason for this unreliability was the policy, introduced in the mid-1990's, of reducing the level of subsidy to nil, which was achieved in 1997. However, the bus operators were unable, due to the contracts in place at the time, unable to make London's bus routes profitable. This meant that they were caught in a spiral of cutting costs, which meant that they could not replace vehicles or recruit new drivers, which resulted in penalties being incurred, which led to more cost cutting.
6. In order to make the bus network more reliable, TfL introduced a new contract which not only penalised bus operators for poor service but also paid a bonus if the level of reliability improved. What some of the bus operators did, and TfL are aware of this, was to reduce the value of their bid submissions for each route, and recover the lost profits from the bonus payments.
7. This type of contract would have been satisfactory except that the way in which the TfL contract is set up. TfL established for each route an acceptable level of reliability through the use of Excess Waiting Time. This is the amount of extra time a passenger has to wait at a bus stop for the bus if the route was operating to time. If the reliability for each route is above that predetermined level, then regardless of whether the reliability of that service improves or worsens, so long as the level of reliability is above what TfL expects then the bus operator will be given a bonus payment.
8. Because of this, bus operators have to ensure that the routes they operate maintain their level of reliability in order to maintain their profitability. Therefore pressure is

placed upon the bus drivers to keep to time. Because of the introduction of iBus, bus operators can do this on a real-time basis, meaning that drivers are forced to drive more aggressively; at times not pick up passengers; and, terminate services short of their final destination.

9. The conflict over the buses wheelchair space between parents with pushchairs and wheelchair users, was originally identified as a potential problem by Central Government in 2002. The requirement to provide a wheelchair space on buses was brought into legislation in 2000, and in 2002 the 'conduct regulations', which governed how drivers were to control the space, were introduced. The Government also published guidance to the 'conduct regulations' and it was acknowledged that a conflict could occur, although it could not have been known at the time the scale of the problem.
10. In London, and because of the nature of the contracts operated within the Capital it is likely that the rest of the country was aware, the scale of the problem over the demand for the wheelchair space had become apparent in 2005.
11. The problem itself was caused because bus operators and TfL failed to identify when the various regulations were introduced that there would be two groups within society that would need to use the space. If they did recognise that two groups would require the space, then there was a failure to account for the level of demand from both groups. Today, TfL estimate that the number of pushchairs using London's buses daily is three times greater than wheelchairs.
12. The problem is that bus operators, together with TfL, had taken the view that complying with the vehicle construction and conduct regulations was all they had to do to be compliant with the Disability and Equality legislation. Therefore, they took the view that it was for the passengers to sort the dispute out between themselves. In London this view has modified slightly, but still places responsibility for resolving the dispute remains with the passengers.
13. Whilst TfL have conducted research into why the conflict is occurring, knowledge of what is actually happening is held deep within the management structure of the organisation. The Board of TfL are not aware of their legal responsibilities within the Equality Act 2010, and therefore do not hold the senior management of TfL to account, nor take control of issues such as the wheelchair space.
14. Since 2012, management of TfL have presented the Board with data such as level of complaints and provided a brief explanation of those complaints. However, the data is presented in a manner that reduces the severity of the problems, and the Board have not had explained to them the importance of this data and the action they should take.
15. Similarly the London Assembly, who are responsible for holding the Mayor and the Greater London Authority group of organisations such as TfL, have been aware of all of the issues concerning the accessibility of London buses, and have even been told about the underlying reasons as to why the problems are happening. However, they

have failed to understand the relevance of this information and have not pursued TfL in an appropriate manner. This includes failing to hold to account the whole TfL Board. Instead they have held the Mayor and the Commissioner of TfL to account.

### **General Questions**

16. From my examination of the issues surrounding accessibility of London buses by disabled passengers, I am of the view that the legislation itself is sufficiently strong enough to deal with discrimination. There are however three problems. The first is the ability of organisations such as bus operators to argue that the regulations that govern the bus network within the UK overrides the Equality Act 2010. Whilst this may be true, there needs to be clarity in making organisations aware that regardless of whether they are a public authority or not, they must have all 'due regard' to the needs of disabled people when making policy decisions.
17. The second is that public authorities, such as TfL, have failed to fully understand the requirements of the legislation regarding 'due regard'. Currently they have a scheme that is based upon the race discrimination legislation, which is only applied to major projects and not to day to day policies and procedures. As a result, there has been little consideration to the implications of policies such as reliability on the bus network with respect to disabled passengers.
18. The third problem is one of enforcement. Doug Paulley has been permitted to appeal to the Supreme Court regarding his dispute with First Bus. The fact is that this case should never have got to this point because First Bus have been arguing on a technicality which is actually legislated against within the Act, and against the advice issued by what is now the Equality and Human Rights Commission in 2006. There needs to be a mechanism in place whereby complaints against businesses and public bodies can be brought free of charge to an ombudsman, and any challenges to the decision of the ombudsman can then be brought to the courts.

*15 July 2015*

## **J L Evans – Written Evidence (EQD0114)**

I would like to draw your attention to problems as a visually impaired person who cannot read standard print without using a visual aid.

I have faced during 2015 from the following sources letters sent in standard print

(1 Health, 2 Insurance and 3 Travel information)

### 1 Health

During 2015 I have had a major problem in getting the C Q C to send me a letter they sent to me in March about a survey of my care company. After many months I finally got someone to call and to take away the letter and print out in large print. I finally got a small amount of compensation in the form of £50 00.

We now have the standard to prevent this happening which is to become a legal document in 2016/

I have recently been sent a standard print letter from the Newcastle eye clinic and have contacted them to sort this out.

During 2013/14 I had great problems with the Dental Services Authority over not getting large print letters and no compensation was given.

### Insurance

During 2015 I have had many battles with insurance companies not sending me documents in large print

They are [2 NAMES REDACTED]

IN early June I contacted Insure and go for a quote for travel insurance but until the Financial Contact authority intervened I was getting several copies of the policy in standard print finally they sent me a copy of the policy in large print.

[NAME REDACTED] sent me a quote for my house insurance for period 2015.16 but they did not send me large print letters plus it was going to be increased so I found a cheaper quote from the Coop. I am waiting for large print copies to arrive.

### Travel Information

I am very concerned that my travel provider has decided to change the format on timetables put in bus shelter across Tyne and Wear. They are now not easy to read as the font size has been reduced and is not easy to read.

I have tried to discuss this problem but no action to improve the size has been done especially where there is plenty of room to change the font size.

Train travel across the North East operated by Northern Rail is not acceptable as they continue to use Class 142 pacer units to Carlisle. I think that it is a case to try and get policy changed and give up some of the money for HS2 and provide new stock for local services in the North East as well as the North West.

In relation to train announcements at Newcastle they are very difficult to hear so I think this is a decimation and therefore not equal to sighted people as information screens are high to read without using my visual aid.

On many of the trams system which been built the ticket machines which I would need to buy a ticket are not accessible because the print is too small and the key pads do not have large buttons to navigate through to buy the right tickets for travels. These systems do not have any staff to help get the correct tickets so I think we should be telling government the best way they could sensory people have better life is to introduce a National Disabled travel permit where we could travel freely without restrictions. We should get a better deal in discount on rail travel such as increasing the level of discount to 50% and no time restriction when using a rail over / day ranger ticket

Many times I have had discussion with bus drivers outside of my local area is that my C T permit will not scan so the driver says it is not valid when it is because they do not look at the date on my pass

There are a lot of stations with ticket barriers which give restricted access to trains and there is not enough staff to help you get through these barriers. Trains operated by both X Country and Trans Pennine do not have enough stock and catering facilities is not easy to access on board. T P Express do not have any catering at weekends.

A further problem is that bus operators are not making access to travel on buses by not providing audible announcements on their buses. So far limited success in getting operators to provide this but one of the major companies have no plans to introduce this but people who live in London have this service provision on all buses.

So to conclude there are many areas of unequal access to information so as a sensory impaired community we face many barriers in getting around equally compared to fully sighted people.

Also getting a job at my age is not easy as being sensory impaired person and over 60. So I face many daily problems as mentioned above.

I would like you to present this statement to the select committee as I feel the Equality Act is not helping to remove barriers we face as a disabled person living and getting around without a great lot of help but many sensory people do not have the confidence to get about easily

*17 August 2015*

## **Professor Ralph Fevre – Written Evidence (EQD0130)**

### **Summary**

This submission consists of three sections. Section One summarises some of the best scientific evidence on the underlying problem which the 2010 Equality Act is meant to address (Fevre et al 2009; Fevre et al 2012, 2013). Like all of the preceding legislation, the Act fails to take into the account the most important fact about the discrimination and harassment suffered by people with disabilities in employment: they are rarely aware of it when it happens to them. Section Two draws on some of the best available research (Fevre et al 2011; Foster and Scott 2015 ) to explain why people are not aware of this discrimination and harassment. It suggests that the key to the future success of any legislation will be depend on finding a way around the existing reliance on what employees know about their treatment at work. The third and final section looks at possible agents of such change. One possibility is to redesign the legislation so that the onus for recognising discrimination and harassment is placed on those who would be legally liable for it, rather than those who suffer from it. The design of the Americans with Disabilities Act (ADA) offers one possible template in conjunction with an American style EEOC instead of a largely ineffective, indeed often invisible, EHRC. One area of the existing legislation that has more in common with the American approach is the Public Sector Equality Duty and there are some ways it could be developed to aid the shift away from relying on those who suffer discrimination and harassment to know that this has occurred. Finally, worker representatives, occupational health and other health professionals could play an important role in changing what employees know about their treatment at work but all three groups require assistance and guidance which might require legislation or other measures.

### **Section One**

1. The point of the Equality Act is to make provision for legal redress when people know they have suffered discrimination or harassment because of their disability. The best available research evidence strongly indicates that only a very small number of employees with disabilities reach this conclusion yet a far higher number of them suffer this kind of treatment.
2. The most reliable British data about what happens within employment (not covering recruitment or leaving employment) prove that discrimination and harassment is a far bigger problem for people with disabilities than it is for any other protected group. This is established by the Government's own Fair Treatment at Work Survey (Fevre et al, 2009), the most representative and reliable study of its kind. Moreover, this result holds in multivariate analysis where allowance is made for all of the other factors (related to the employee, their job and their workplace) that might be correlated with discrimination and/or harassment.
3. The dependent variable in this analysis is a summary measure of the potential problems in work experienced in the previous two years. Much the biggest component of this measure is provided by problems with employment rights (covering problems with pay, grievances, health and safety, contracts, time off sick and so on). It also includes unfair



treatment and discrimination, bullying and harassment, and other serious problems at work. Employees with disabilities are the only protected group statistically more likely to have experienced these problems and the effect is enormous. Holding all other factors constant, they are nearly twice as likely to experience these problems as anyone else.

4. Simple bivariate analysis also shows which kind of problems will be most prominent within this overall pattern. Employees with disabilities are most likely to report problems with sick leave or pay but also with holidays, rest breaks, number of hours or days, pay, contract, set procedure for a complaint, set procedure for a grievance, health and safety, and retirement. This suggests that employees with disabilities are not more likely to report problems at work simply because they are more likely to perceive that they have been subject to discrimination or harassment.
5. In fact there is very little evidence that perception of discrimination and harassment contributes to the enormous difference in reported experience of employment between those with and without disabilities. There is even less evidence that people with disabilities perceive their experience in employment as the consequence of disability-related discrimination or harassment.
6. Looking at discrimination and unfair treatment alone, and once more using multivariate analysis including all of the potential correlates, we find none of the protected characteristics, not even disability, are correlated with respondents telling researchers they have experience of discrimination or unfair treatment. The Fair Treatment at Work Survey also asked respondents to give the reasons they thought they had experienced unfair treatment. The proportion of those who said they had experienced unfair treatment because of a long term illness or other health problem was 8% and the proportion of those who thought the reason was their disability was smaller still at 3%. The comparable figures for discrimination were 8% and 4%.
7. So, having a disability means you are far more likely to have employment problems but, at the same time, very few people with disabilities think they are experiencing problems because of discrimination or unfair treatment. This means the raw numbers of people who translate their higher experience of problems at work into personal experience of unfair treatment and/or discrimination are very small, much smaller than the prevalence of disability in the working population would suggest. Thus 1.2% of the working population are workers with a disability who have experienced unfair treatment and 0.7% are workers with a disability who have experienced discrimination.
8. Having a disability does however, make people more likely to say they have experienced bullying and harassment. In fact multivariate analysis confirms that three of the protected groups are more likely to experience bullying and harassment. Workers with disabilities are more than twice as likely as those without disabilities to suffer bullying and harassment. The effect is stronger for disability than for gender, but strongest of all for sexual orientation.
9. Yet despite the greater awareness than in respect of unfair treatment and discrimination, even in the case of bullying and harassment workers with a disability do

not think that they are suffering bullying and harassment because of their disability. This is confirmed by data from the British Workplace Behaviour Survey, a less well-resourced survey than the Fair Treatment at Work Survey but one that nevertheless meets normal scientific standards for representative and reliable surveys (Fevre et al, 2012, 2013).

10. This survey confirmed the finding of the Fair Treatment at Work Survey that workers with a disability are far more likely to experience bullying and harassment than those without a disability. The Survey used a summary measure of 21 variations of this kind of ill-treatment including being subjected to persistent criticism, being shouted at, or even threats or violence at work. Once more, the study used multivariate analysis so all possible causes were considered at once, and this analysis showed that disability had a far greater effect than any other factor. The only other protected ground that featured was sexual orientation but it did not come close to the same level as disability. So, holding all other things constant, those with a learning difficulty, psychological or emotional condition, had an increased risk of the 21 types of ill-treatment to the tune of 177%. The risk for those with other disabilities and long-term health conditions was increased by 102%. The risk for those with physical disabilities was increased by 15%.
11. The British Workplace Behaviour Survey also asked respondents about the root causes of ill-treatment. Only 11 out of 284 respondents said that their experiences of ill-treatment at work were related to their disability and only 25 out of 284 felt that the ill-treatment was related to their long-term illness or other health problems.

## **Section Two**

12. There is strong scientific evidence to suggest employees with disabilities are not alone when they fail to perceive their experiences in employment as discrimination and/or harassment (Fevre et al 2011). Whatever protected group is considered, employees rarely think they have suffered discrimination in recruitment. This makes sense because those who are responsible for discrimination usually take pains to cover it up but the surveys discussed so far also suggest that people do not expect to come across discrimination in their workplace. They expect employers and managers to behave rationally and they are not primed to look for evidence of discrimination. Even when they do think they have experienced discrimination or unfair treatment they tend to rationalise this, for example telling researchers they have been the victims of a personality clash or that there are particular reasons why the discrimination or harassment was actually rational and not the result of prejudice (Fevre et al 2009, 2012). This applies as much to those with a disability as to other protected groups.
13. It is perhaps small wonder that people are not primed to look for discrimination in the workplace when they usually have no notion of how prevalent it is. We need to bear in mind that people with disabilities usually have no idea of the extent of discrimination and harassment of people with disabilities described in Section One of this submission. Yet, even if they did know this, would they assume they might be affected? In the surveys reported in this submission respondents were obliged to give researchers the information that allowed their classification as employees with a disability but of course

this does not mean that most of those who were so classified would think of themselves as employees with a disability and still less as members of a protected group.

14. In the qualitative case studies described in Fevre et al (2012) and Foster and Scott (2015) there were several examples of employees who the researchers were confident would have qualified under the Act but who did not think they had a disability. Even if they did think that they might be protected there were others, including managers, who would deny that this was so. This last finding is not surprising since the surveys reported earlier showed that managers were the single most important cause of the bullying and harassment experienced by employees with disabilities.
15. Even if they do know they have protection as workers with disabilities and think they have experienced discrimination or harassment because of it, substantial minorities of the workers identified as disabled in the Fair Treatment at Work Survey did not think that what they had experienced was a breach of their legal employment rights (Fevre et al 2009). Indeed, only about half of those who thought they had suffered discrimination in work because of their long-term illness or health problem thought it was a breach of their legal employment rights.
16. The 2010 Equality Act did nothing to alter the basic facts describe in paragraphs 1-15. If legislators were determined to take more effective action to reduce the numbers of people with disabilities who are affected by discrimination and harassment, this would require some bold and creative solutions to the fundamental problem that employees do not recognise when they have suffered discrimination and harassment because of their disability.

### Section Three

17. The third and final section of this submission looks at the most likely solutions. One possibility is to redesign the legislation so that the onus for recognising discrimination and harassment is placed on those who would be legally liable for it, rather than those who suffer from it. The design and operation of the Americans with Disabilities Act (ADA) offers one possible template. For example the *Enforcement Guidance for Reasonable Adjustment and Undue Hardship Under the Americans with Disabilities Act*<sup>108</sup> specifies that a process by which discrimination is eliminated from the employment experience of an employee with disabilities need not require that the person identifies themselves as either disabled or in need of reasonable adjustment. All that is required is that an employee makes a request, for example one concerning pay, grievances, health and safety, contracts, time off sick or one of the other areas of employment which was noted as problematic for people with disabilities in paragraph 3 above. The ADA shifts the onus to employers who, with the aid of clinically-qualified professionals, must establish that the employee is covered by the legislation and that the request being made amounts to a reasonable adjustment which cannot be legally denied. Monitoring and compliance is

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<sup>108</sup> <http://www.eeoc.gov/policy/docs/accommodation.html#intro>

provided by the Office for the Equal Employment Opportunity Commission (EEOC), a far more active and effective body than the EHRC.

18. Short of this kind of wholesale revision of the legislative approach there are other more modest solutions to the problem of the knowledge gaps describe in Section One. Recent work by Foster (2015) show how in Wales the Public Sector Equality Duty has been pursued with equality plans and support for Equality Impact Assessments. Equality representatives on the ground report some positive outcomes which promote disability equality in employment: including 'changes in policies, practices and criteria relating to sickness absence and associated disciplinary procedures (relevant to indirect disability discrimination), improvements in the training of managers on reasonable adjustments, better facilities for disabled staff and a greater proportion of staff being willing to request workplace adjustments'.
19. Foster (2015) notes that in Wales equality representatives receive some support from the Welsh Assembly Government but nevertheless are sometimes lacking in knowledge themselves. The importance of generic workplace representatives to equality was established by the Fair Treatment at Work Survey which showed that for all types of employment problems, 'Key conditions for positive outcomes were seeking information or advice from a manager of a trade union or staff association representative in the workplace' (Fevre et al 2009). The qualitative research reported in Fevre et al (2012) confirms that worker representatives can be a great help in filling the knowledge gaps described in Section One but are overloaded with individual casework and additional expectations heaped on them by employers and trade union head offices. Foster (2015) reports that the help give to equality representatives by the Welsh Assembly Government (including a collective agreement on facility time in the public sector) may have gone some way to addressing these problems. Foster's research also documents the emergence of disability specialists who may themselves have experience of a disability amongst the equality representatives. She raises the possibility of considering facility time as a reasonable adjustment for this sub-group. More generally equality representatives need training and given the key role they could play in filling the knowledge gaps it is easy to see the case for Government support for this role.
20. The qualitative evidence reported in Fevre et al (2012) showed that occupational health and other clinical professionals could make a significant contribution to filling the knowledge gaps described in Section One however access to these professionals was often restricted and, in the case of occupational health, often provided by a remote call centre entirely unsuited to providing disability assessment services (for example as required under the ADA in the United States). Analysing the same qualitative evidence, Foster and Scott (2015) show that occupational health professionals frequently abdicate responsibility and leave the determination of disability status, discrimination and reasonable adjustments to uninformed line managers. Their interventions are all too often unplanned and rather too late in the day (for example, too late to stop problems escalating into disputes). As things stand neither occupational health nor the resources of the NHS (including GPs) can give employees and employers the help they need to decide which employees are covered by the legislation, when discrimination or harassment has occurred and when reasonable adjustments may be required. Further

training and support are clearly required if these professionals are going to be in a position to fill the knowledge gaps described in Section One but, properly resourced they could be given a key role within a revised legislative framework along the lines suggested in paragraph 17.

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4 September 2015

## FirstGroup plc – Written Evidence (EQD0133)

### INTRODUCTION

- 1 FirstGroup plc's UK Bus Division ("First") welcomes the opportunity to respond to the call for written evidence of the House of Lords Select Committee on the Equality Act 2010 and Disability. We hope it will be of assistance to the Committee to have the perspective of a leading provider of public bus services throughout the UK. We consider that our response is relevant to questions 3, 4 and 8 posed by the Committee's call for evidence.
- 2 First operates around a fifth of local bus services in the £4.4bn deregulated market outside London. First is one of the largest bus operators in the UK with a fleet of approximately 6,300 buses serving around 1.7 million passengers a day across over 40 of the UK's largest towns and cities as well as in rural areas across the country. We employ 18,000 people operating from around 70 depots.
- 3 We hope that this submission will provide the Committee with a useful perspective on compliance with the anticipatory duty to make reasonable adjustments<sup>109</sup>, pursuant to the Equality Act 2010, in a public transport context. In particular, as we explain below, we think about the fulfilment of this duty as part of our wider efforts, working alongside disabled groups and those with disabilities, to improve the accessibility of our services and the experience of our passengers.
- 4 We note that the Committee has already heard evidence which refers to the case of *Douglas Paulley v FirstGroup plc* ("Paulley") and the case of *Black & Others v Arriva North East Limited* ("Black"). The Committee will know that the *Paulley* case is currently before the Supreme Court. As defendant in the Paulley case, it would be inappropriate for First to comment on any of the arguments currently before the Supreme Court. However, given that some of the evidence already heard by the Committee relates to the *Paulley* and *Black* cases, we hope that it will be of assistance to the Committee to have our summary of the findings and issues in those cases.

### IMPROVING ACCESSIBILITY FOR ALL PASSENGERS

- 5 First's vision is simple – to provide solutions for an increasingly congested world, to keep people moving and communities prospering. To this end, we want to encourage and enable as many people as possible to use our bus services, including, of course, those with disabilities.
- 6 To that end, we work hard to ensure that considering the needs of all disabled customers is an integrated and visible part of our business. This begins with training. All of our 13,500 drivers receive full customer service and disability awareness training as part of their initial training. The Driver Certificate of Professional Competence (DCPC) course includes disability awareness training agreed with the Department for Transport. In addition, all of our new drivers receive City & Guilds accredited training and instruction on use of the wheelchair ramp and wheelchair handling. This training

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<sup>109</sup> See paragraph 18 below

includes participating in practice scenarios to replicate real life experiences and aims to ensure our drivers are aware of how to assist wheelchair users. This training also includes modules showing drivers how to identify and help customers with sight loss or who may be suffering from dementia.

- 7 We ensure that this driver training is consistently refreshed to reflect changing needs and best practice. For instance, as part of our ongoing work with the Prime Minister's Champion Group on Dementia Friendly Communities, we have worked with the Alzheimer's Society to develop a DCPC module for drivers designed to specifically increase their understanding of dementia and enable better support for dementia sufferers and their carers. We are proud that this industry-leading work secured the 'Business Award' at the inaugural Dementia Friendly Awards, organised by the Alzheimer's Society, in June 2014.
- 8 As an addition to the training and information already available, since autumn 2014 all of our drivers are issued with a briefing leaflet, as an easily available source of reference for an explanation of their responsibilities and the company's policy towards wheelchair users. This is further supported by depot notices and information on the internal staff website.
- 9 Our vision is also reflected in our investment programme. First has invested £385m in 2,200 new vehicles since 2012. This is not just to ensure that our bus fleet is as modern as possible in terms of comfort, convenience (all our new buses provide free Wi-Fi) and carbon footprint (all new buses are fitted with Euro V standard low-emission engines or other low-emission technology) but also is in no small part driven by the need to meet our obligations for wheelchair accessibility. The deadlines for full wheelchair accessibility are laid down in the Public Service Vehicle Accessibility Regulations 2000 (as amended) (the "PSVAR Regulations") – 1 January 2016 for single-decker vehicles and 1 January 2017 for double-deckers. We are making excellent progress towards meeting these deadlines. Indeed some of our local fleets have already achieved 100% PSVAR compliance for vehicles – including York, Leicester and the Midlands. The overall proportion of our fleet which is fully compliant with Schedule 1 of the PSVAR Regulations 2000 is currently 86% and a further 10% of our fleet is of "easy access" low floor construction.
- 10 Furthermore, all new buses bought by us from 2012 have a re-designed front layout, fitted with extra space for wheelchairs and pushchairs as standard, as well as extra grab-rails. The design process was carried out in consultation with a number of different customer groups:
  - wheelchair users - both those confined to wheelchairs, and those with some mobility;
  - parents with pushchairs and their children;
  - elderly people;
  - visually impaired people; and

- young people.

We believe that this revised design achieves the optimum balance between competing needs – any more dedicated wheelchair/pushchair spaces would lead to problems for the elderly infirm and ambulant disabled who would have to walk further to access seats. The layout remains under review and will continue to be refined in future.

- 11 Whilst there is no legislation pertaining to the carriage of mobility scooters on buses in the UK, First subscribes to the Mobility Scooter Code of Conduct established by the Confederation of Passenger Transport in conjunction with the Department for Transport. This sets out commonly-agreed "ground rules" for mobility scooter users and bus operators, so that Class 2 Mobility Scooters can be carried on any of our vehicles which is wheelchair accessible, provided that the customer has obtained a permit to travel (which includes a requirement for the customer to undergo training provided by the bus operator on how to use their scooters on a bus). Class 3 Mobility Scooters, which are themselves road-going, are not carried on local buses.
- 12 We have also worked with other disability groups to improve our service to people with disabilities. For instance, we worked with the Disability Action Alliance to develop our Safe Journey Card and Better Journey Card concepts. These cards discreetly allow customers to let drivers know if they need extra help or assistance on their journeys.
- 13 We also work with the national charity Guide Dogs and we developed a new training package to enable us to deliver sighted guide training to all our drivers giving them a skill for use both in and out of work. In March 2014, First became the first public transport operator to sign the RNIB's 'Bus Charter' which is designed to improve services for customers with visual impairments.
- 14 We are also examining the options for delivery of audio visual next stop passenger information. During 2015, in conjunction with RNIB, we have been running a trial of smartphone-based audio visual next stop information in Leeds and this has proved to be very successful and welcomed by passengers, in particular the visually impaired. We are about to test the next development of this system, where the information is available on the bus, to all passengers, without reliance on the previously essential infrastructure. We are hopeful that this may provide a practical and effective solution to provision of such data more widely. We also use the "traditional" method of providing audio visual next stop information on a selection of our services.

#### **RELEVANT LEGISLATIVE CONTEXT**

- 15 As the Committee will be aware, there is a quite complex legislative regime relating to the layout of buses and the priority use of certain designated spaces within the bus for wheelchair users and other disabled passengers, including the PSVAR Regulations and the Public Service Vehicles (Conduct of Drivers, Inspectors and Conductors and Passengers) Regulations 1999 (as amended) (the "Conduct Regulations").
- 16 This regime was most recently considered by the Department for Transport during 2015 in the passage of the Public Service Vehicles (Conduct Of Drivers, Inspectors, Conductors



And Passengers) (Amendment) (England And Wales) Regulations 2015 (SI 2015/ 888). The explanatory memorandum to the Regulations explains that "*the Department's proposal not to make any alterations to regulations 11 to 17, which set out the responsibilities for drivers and conductors in respect of wheelchair users and disabled passengers received a balanced response (15 in favour, 12 against)*" with the majority being in favour of making no change to these Regulations.

- 17 The interpretation of these Regulations is an issue before the Supreme Court in *Paulley* so we will not comment further.
- 18 First recognises that its duty to make reasonable adjustments under the Equality Act 2010 is an anticipatory duty "*in the sense that it requires consideration of, and action in relation to, barriers that impede people with one or more kinds of disability prior to an individual disabled person seeking to use the service*" and that it is a duty "*owed to disabled people generally. It is not simply a duty that is weighed in relation to each individual disabled person who wants to access a service provider's services*"<sup>110</sup>. We also recognise that what constitutes a reasonable adjustment "*depends on all the circumstances of the case*" and therefore requires us to consider the wider circumstances, for example the effect on other passengers and on drivers.
- 19 The question of how to give effect to this duty in the provision of access to the wheelchair space on our buses is an issue before the Supreme Court in *Paulley* so we will not comment further.

## **SIGNIFICANT LEGAL JUDGMENTS**

- 20 The Committee has already heard evidence on the issues raised in *Paulley* and *Black*. In its judgment in *Paulley*, the Court of Appeal set aside a county court judgment that First had discriminated against a disabled wheelchair user by failing to require another passenger to vacate the wheelchair space on one of its buses. Mr Paulley has been given permission to appeal to the Supreme Court against the decision of the Court of Appeal. Given the extant appeal, this submission is, of necessity, limited to a factual explanation of the case of *Paulley*, and its relationship to the decision in *Black*, and the relevant issues in those cases. In light of the Supreme Court proceedings, we do not think it would be appropriate for First to comment on how the law in such cases ought to be interpreted, nor to address directly the questions raised in the call for evidence insofar as they are relevant to the appeal.
- 21 Both cases demonstrate the need to consider "*all the circumstances of the case*", as required by the Equality Act Code of Practice (paragraph 34 refers), including both the need to consider the practical day-to-day application of any adjustment aimed at enhancing disabled accessibility, and also the balance of legitimate, and not always compatible, needs.

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<sup>110110</sup> These quotes are taken Chapter 7 (in particular 7.19 and 7.20) of the [Equality Act Statutory Code of Practice for Services, Public functions and Associations, published by the EHRC](#).

- 22 We are concerned that there may be some confusion as to the nature of the issues raised by these cases. In particular, in its first evidence session of 7 July the Committee was told:

*"In terms of the relationship with other groups within the Act, we are not conscious of disabled people being in what might be called conflict with the other groups... One possible exception that might be in the minds of the Committee is Paulley v FirstGroup, the case in which the Court of Appeal relatively recently ruled in favour of a mother with a buggy using space on a bus and against a disabled man in a wheelchair."*

- 23 It is not accurate to say that the Court of Appeal "ruled in favour of a mother with a buggy" and "against a disabled man in a wheelchair". In his judgment, Lord Justice Lewison said this:

*"1. This appeal has attracted some public interest, so it is important to be clear about the issue. It is not about whether non-wheelchair users should move out of the wheelchair space on a bus in order to accommodate a passenger in a wheelchair. Of course they should if that is possible. Nor is it about whether mothers standing in the wheelchair space with a child in a folding buggy should fold their buggies in order to make way for a wheelchair user. Of course they should if that is possible. Non-wheelchair users, unlike wheelchair users, will normally have a choice about which part of the bus to sit or stand in. Common decency and respect for wheelchair users should mean that other passengers make way for them. What is at issue is whether the bus company must have a policy to compel all other passengers to vacate the wheelchair space irrespective of the reason why they are in it, on pain of being made to leave the bus if they do not, leaving no discretion to the driver.*

*2. For the reasons that follow I have concluded that that is a step too far."*

- 24 As can be seen from these passages, the Court of Appeal was not being asked to adjudicate between the competing claims of mothers with buggies and wheelchair users. It was considering a different question: whether bus companies are required by law to have a policy to compel all other passengers to leave the wheelchair space irrespective of the reason they are in it, on pain of being made to leave the bus if they do not, leaving no discretion to the driver. The answer to this question was "No". The Court therefore found that First did not have to change its policy.
- 25 We also note that it was reported to the Committee in its 7 July evidence session that Arriva had decided to discontinue its appeal in *Black*<sup>111</sup>. This is incorrect.
- 26 In brief summary, *Black* was a claim by ten claimants against the bus company Arriva North East, relating to various incidents in which the claimants (who were wheelchair users) had not been able to access the wheelchair spaces on buses because they were occupied by people who either could not or would not move despite a request from the

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<sup>111</sup> Tracey Kerr: Perhaps I can answer that one—to some degree, anyway. The Arriva North-East case was going to be joined with the Paulley case, but Arriva decided not to take it any further, so it is relying on the Paulley decision in the Supreme Court to see how it develops in that area.

driver that they should do so. The claimants alleged this amounted to discrimination, harassment and/or a failure to make reasonable adjustments. The Court ruled that Arriva had not discriminated against the claimants and that, applying the test for whether a reasonable adjustment was required pursuant to the Equality Act 2010, no adjustment was required. It confirmed the Arriva's policy and practice in relation to the wheelchair space was not discriminatory. One of the claimants subsequently sought permission to appeal but later discontinued the appeal. To assist the Committee we have included brief details of this claim at Appendix 1.

## THE PAULLEY CASE

27 Given the attention this case has already received in the Committee's deliberations, and the wider publicity it has received, we feel it would aid the Committee's understanding if we went into some detail on this key case. The [full text of the judgment](#) is available on the Courts and Tribunals Judiciary website<sup>112</sup>. The facts giving rise to the Paulley claim are set out at paragraphs 3-8.

28 Mr Paulley tried to board one of First's buses at Wetherby. The driver told him to wait because the wheelchair space was occupied by a woman with a sleeping child in a pushchair. The driver asked her to move and fold down the pushchair so that Mr Paulley could use the space. She said that the pushchair did not fold down and refused to move. Mr Paulley therefore had to wait for the next bus.

29 The bus driver had acted in accordance with First's policy, which stated:

*"Wheelchair users have priority use of the wheelchair space. If this is occupied with a buggy, standing passengers or otherwise full, and there is space elsewhere on the vehicle, the driver will ask that it is made free for a wheelchair user. Please note that the driver has no power to compel passengers to move in this way and is reliant upon the goodwill of the passengers concerned. Unfortunately, if a fellow passenger refuses to move you will need to wait for the next bus."* [our emphasis added]

30 The County Court found that First had breached its duty to make reasonable adjustments. Specifically, it found that it would be a reasonable adjustment for First to change its policy from one that *requested* other passengers vacate the wheelchair space (a "request policy") to a policy which *required* them to do so (a "require policy"). The County Court suggested that this could be incorporated in First's Conditions of Carriage.

31 First appealed this decision for two reasons:

(a) *Paulley* and *Black* were two County Court judgments concerning the same legal issues and materially identical facts that reached opposite conclusions. It was therefore in the interest of passengers and the industry as a whole, to have clarity about what bus operators were legally required to do and how. In granting permission to appeal, the Court of Appeal agreed that the uncertainty created by the two conflicting judgments was unwelcome (which is one of the reasons that the

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<sup>112</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2014/12/paulley-v-firstgroup.pdf>

cases were initially listed to be heard together in the Court of Appeal before the appeal in *Black* was discontinued by the Claimant).

- (b) More importantly, the adjustment required by the County Court required a rigid policy of priority for wheelchair users over all other passengers. Such priority would have applied irrespective of other passengers' legitimate need to use the same space and even if this left them with no option but to leave the bus part-way through their journey, potentially in an unknown location. Moreover, it would invite confrontation (between the bus driver and passengers, as well as among passengers with differing needs), and would be a policy which our drivers had no legal powers, or practical means, to enforce and therefore serve neither the interests of disabled people nor those of passengers more generally.
- 32 We knew from our experience that there are many real life situations in which a passenger occupying the wheelchair space would consider it unreasonable to have to move from that space. Such examples (which were outlined before the Court of Appeal) include cases where:
- the passenger has need of the space because he/she is disabled, albeit not a wheelchair user, and needs the space to safely secure, use or store essential equipment such as a combined seat/walking frame;
  - the passenger has a pushchair that cannot be folded so that the passenger and the child would be required to leave the bus in order for the wheelchair user to board (as in *Paulley* itself);
  - the space is occupied by a pushchair carrying a disabled child;
  - the space is occupied by a pushchair carrying a child and the parent is disabled and therefore unable to hold the child while travelling; and
  - having to leave the bus could place a vulnerable passenger in a potentially dangerous or unsafe situation (for instance in a remote location on a rural route or in an urban area with which he/she is not familiar).
- 33 These are not hypothetical examples. In fact, one of the first customer letters which we received following the County Court decision in *Paulley* was from a disabled mother, whose disability meant that she was unable to safely carry her child other than in a pushchair and therefore used the wheelchair space. She was concerned about where the County Court's judgment left her.
- 34 In deciding the appeal, the Court of Appeal had regard to the Equality Act Code of Practice issued by the Equality and Human Rights Commission. This is a Code which First must also take into account in determining how best to give effect to its anticipatory duty to make reasonable adjustments. The Code says at paragraph 7.29 that what is a reasonable step "*depends on all the circumstances of the case.*" Considering the wider circumstances, for example the effect on other passengers, is therefore an important element in the equation of assessing whether a particular adjustment is reasonable.
- 35 The Court of Appeal held that the adjustment identified by the County Court (i.e. having and enforcing a policy of requiring any person occupying the wheelchair space to vacate that space whenever a disabled wheelchair user wished to board) was not reasonable.

In the course of his judgment, Lord Justice Lewison noted that this adjustment would have put drivers in an untenable position of needing to adjudicate between competing claims of passengers:

*"...the driver will in effect have to adjudicate between competing claims to the wheelchair space...A bus driver is simply not equipped or trained to make the necessary adjudications; and it would, in my judgment, be unreasonable to require him to do so."*<sup>113</sup>

36 Whether the Court of Appeal's decision in this case is correct as a matter of law is now a matter for the Supreme Court. A ruling is anticipated in 2016.

### **INTERVENTION OF THE EQUALITY AND HUMAN RIGHTS COMMISSION**

37 With reference to question 8 of the call for evidence, another feature of the *Paulley* case which is relevant to the Committee's considerations is that Mr Paulley's defence in the Court of Appeal proceedings was funded by the Equality and Human Rights Commission (EHRC).

38 The intervention by the EHRC was welcomed by both parties. First's (and the wider industry's) interest was in receiving a clear and enforceable judgment from the Court of Appeal which was made in light of all relevant facts before it and having heard persuasive argument from leading Counsel for both sides. The intervention of the EHRC made that possible. We understand that the EHRC is continuing to fund Mr Paulley's appeal to the Supreme Court. In this respect, its intervention is also welcomed by First.

### **CONCLUSION**

39 The duty placed on First as a bus operator, by both the Equality Act 2010 and other regulations, requires us to anticipate the needs of our disabled passengers. In *Paulley*, the Court of Appeal found that it would be unreasonable to expect our drivers to enforce a policy requiring any person other than a wheelchair user occupying the wheelchair space to vacate that space whenever a disabled wheelchair user wished to board. First recognises that this is just one example of how the anticipatory duty to make reasonable adjustments shapes our approach to the provision of bus services throughout the UK. We work hard to ensure that considering the needs of all disabled customers, working in collaboration with disability groups and through a variety of other measures, remains an integrated and visible part of our business

### **APPENDIX 1**

#### **A summary of the case of *Black & Others v Arriva North East Limited***

*Black* was initially a case before the Middlesbrough County Court, heard before His Honour Judge Bowers and decided on 1 May 2013. It was a claim by ten claimants against Arriva North East, a bus company, relating to various incidents which the claimants alleged amount to discrimination, harassment and/or a failure to make reasonable adjustments. The essence

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<sup>113</sup> Judgment at page 15, paragraph 53

of the claims was that the claimants, who were wheelchair users, had not been able to access the wheelchair spaces on buses where those spaces had been occupied by people who either could not or would not move despite a request from the driver that they should do so.

In terms that are relevant to the Select Committee, the principal issue was whether there had been a failure to make reasonable adjustments to the policy which Arriva applied to access to the wheelchair space on buses. Arriva's policy required drivers to ask other passenger (non-wheelchair users) to vacate the wheelchair space if a wheelchair user needed to use it. Arriva instructed its drivers that if passengers refused to move they could not force them to move and they should politely explain to the wheelchair user that they could not safely be carried on the bus.

The claimant's put forward 12 adjustments which, individually or in combination, they claimed would be reasonable adjustments under the Equality Act 2010. These are set out at paragraph 41 of the judgment. We suggest this is relevant to Questions 3 and 4 of the Committee's call for evidence.

His Honour Judge Bowers found that Arriva had not discriminated against the claimants and that, applying the test for whether a reasonable adjustment was required pursuant to the Equality Act 2010, no adjustment was required. In particular, a basis for this decision was that, in the Court's judgment, it was not Arriva's policy or its application by drivers which gave rise to the outcome which was the subject of the claimants' complaints. In the Court's view, the outcome resulted from the fact that the legal regime which applies to the wheelchair space does not exclusively dedicate the space for wheelchair use and it was therefore inevitable that, from time to time, there would be a non-wheelchair user in that space who either could not or would not move from it when requested to do so by the driver.

*4 September 2015*

## **Jonathan Fogerty – Written Evidence (EQD0152)**

I have been made aware that there is a House of Lords Select Committee call for evidence on the Equality Act 2010 and disability.

### **BACKGROUND**

By way of background, I am a tetraplegic following a spinal cord injury in 1988. I was 14 years old when I was injured in a diving accident and I am now aged 42. I have paralysis from my chest down and no lower limb function. I have been a full-time wheelchair user for over 27 years.

I am a trustee of the Spinal Injuries Association (SIA). The SIA is one of the leading user led organisations in this country. It supports anyone affected by spinal cord injury. It was founded in 1974 by Baroness Masham and remains the leading support organisation for people affected by spinal cord injury in the UK. Professionally, I am a practising solicitor. I qualified as a solicitor in 1999 and I have practised in personal injury compensation cases since qualifying. I am familiar with the court process.

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.

### **COURT ACTION USING THEEQUALITY ACT 2010**

The Equality Act 2010 has provided disabled people with the teeth in order to challenge discrimination or alleged cases of discrimination.

Personally, I have taken four cases through the Small Claims Court alleging discrimination on the grounds of disability and where a service provider has failed to make a reasonable adjustment and not provided wheelchair access. I have also pursued a number of complaints by way of written correspondence with a service provider where I have not been able to access their service. A number of these have resulted in an out of court settlement and an agreement for the service provider to make a reasonable adjustment or a change to the way they provide their service in order that it is accessible to those with a mobility impairment.

I have achieved change, both in the cases I have taken to court and in the cases that have been settled out of court. As a result of my complaints, there are now a number of service providers in my local area who have portable ramp facilities and call bells in order for those with mobility impairment to summon assistance. Change can still be achieved in correspondence but only with the backing of the provisions of the Equality Act. What the Equality Act has done therefore is provide people with a disability with the teeth so that if correspondence goes unanswered or the reply received is unsatisfactory, there is the option of pursuing the matter through the courts.

In my experience therefore, the Equality Act 2010 has strengthened disability discrimination law. But as with any laws however it has its flaws.

### **WEAKNESS OF THE EQUALITY ACT 2010**

Under the Equality Act, the court is unable to enforce a service provider to make a reasonable adjustment and make their service accessible to those with a disability or mobility impairment. This is very frustrating.

By way of example, I have recently taken a case against a local restaurant through the small claims court. The restaurant had no wheelchair access and when I visited with my wife for a meal, we were unfortunately turned away. My attempts to resolve the complaint in correspondence failed and so I was left with no option but to issue County Court proceedings against the restaurant owners alleging discrimination on the grounds of my disability because of their failure to make a reasonable adjustment. The case was heard at Stockport County Court and judgment was awarded in my favour, (that is the court found that I had been discriminated against on the grounds of my disability because the restaurant owners had failed to make a reasonable adjustment). I was awarded damages of £5,000.00 to reflect the fact that I had been discriminated against. The court however was unable to enforce change at the restaurant so that wheelchair users could access the facility. It is most unfortunate therefore that having been through the court process for more than two and a half years, the restaurant remains inaccessible to wheelchair users. The whole process therefore has not really achieved anything other than an award of damages for discrimination. Of course by not making a reasonable adjustment, the restaurant owners are leaving themselves open for further complaints of discrimination to be made against them in the future, but one has to question how many disabled people are willing and able to take these cases on themselves.

### **I attach a copy of the court's judgment in the matter of Fogerty v Keaz Ltd.**

As I am a solicitor and familiar with the court process, I ran a training course for other people with a disability talking through the small claims procedure and how to follow through a complaint under the Equality Act. One of the recurring themes from attendees on the day was that they did not feel confident about taking a case to court themselves.

Although the small claims procedure has been simplified to encourage litigants in person (and the costs rules in the Small Claims Court also encourage litigants in person) many disabled people still see the court process as being a daunting one and whilst they may write a letter of complaint they would not take this further. This is unfortunate.

### **OTHER REGULATORY BODIES**

There is much more that could and should be done by other regulatory bodies such as licensing authorities and those involved in approving planning applications and building regulations applications.

For example, as part of an application for a liquor license or as part of the renewal process



for a liquor license, questions could and should be asked about the provision (at the restaurant or bar concerned) of wheelchair access. Why is it that liquor licenses are granted to premises that are not wheelchair accessible? The question should at least be asked and if the premises are not wheelchair accessible, a warning should be given that if the situation remains the same the following year the liquor license will not be renewed.

This would encourage service providers to make reasonable adjustments or fear losing their license. In addition, it is frustrating that premises go through a “change of use” or have substantial alterations done to them which require building regulations approval and planning permission and yet little or no consideration appears to be given to providing wheelchair access. How can this be?

If the service provider is making alterations to their premises, then there should also be an obligation to consider wheelchair access and reasonable adjustments that can be made to ensure that their service is accessible to all.

### **EDUCATION ON OBLIGATIONS UNDER THE EQUALITY ACT 2010**

Ignorance of the law is no defence in this country and I agree with that. Having said that however, I do not think that there is enough information available for service providers on their obligations under the Equality Act. More information should be made available and this could be done through the process of applying for a license to operate be it a food outlet or one that sells alcohol. Local authorities could also help in improving the information that is made available to licensed premises in their area.

For example, I made a complaint to a bakery shop in my local village. There was no wheelchair access and I suggested that a portable ramp would be appropriate. The reply came back that because the shop was a food outlet and sold fresh bread, they did not have to provide wheelchair access because of the hygiene regulations when handling a portable ramp. Such examples of ignorance of the Equality Act and anti discrimination law are not uncommon.

### **THE ROLE OF THE EHRC**

A major weakness in enforcing the disability provisions of the Equality Act has been the combining of the work of the Disability Rights Commission, the Equal Opportunities Commission and the Race Relations Commission into the single Equality and Human Rights Commission.

Disability has always been at the bottom of the equality agenda (for evidence this just look at how long it took to have disability discrimination legislation) and so disability has really suffered with the loss of the Disability Rights Commission. If you add to that the cuts in funding that the Equality and Human Rights Commission suffered, the EHRC has a lot to do on a small budget.

By way of example, in 2008 I took a bar in Manchester to court over the lack of wheelchair access. As part of the complaint procedure, both parties were referred for face to face

mediation. This was arranged and funded by the Disability Rights Commission. It was a proper, formal process and whilst we did not settle the case in the mediation, it was a very worthwhile process. It was a face-to-face meeting which lasted for approximately four hours. I was so impressed by the mediation process and the opportunity it gave me to talk directly to a service provider that I trained as a mediator myself and conducted many mediations involving people with disability and service providers.

## **MEDIATION**

I know of many complaints that were taken under the old Disability Discrimination Act and which settled at the mediation meeting.

The mediation process was very powerful giving the disabled person the opportunity to sit down with a representative from the service provider and talk openly about the discrimination they suffered, how it affected them and how the service provider could change their service provision to make it accessible to all. It may well have been the first time a service provider stopped and listened to a disabled person and it was a useful learning experience for them. It also provided the opportunity to achieve a "win-win" situation, something which is difficult to achieve once court proceedings have started and even more difficult to achieve after a final court hearing.

Disabled people often encounter problems using day-to-day services that they want to continue using even after making a complaint. For example, I know of one individual who is a wheelchair user and he wanted to complain about the wheelchair accessible facilities at his local football ground. He did not consider that the football club had made reasonable adjustments for him as a wheelchair user and he wanted to complain. He did not however feel comfortable complaining because he wanted to go back to the club every weekend and support his team. Mediation, as it took place a few years ago through the disability rights commission would have offered him the opportunity to sit down with a representative from the football club and explain the problems he was having. It would also have offered the football club the opportunity to explain to him the steps they were taking to make the football ground more accessible.

Other such examples I have come across when mediation was used as a very powerful tool involved a person with a disability complaining about access at their local health centre and a disabled person complaining about the lack of a hoist into the swimming pool at the local leisure centre. The important point was that the purpose of the complaint under the Equality Act was to enforce their rights. They did not want to stop using that facility and with mediation, after the complaint had been resolved, the individuals were able to continue using the service. It was a 'win-win' situation all round.

Unfortunately, under the Equality Act and with the Equality and Human Rights Commission, this mediation service is no longer available. Now, the mediation process is done over the telephone and is limited to one hour. This is provided by the Small Claims Mediation Service and having been through the process myself as the claimant, I found it very unsatisfactory. I did not even have the opportunity to speak directly to the service provider. The mediator acted as an intermediary, not as a facilitator to a direct conversation between myself and

the service provider.

Face to face mediation offered the opportunity for the disabled person and the service provider to explore innovative and wide-ranging solutions to access issues. It gave the opportunity to disabled people to explain about the difficulties they face every day and how frustrating it was to be faced with inaccessible service provision.

It would be useful to make available again a proper mediation service to people with a disability. I believe this is a more effective and better way of resolving complaints than ending up in court. The mediation process allows for a discussion about reasonable adjustments that could be made to the service providers premises or service provision and part of the agreement reached at mediation can include reasonable adjustments to be made. This is not possible once the case goes to a county court. The only thing that a County Court can decide on is whether or not discrimination has occurred and if so, to award damages if the court thinks they are appropriate.

I do not believe that the Equality and Human Rights Commission has been effective in supporting people with a disability to make a complaint under the Equality Act. I have written to the Equality and Human Rights Commission on a number of occasions briefly detailing the nature of my complaint against a service provider. All I receive in response from the Equality and Human Rights Commission is a standard letter telling me that they are unable to help me and that I should seek advice from the Equality Advisory Support Service. When I contact them, they are also unwilling or unable to help.

In the event I issue court proceedings against a service provider under the Equality Act, the Equality and Human Rights Commission write back to me asking me to let them know the outcome of the court case. It seems they want to know when people have taken court action themselves but are unwilling or unable to help him in the process. This is unsatisfactory.

In my experience of talking to people with a disability about the Equality Act and about how to take a case to court, they need support to do so and I would have thought this was the purpose of the Equality and Human Rights Commission.

In the cases that I have taken to court I think it is still reasonable for the court to determine what would and would not constitute a reasonable adjustment. There is of course guidance in the Equality Act legislation as to what constitutes a reasonable adjustment but each case should be considered on its own merits and the willingness and resources of the service provider should always be considered when determining what might be a reasonable adjustment.

On the whole, I have found that the County Courts have been accessible and supportive in enforcing the Equality Act legislation. Where I feel let down is that the county courts cannot enforce the making of reasonable adjustments.

## **SUMMARY & CONCLUSION**

I have used the provision of the Equality Act on a number of occasions in order to enforce my rights as a person living with a disability in the UK. The Equality Act 2010 is an important piece of legislation in protecting the rights of those with a disability however it has weaknesses.

In my experience, people with a disability in this country are reluctant to enforce their rights. They do not feel confident in doing so and need support. That is unfortunate. Many people with a disability I have come into contact with over the years will readily write a letter of complaint but will not go that extra mile and take court action. That is unfortunate because until more disabled people take cases to court under the Equality Act legislation, nothing will change.

People with a disability need more support in this area and in the court process generally. This could be achieved by a program of education and general awareness raising and also through an improvement in the mediation process. This would be seen as less formal and would give the opportunity for more flexible and more innovative resolutions and problem solving.

I would be more than happy to be contacted about this written submission.

**I attach a copy of the court's judgment in the two matters of Fogerty v Keaz Ltd & Fogerty v Pizza Lavita.**

**These are both cases taken by myself under the Equality Act 2010 and in which I was successful.**

### **Biography - About Jonathan Fogerty**

Jonathan Fogerty is employed as a solicitor and as the National Lead on Spinal Cord Injury with Slater & Gordon Lawyers in Manchester. He specialises in serious injury compensation cases. He is a qualified mediator with an interest in mediating disputes arising out of the Equality Act.

Jonathan is 41 and he has been a tetraplegic following his injury in 1988, when aged 14, he dived into the shallow end of a swimming pool. His head struck the bottom of the pool, breaking his neck at C5/6 and instantly rendering him paralysed and a wheelchair user. After his injury Jonathan was treated and rehabilitated at the Southport Spinal Injuries Centre.

On his discharge from hospital, Jonathan completed his schooling and university studies. His chosen career was law and Jonathan qualified as a solicitor in September 1999. Since then he has worked as a personal injury solicitor in Manchester dealing with catastrophic injury claims and in view of his own background he has a particular interest in claims arising out of a spinal cord injury.

Jonathan is a strong advocate for those living with a disability and to date he has delivered presentations and contributed to APIL, SIA and MASCIP (Multi-disciplinary Society of Spinal Cord Injury Professionals) conferences about spinal cord injury. Jonathan believes education is the key to supporting all those working with spinal cord injured people.

Jonathan has long been associated with the work of the Spinal Injuries Association (SIA). He has been an SIA Trustee for fifteen years and recently retired from the position of Chair. Jonathan has also been Chair of the Building Committee, overseeing the building and design of the universally accessible SIA House, SIA's new headquarters. He was also a founder member of the SIA Cornflower Ball, an SIA fundraising event held annually in Manchester for the legal community.

Jonathan was the SIA Training Officer from 2007 until 2009. He delivered training courses on spinal cord injury and educated professionals working in the field. In his time with the SIA, Jonathan delivered comprehensive spinal cord injury training to a variety of audiences including community healthcare groups, case managers, university therapy students and personal injury solicitors.

Jonathan is from Manchester where he lives with his wife, Charo. He has traveled extensively since his injury to New Zealand, Africa and closer to home, throughout Europe. He is a keen skier, traveling annually to Sweden to participate in this exciting sport.

*11 September 2015*

## **Jonathan Fogerty and Doug Paulley – Oral Evidence (QQ 97-104)**

Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Foster of Bishop Auckland  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley

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### **Examination of Witnesses**

**Doug Paulley**, litigant on behalf of himself and other people, and **Jonathan Fogerty**, solicitor and litigant on behalf of himself and other people

**Q97 The Chairman:** Good afternoon, and welcome to everyone who has come to this afternoon's session. The first half is very much about the law. We are very pleased to have with us Mr Paulley, who I know has experience of going to court, and Mr Fogerty, who has also done that and is a lawyer. We will be looking at legal issues in the first half of this afternoon, and we are very pleased that you have been able to come here and tell us your experience, quite apart from having given us your written evidence. Thank you very much indeed. The names of the Committee members are in front of you, and every Committee member will declare an interest, if they have one, relevant to this inquiry, before they ask their question.

As I expect you know, this session is open to the public, and a webcast of the session goes out live and is subsequently accessible on the parliamentary website. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after the session you will be sent a copy of the transcript to check it for accuracy. It would be very helpful if you could advise us of any corrections as quickly as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence, or if you have any additional points to make, you are welcome to submit supplementary evidence to us. I say that because you will appreciate that we have to move pretty fast through the questioning. We have another session after you. So if you have a feeling that there was something that you really wanted to tell us, or you did not have time to amplify something, by all means write in later and we will of course read it and add it to our store of knowledge. Mr Paulley, we know that you are a disability rights activist. You sent us very useful written evidence. We know that you have wide experience of taking cases for discrimination under the Equality Act, we know that you are involved in a case right now and we all understand the sub judice rule: we cannot discuss the details of the case, but we can talk about it in generalities. If you think we are crossing the line, or if we think you are crossing the line, then of course we will stop short and not go into the actual details of the case before the court, although we anxiously await the Supreme Court's judgment.

Both of you have litigated successfully and frequently to enforce your rights under the Equality Act, but in this you are far from typical. Is it right that ultimately the only way disabled people can enforce their rights is through court proceedings initiated by them? Could local authorities do more? Would you support the creation of a disability ombudsman or other things such as mediation? Mr Fogerty, I know that you are a solicitor, and you have great experience of that too, so we would like to hear from both of you about litigation and how to help people achieve their rights.

**Doug Paulley:** It is very difficult for disabled people to take cases, both with representation and without it, as I should imagine the Committee is largely aware. However, I have concerns about the potential of an ombudsman, because sometimes, to my mind, they do not have much oomph behind them. If we were to have an ombudsman, we would need one who recognises that this is not just a customer-service issue; it is a legal right. They would have to have the duty to assess any issues that came in. From my own experience, I can recommend the Information Commissioner, because they have to assess compliance or otherwise, or likely compliance, under the Disability Discrimination Act or the Freedom of Information Act. This assessment is mandatory. At the moment, I wonder if another ombudsman without that would basically be repeating what the Equality and Human Rights Commission is doing.

I am not happy with the idea of local authorities' taking on enforcement, partly because it produces something of a postcode lottery. That is my own experience. Certainly, taxi provision varies substantially around the country, as does enforcement. Some issues are never enforced, such as the Conduct Regulations.<sup>114</sup> To the best of our knowledge, nobody has ever enforced that law, and it would be good to have an ombudsman or similar who could do that and take away the impossible burden on disabled people in attempting to enforce their rights.

**The Chairman:** You say "impossible burden", and obviously I understand about the cuts in legal aid, but what is it about you two that has enabled you, almost uniquely, to pursue so many cases? What was the trick that enabled you to go forward when so many others have found it impossible?

**Doug Paulley:** So many people do not have the support they need to get even to their front door, let alone to experience discrimination in the community. When people are being forced to be incontinent at night because the local authorities do not have the resources or will not spend the resources to assist them even on to the commode chair, they have little chance of ever engaging with services, let alone challenging them. I am lucky in that I am articulate and I had a good education, very supportive family and friends, and some experience of life before moving into an institution. Many people do not recognise that they have been discriminated against; and if they are not literate, and a large proportion of disabled people are not literate, they have no chance of even beginning to interface with this sort of thing.

**The Chairman:** Mr Fogerty.

**Jonathan Fogerty:** First, I thank the Committee for inviting me to give oral evidence. You have extended a warm welcome, and I would like to reciprocate your thanks. Thank you very much for the opportunity to be able to give my input.

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<sup>114</sup> The witness was referring to Part IV (The conduct of drivers and conductors of regulated public service vehicles with respect to wheelchair users and other disabled persons) of the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 (SI 1990 /1020) introduced by Regulation 6 of the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002 (SI 2002/1724)

I will answer your question there before I make a couple of wider points. I think I am fortunate in that I am already a qualified solicitor, so my experience professionally on a day-to-day basis involves engaging with the courts. I have the experience of taking a case to the small-claims court, and fortunately I am not intimidated by the court process, so I feel confident, first, in knowing that I have been discriminated against, or at least in thinking that I have been discriminated against; secondly, in going through the process of corresponding with the service provider in writing to try to sort the situation out before deciding that the complaint has not been resolved to my satisfaction, so the ultimate process is to start court proceedings, which I do not do lightly. Fortunately, I have the experience to be able to assess that the situation has not been resolved properly and to take that final sanction of going to court.

I ran a course on the Equality Act and on taking action under it through the Spinal Injuries Association. That proved very popular with our members, who wanted to know what to do. They were happy writing letters, writing a letter of complaint, but were very unsure what to do as the next step when their complaint was not resolved to their satisfaction. Either they did not receive a letter in response from the service provider concerned, or the letter did not address the basis of their complaint. The problem was how to take that next step and having the confidence to do that. There are a few reasons why people do not take it. Mr Paulley has touched on one or two of them. I will touch on a couple as well.

I will go back to one of the questions the Chairman asked at the beginning, which was about how, ultimately, the only way in which people with a disability can enforce rights is through court proceedings initiated by them. As a lawyer, with my lawyer head on, when somebody comes to me for advice, the first question I ask them is, "What do you want to achieve by going through the process of litigation?". Litigation is satisfactory as an end result but it also never really, in my experience, results in a win-win situation, because by the definition of going to court one party loses and one party wins, and one party is going to be aggrieved by losing. So if the situation for the person with the disability discrimination involves a service that that person wants to continue using—they just want equal access to it—I would be very reluctant to recommend that they engage in a process of litigation. Does that make sense? If they go through the litigation, either they or the service provider is going to feel very uncomfortable in using it. I will just give a very quick example of a lady I knew. She wanted to be able to access the swimming pool at the local leisure centre. The leisure centre had two swimming pools. One was ostensibly a learners' swimming pool, one for children, and one was what you might call more of an adult swimming pool, where people would swim lengths for exercise. Only one of those swimming pools had a lift installed, a shower-type chair, in order to enable a wheelchair user to gain access to that pool. That was installed in what one might call the learners' or the children's pool. One day she went down to the swimming pool to use the said pool, and the pool was closed. She got a couple of lifeguards to assist her manually by lifting her into the adult pool and she swam lengths. When she went back the next time to do exactly the same thing, the leisure centre owner had forbidden the lifeguards from lifting her manually because of the risk in manual handling, so she could not access the main pool and had to go back to using the learners' pool. She wrote and complained about the lack of an access lift into both pools, which should have been made as a reasonable adjustment under the Equality Act. By the time her complaint process had been handled, the funding had been found for a lift, it had been installed and she was able to use it. She went through a mediation process in order to be able to get to that situation. My point is that if she had resorted to court action she would have won, but would



she have felt uncomfortable going back to that leisure centre and using the facility? Would the leisure centre have felt comfortable having her back in the pool? I suggest not. She wanted, by going through the complaint process and ultimately, if she had to, going to court, to enforce the access, but it would have resulted in a poor outcome at the end. So I still say to people with a disability, “Please make sure that you have exhausted all your attempts to resolve your complaint in writing, and properly, with the service provider. Talk to local service providers about the facilities that they are offering and why they are not suitable for your particular disability”. A lot can still be achieved by corresponding effectively with the service provider, so that the person feels that their complaint has been handled properly, that a reasonable adjustment has been made, and that all parties involved are satisfied with the outcome, the facilities are much better for everybody concerned and the person with the disability still feels comfortable using the system.

**Q98 The Chairman:** You are making a strong case for mediation. Is there a specialist disability mediation service?

**Jonathan Fogerty:** There is not now, Madam Chairman. There used to be under the Disability Rights Commission. Once we lost the Disability Rights Commission and we got the Equality and Human Rights Commission, we lost the face-to-face mediation service. The first case that I took was under the DDA legislation. I was assisted by the Disability Rights Commission in having a face-to-face mediation with the service provider involved. That, I have to say, Madam Chairman, was a very, very powerful experience. I did not settle at mediation, but that did not undermine the way the process was handled and the opportunity it gave to me, as a person with a disability, to talk directly to a representative from the service provider that had discriminated against me about what had happened and how it made me feel and potentially to talk about a remedy to the situation.

**The Chairman:** What I think I am hearing from both of you is that a mediation service face to face would be a good, and perhaps not too expensive, addition. On the phone it just will not do, will it?

**Jonathan Fogerty:** In my experience it was totally unsatisfactory. Once I took advantage of the small claims mediation service. I issued court proceedings, so I then had the opportunity of going to the small-claims mediation service, but it was over the phone. I had thought, when I engaged in it the first time, that it would be a three-way telephone conversation between me, the service provider and the mediator on the phone so that these issues could be aired. It was strictly limited to one hour, and it was me on the phone talking to the mediator. The phone got put down. The mediator picked up the phone to the service provider. They had a conversation. It was not fluid, there was no exchange of ideas, and it was totally unsatisfactory.

**Doug Paulley:** I have successfully sued the small-claims mediation service through the Ministry of Justice for disability discrimination, for failing to make reasonable adjustments. Yet the equality mediation service, as was, was so much better. It has provided very good service, and I am very sad that it is gone.

**Baroness Brinton:** You said something earlier, Mr Paulley, about an ombudsman for services that may be licensed by councils. This was in the context of local authorities. You were saying that in some contexts an ombudsman was not particularly useful, but you thought that it was in this case. Are you talking about an extra ombudsman, or are you talking about the Local Government Ombudsman being able to intervene?

**Doug Paulley:** I was thinking more of an ombudsman or some form of body to deal with equality issues, not just within councils—something like the Information Commissioner, who

deals with freedom of information and data-protection legislation countrywide, although it is devolved for some aspects. I was thinking of a model more like that, to be honest.

**Baroness Browning:** I take the point you have made about mediation, but with cases where you do start to take action, specifically those to do with local authorities, do you have any feel for how many local authorities settle before a case gets to court?

**Jonathan Fogerty:** In taking action against a local authority? I would not know. As to ordinary service providers—a restaurant, bar or cinema, something like that—I would say an awful lot, because they want to avoid the adverse publicity that would come with going to court.

**Baroness Browning:** But failure to provide statutory services through social services—any idea?

**Jonathan Fogerty:** I honestly would not know.

**Q99 Lord Northbrook:** I have no relevant interests to declare. Tribunal fees and the reduction in legal aid are both cited as reasons that enforcement of rights through the courts has become more difficult. Should the Equality and Human Rights Commission do more to support litigants from the outset? Could you talk about premiums for after-the-event insurance and the possible extension of qualified one-way costs shifting under Part 44 of the Civil Procedure Rules? Perhaps we could start with Mr Fogerty.

**Jonathan Fogerty:** Thank you for the question. First, in my view—and Mr Paulley has touched on this already—disabled people as a whole need to improve their use of the Equality Act legislation, and I do not say that lightly. I think of other equality strands that protect people in this country. People with an ethnic minority background and people of different sexual orientations, for example, have used the equality legislation very effectively, but I think that people with a disability have done that less effectively. Mr Paulley has touched on some of the reasons for that: if you have a lot going on in your life with your disability, if it takes you two hours to get up in the morning and two hours to go to bed, if you face discrimination and you are not sure whether you have or not, if you have so much else going on, then taking litigation is something of a last resort, and you will feel intimidated by the process, so you are not going to do it.

I was touched recently—just last week, I think—by the case of the chap who faced homophobic gestures and who received a very substantial settlement, having gone through the court process. He took that litigation under the Equality Act. So if people from different minority groups in this country are using the equality legislation, then why are people with a disability not doing so? I think they feel intimidated by it. I think there should be more support from the Equality and Human Rights Commission to support people down the process—we have touched on that already—with greater emphasis on providing a mediation service, to guide people through the stages. It is not just about getting the outcome; it is about feeling that a person with a disability has had their case heard, even before it gets to court. So I think there should be more emphasis on support from the Equality and Human Rights Commission. My experience of using the EHRC has been largely negative, I have to say. As you have to do now, I have to write to the EHRC to give them notice that I have issued proceedings in the small-claims court under the practice direction. They write back to acknowledge that. But before that, in sending copies of my correspondence, it has been very ineffective. I send copies of any judgments and of the outcomes of any proceedings. If I do not litigate, I am always sending them copies of correspondence, but very little ever comes back from them in terms of any real support.

Speaking as a lawyer, I can understand why more lawyers do not take these types of cases on. It is because of the difficulty with funding. It is both a pro and a con that the discrimination cases end up in the small-claims court. There are costs consequences of that in that if you are in the small-claims track and your case remains in the small-claims track, if you employ a solicitor yourself you will not recover those legal fees. Likewise, if your opponent employs the services of a solicitor, they cannot claim their legal fees back from you as long as your case is meritorious. I think that is a very important feature, I really do, because it enables people to go through the procedure confident that if they lose their case, the only exposure financially—and I say “only” lightly—is their issue fee and their court hearing fee. In the small-claims track—let us say that the bracket in which you put your discrimination claim is around £5,000, which is the usual kind of bracket—your issue fee is just over £200, and your hearing fee is just over £330. So your maximum exposure in a financial loss will be around £540. That is a significant sum—I am not demeaning that amount of money—but it is a fee that you know at the beginning, if you take the case and lose it, is what you are exposing yourself to. If a solicitor were to take the case on—and I assume they would do so on a contingency-fee basis, if ATE or no-win no-fee insurance were available—they would be doing it on the basis of, “Well, we will take 25% of any damages that you are awarded”, for example, and limit themselves to a percentage. I assume that in those cases solicitors would end up in the difficult situation of saying, “You have been awarded £1,000 for your discrimination. We are going to take £250 of that in our legal fees”. But £250 would not reflect the amount of time they probably put into it, so they would probably have to take more, and all of a sudden you get solicitors with bad headlines in the papers saying that £1,500 is awarded for discrimination in a case, and the solicitors take £1,500 of the £1,500. That is just going to generate bad headlines for lawyers. So these cases are the type that solicitors, if I can be so blunt, do not really want to take on because of the adverse publicity about their taking the costs. That would be my experience of being a lawyer. It would be my experience of advising other people that the purpose of the small-claims track process—if we go back to the Woolf reforms of the late 1990s, which simplified them—was to encourage more litigants in person. With the idea of the litigants in person, the small-claims costs consequences were designed to encourage more people to take these kinds of cases on themselves.

**Doug Paulley:** The Equality and Human Rights Commission has indicated that it is generally its method that it becomes involved only once a case has already got past the initial litigation stage, although in the case of disability it is looking at starting its support and intervention earlier. At the moment it is not really happening. There are around 15 applications for Section 28 assistance a year on disability discrimination in the provision of services, of which fewer than five are approved. Yet there are so many disabled people around the country experiencing discrimination that that is no reflection on the number of incidents; I think it is a reflection on the effectiveness of the system that should be there to support individuals. The after-the-event insurance premium is a massive problem. It says something about how few cases get to court that it seems to have fallen underneath the radar at the time of the Jackson reforms. I probably do not need to explain the ins and outs too much, but it makes it uneconomical or very risky for disabled people or their representatives who wish to take a case. Even if they manage to get it allocated to the fast or multi-track, it makes it nigh on impossible. I think that it is a simple error that could very easily be corrected. There are so many reasons why people cannot take cases to establish their rights or to enforce their rights, and this would be a very simple change for the Government to make to remove at

least one barrier. All that has to happen is to make clear that the qualified one-way costing gets extended to cases under the Equality Act.

**The Chairman:** I should have mentioned Baroness Campbell's interests at the outset, to save time. I will read them out now. She is a patron of Just Fair, an economic, social and cultural rights organisation; a patron of the National Disability Arts Collection and Archive; founder and member of 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; and Commissioner of the Equality and Human Rights Commission for three years.

**Q100 Baroness Campbell of Surbiton:** I wanted to explore a little further the Equality and Human Rights Commission and disabled people's interface with that. Having been on that commission and others, I have quite a lot of experience of seeing the comparisons. It is very good to see you both here. Mr Paulley, as you know, the EHRC has intervened to support you in your case against FirstGroup. Do you think it should play a bigger part in litigation involving issues of public importance? I would be quite interested in exploring judicial review with you both. What is your experience?

**Doug Paulley:** Thank you. I am very grateful and lucky that the Equality and Human Rights Commission is supporting the case that I cannot talk too much about. The case would not have happened, however—they would not have had the opportunity—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. That is less the case now. So there is a problem with the initial threshold. The Equality and Human Rights Commission tends, so I understand, to intervene in existing cases rather than start judicial review proceedings on its own. 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.

**Baroness Campbell of Surbiton:** Is your view the same, Mr Fogerty?

**Jonathan Fogerty:** Yes, it is, Baroness Campbell. I am interested that Mr Paulley commented that the EHRC is quick to jump in on cases that are already going through the process. I was slightly amused to see a write-up of a case of mine that was settled last year. There was a write-up in the local paper, the *Manchester Evening News*, about it. Having described the damages and the settlement and what had happened in the end, there was a sentence from a spokesperson for the Equality and Human Rights Commission—the name was given, but I forget it—commenting on what a positive settlement it had been and that it reflected the seriousness of the discrimination. The Equality and Human Rights Commission had done nothing all the way through the process but felt the need clearly, once I had concluded the case successfully, to comment upon it and to get its name in it.

I would like to see more from the Equality and Human Rights Commission supporting people, if I am honest. If I can be openly honest, I think disability sits quite far down on the agenda of the EHRC. That has happened since we lost the DRC. All the commissions were combined into one. If we look at how long it took to get effective disability legislation in this country, it came in 20 years ago, in 1995, which followed a long time after other equality legislation in this country. I think that carried through to the EHRC once we lost the specific Disability Rights Commission. Disability is probably far down. If you add to that the cuts that the Equality and Human Rights Commission suffered five years ago, we are looking at an

organisation that was very effective as separate organisations, but there is an enormous amount of work for that commission to do.

**Baroness Campbell of Surbiton:** I was very interested to hear you say that you felt that other minority groups, for instance lesbians and gay men, were more assertive in claiming their legal rights. Do you have evidential information for that, or is it just a feeling?

**Jonathan Fogerty:** I do not.

**Baroness Campbell of Surbiton:** Why do you think that is? I would say to you that there are many very assertive disabled people who are quite capable of taking cases, so we cannot really say that all disabled people are in the kind of situation that Mr Paulley describes, although many are. I want to get a bit more of a feel for why you think this. Is it because the other groups have had a commission for longer?

**Jonathan Fogerty:** If I gave the impression that it was all disabled people, I apologise. I did not mean that at all. From running the course that I did and from talking to other people with a disability, my overriding impression has been that people say, “I tried to get into that pub and it is not accessible. We go to this pub, and all the time I have problems getting in and out”, I say, “What have you done about it?”, they say, “Oh, nothing, there is no point in complaining”, and I say, “If you do not complain, if you do not write, nothing is going to happen”. We, as a group of people with a disability, are not going to effect change unless, as a group of people, we do something about it. Or people say, “I wrote a letter, but I did not get a reply”. So what did you do about the fact that you did not get a reply? You write your letter, you outline the discrimination that you think you have faced, you put in their brief obligations under the Equality Act legislation, and you put in a reasonable timescale for them to reply. If they do not reply, follow it up. If they do not reply again, follow it up. Then involve the Equality and Human Rights Commission. It involves getting behind your word processor, I am afraid, and doing a bit of work.

**Baroness Campbell of Surbiton:** I understand that, but I am trying to get you to tell me why you feel that other equality groups with protected characteristics are doing better.

**Jonathan Fogerty:** It is an impression that I have. Perhaps it is also the way the media report cases that involve other equality strands. There is now the case involving the gay man from only the last couple of weeks. The media seized on that, and it was a huge publicity case. There was a case involving two gay men who went to a bed-and-breakfast and tried to sleep in the same room, if my memory serves me correctly. There was one recently about wedding cake makers. The couple wanted a specific message on a cake. That hit the media. I used to give this example on the course that I ran: being a wheelchair user, if I am trying to access a shop and there is a step in their wheelchair access, it is the same to me as a sign in the window saying, “No black people”, “No lesbians”, or “No pregnant women”. You would not see a sign in a shop window saying, “No black people”, or “No lesbians”, on a Monday morning, but that is the same message they are giving to me as a wheelchair user. Yet one is totally unacceptable and almost laughable, and the other situation we face every day. As Mr Paulley and I journey back to Euston together, I am sure we could identify many cases of discrimination.

**Q101 Lord McColl of Dulwich:** I have taken only one case to the small claims court, and I was amazed at how much pressure was put on me by the chairman to take legal advice. Being a Scot and knowing that it would cost something, I refused, of course. My question is: what proportion of cases are taken by litigants, both disabled and non-disabled people, without legal advice?

**Doug Paulley:** I have been trying to research this. Back in 2009, the Government responded to the Work and Pensions Select Committee, stating that they would manually collate statistics on various aspects of disability discrimination cases under what was then the DDA. They would then institute a computer system that would automatically record this. When I tried to research the proportions using the Freedom of Information Act, nobody seemed to know, to be frank. I have asked quite a lot of different organisations, and from what I can gather the requirement to notify the Equality and Human Rights Commission of cases is not universally complied with, to say the least. The Ministry of Justice has not recorded statistics on this. So I am afraid that all we can give you is anecdotal experience. I think I am unusual in taking a substantial proportion of the cases in the country on disability discrimination in the provision of services without representation. I know two or three other people who do.

**Jonathan Fogerty:** I have nothing to add. I honestly would not know from my own experience how many cases there have been.

**Q102 Baroness Brinton:** Damages for discrimination are often only a first step. Do you think that the power of courts to grant injunctions, as stressed in the code of practice, works to compel businesses and others to make reasonable adjustments?

**Doug Paulley:** Being frank, largely no, I am afraid. I do not think it works for people who take cases to court, perhaps especially for litigants in person. As my co-campaigner here commented, it certainly has not created a wider disincentive, because if you walk, or wheel, down the street, there are any number of cases where there are still major access problems for people with various different impairments. My experience is that the judges who have dealt with cases in which I have represented myself have had very limited experience in cases under the Equality Act. This is a problem, because often they are not aware of, or are not used to using, this power of injunction, which is traditionally only usable for other legislation, often in the High Court. They have been nervous of doing so. I understand it is quite difficult to produce a SMART injunction—on that is specific, measurable, achievable, realistic and time-bound—which it has to be to be useful. If judges are not even aware of the obligation to appoint an assessor, who is supposed to have expertise in the Act and inform the judge on disability equality issues, they are sunk at the first step. Even if the person bringing the action asks about injunctions, particularly if they are unrepresented, to be honest, I have found that it has not happened. Happily, I think that the monetary penalties, small as they are, and the publicity can have a beneficial effect to a certain extent—from the limited number of cases that make it to court.

**Jonathan Fogerty:** I agree on the damages point made by Mr Paulley at the end. Even without an injunction, discrimination remains ongoing. If a service provider fails to make a reasonable adjustment, I am not sure how the courts would view it, but it remains open to me to return to a service provider that has made no reasonable adjustment and attempt to gain access again and to start the process all over again. One would hope that a service provider would realise that it would be cheaper to purchase a portable ramp or to make some kind of reasonable adjustment than it would be to face repeated claims brought for discrimination under the Equality Act, or I could tell 10 of my wheelchair-using mates to pop round and have a meal at the said restaurant. One does not like to use the legislation perhaps flippantly like that, but realistically, if the discrimination were ongoing, one could do that.

I regretted not asking the court this summer to grant an injunction. The litigation with the restaurant concerned lasted two years and was settled this summer with a judgment in my favour. The restaurant remains as inaccessible today as it was two years ago. The service

provider involved failed to recognise that they had any responsibility under the legislation to make the restaurant accessible or to make any form of reasonable adjustment. An independent expert was brought in on the case by the judge—which is unusual in a small-claims court, but the judge felt it necessary for the court to be properly informed, so an independent expert report was commissioned. The restaurant failed even to acknowledge the role of the independent expert and to recognise the recommendations made in the independent expert report to the court. A judgment was awarded in my favour, I was awarded damages, and the restaurant has made no reasonable adjustment. It has been a very frustrating process. In hindsight, I wish I had asked for an injunction. I did not, but it was interesting that at no point did the court consider that an injunction might be appropriate. It was slightly complicated by the fact that the company that owned the restaurant and filed for liquidation just before the final hearing had intimated to the court in correspondence that they did not have any assets in order to meet a payment of damages, if damages were to be awarded. Whether that coloured the court's feeling that if it served an injunction, that was not going to be able to deliver anything effectively, I do not know, but as much as I wished afterwards that I had asked for an injunction, there was no consideration by the court that one might be appropriate, given the behaviour, if I can call it that, of the defendants through the litigation process. So it was frustrating. Would I do so again? Yes, I would. We have, of course, the case of *Allen v Royal Bank of Scotland*, which is a Court of Appeal case in which the Royal Bank of Scotland was served with an injunction by county court, which was appealed to the Court of Appeal and was upheld. In that case, by the time the appeal was heard, the RBS had rightly, because I think it realised that it should have had wheelchair access in the first place, installed it. That is a very clear case for an individual to rely on at county court level.

**The Chairman:** Thank you. So the restaurant is not insolvent. It is still going.

**Jonathan Fogerty:** The restaurant is still going. The restaurant is open every night for business. What I think has happened, Madam Chairman, is that the company has transferred the ownership of the restaurant to another company that they have set up, leaving the company that owned it when I suffered discrimination with no assets and put into liquidation. So my payment for damages has not been made.

**The Chairman:** So you have to start again.

**Jonathan Fogerty:** With your permission, Madam Chairman, I will revisit the restaurant for a meal and start again.

**The Chairman:** I am not sure I would call it permission. I was just interested.

**Q103 Lord Foster of Bishop Auckland:** I have no relevant interests to declare. A number of our witnesses, in both oral and written evidence, have criticised the Government's decision to transfer the EHRC's helpline to the Equality Advisory Support Service. How could the service provided by EASS be improved?

**Doug Paulley:** I would really like it if it could be brought back. There are all sorts of problems with its being separate. One of them is that the Equality and Human Rights Commission is not informed about cases at an early stage. Given that they are considering trying to become involved in disability discrimination cases at an earlier stage, this in itself would be very useful to bring back. I would also like it if it could have a direct input into the commission to ease applications under Section 28 of the Equality Act 2006 or the various other powers that can be used. The couple of times that I have phoned them I have found them useful in the information they have been able to provide, so I cannot give evidence about the problems that other people have experienced. In general I have concerns that it does not have a line

into the Equality and Human Rights Commission. Ultimately that needs to happen in order for people to be able to have the support they need to bring issues to court. I would like also there to be an assessment procedure that the Equality and Human Rights Commission or the Equality Advisory Support Service has a mandatory obligation to assess each case that comes to it as to whether it wishes to offer support, instead of just people who persevere being able to submit a specific application for assistance.

**Jonathan Fogerty:** I echo Mr Paulley's comments about incorporating its work more closely with the Equality and Human Rights Commission and providing the support through the EHRC. My own contact with them has been limited. I have sent copies of correspondence first to the Equality and Human Rights Commission, which has then referred me to the EASS. I brought one of its letters with me today, and I familiarised myself with the content on the train down. It basically says, "You have been in contact with the Equality and Human Rights Commission. We do not offer a conciliation or mediation service any more. We offer general advice about the Equality Act. You seem to have done everything so far that we would recommend. If you are considering making a claim, that is something only you can decide upon. If you decide to go ahead, you should contact your local county court in order to do this". There you go. You are on your own, really. I think we should bring it back to how we could support people more closely. If you are intimidated by the court process and unsure where to go for advice, that kind of letter is unhelpful. I suggest that people would be supported better if they could have a letter that was more helpful and offered more support.

**Doug Paulley:** May I make a suggestion? By the nature of this, we two are aware of the system. The people who you could perhaps talk to are the people who are not able to bring their own cases; they may be people who would make more use of the Equality Advisory Support Service. I suggest talking to disabled people in the community and disabled people's organisations to understand people's experience of the support service. Further, I would recommend speaking to disabled people's organisations instead of charities, which often have their own vested interests or pretend to represent disabled people when they do not.

**The Chairman:** We have and will continue to speak to them. We have met people who have made it quite plain to us that they do not have the ability to bring cases, so we appreciate what you say. That is why you two are exceptional.

**Doug Paulley:** Thank you. Sorry, I did not mean to intimate that you would not.

**Q104 Baroness Campbell of Surbiton:** What kind of support do you think would be necessary for disability organisations to support disabled people so that they do not feel on their own? I have heard from both of you throughout the session that you feel that disabled people feel very isolated. What kind of support would you suggest?

**Doug Paulley:** I would like user-led organisations to be given the power to take class actions on behalf of their members, because certain key issues recur again and again in user-led organisations in discussions about their members' experiences. I am not saying it is easy, but taking action is much less isolating and difficult a task if it is done as a group, but as it is, they do not have the ability to take vicarious class actions.

**Baroness Campbell of Surbiton:** You would need a great deal of training to do that.

**Doug Paulley:** The individual litigants in person do not have training. It would be good if the whole system were made so things could be dealt with on an informal, less stressful level, through maybe an ombudsman or by mandating the Equality and Human Rights Commission to make assessments and to work with people. It would still be a difficult thing to do, but it is more likely to happen than expecting individual people to achieve societal change through bringing individual actions.



**Jonathan Fogerty:** Again I echo Mr Paulley's comments. In a couple of user-led disabled groups in Manchester of which I am a member, the feedback is that we want to take a group action and support one another. I am afraid that discrimination happens to individuals, but it does not happen to the Manchester Disabled People's Access Group, so the emphasis always has to be on somebody taking the lead and doing it, whether or not the group supports them, even in providing moral support and dealing with correspondence.

I have to say, though, that there is an enormous amount of information available on the small-claims track and on taking a small claim to court, probably more than ever with access to the internet and leaflets that are available from the HMCTS website and through the courts. There is an enormous amount of information out there for somebody who is new to the process and wants to go through it. I appreciate that it is sometimes difficult for me not to understand but to appreciate how other people feel intimidated by the court process because I have training and I am accustomed to dealing in that kind of circle, if you like. But I do say to people, "Talk to your court". There is a court accessible service that advises on disability issues—not the Equality Act but access issues in terms of the court—and encourages people to go down to the court, to sit in it, to experience it and to see what it is like. In my experience, hearings are very informal, particularly when you may have a service provider who is also not legally represented, so you have two litigants in person. My experience has generally been that the judges who deal in that process will give time and will be patient. They deal with them very differently, in my experience, from when they have a couple of lawyers in front of them. They expect compliance with directions and things like that, but there is an element of, "This is how we expect things to be done in the court process". So I would say that the courts are certainly making themselves as accessible as they can. It is about improving the training and awareness among people with a disability of how to bring these cases, I think, rather than saying the courts are not doing their best to raise awareness of how to do the process and how to take a claim through court.

**Doug Paulley:** I think things have improved a lot, but there are still major access problems with the court system. I would also say that I have experienced a heck of a lot of victimisation over the years both from lawyers and the organisations if they are litigating themselves, and some very nasty allegations. They often threaten people with costs or they can ask the very disparaging by questioning whether you are disabled/ That is happening with increasing frequency. If the heat could be taken out of the situation by allowing group class action or requiring some body to assess whether they may assist or not, that would remove that not inconsiderable experience.

**The Chairman:** Thank you. You have both given us some very interesting, useful and constructive ideas, which we take due note of and I hope will be included—or some of them—in our report. I thank you both very much for giving us that legal insight and for taking the time to come here. I am sure we all wish you the best in the future cases that you will no doubt be bringing, and I am glad you are able to use the law. Thank you very much indeed. We do appreciate it.

*10 November 2015*

### **Jonathan Fogerty – Supplementary Written Evidence (EQD0184)**

When I attended to give oral evidence to the House of Lords select committee, I forgot to mention when giving my evidence that I would like to see local authority departments working together and becoming more active in terms of trying to enforce the Equality Act legislation.

Let me try and explain a little more about what I mean?

Local authorities have planning departments and licensing departments that deal with licensing applications for liquor and food and hygiene licences for licensed premises.

In terms of restaurants and licensed bar premises, why is it that licensing authorities could not enquire as part of the application process for a liquor license whether or not the licensed premises have wheelchair access. This could be a simple question on the application form with a box to include relevant information.

If the applicant did not have wheelchair access, I would suggest that the licensing authority would grant the licence in the first year but make recommendations that enquiries are made as to what wheelchair access could be incorporated within the licensed premises.

The following year when the liquor license is once again applied for, the same question is asked and enquiries made as to what progress has been made on incorporating reasonable adjustments.

If the answer once again is negative, the applicant could either be refused at this stage or granted a license conditional on the understanding that the licensed premises are made wheelchair accessible within the following 12 months so that when a third application is made if no wheelchair access has been incorporated, the liquor license is refused and in effect with no license to operate, a licensed premises is closed down and cannot open as a business until wheelchair access is incorporated.

It is just an idea and one where local authority departments could adopt a collective approach to monitoring reasonable adjustments.

The other area that is very frustrating is in planning and planning applications that require planning permission and/or applications for building consent.

Over the years that I have been a wheelchair user, it is very frustrating when a premises is refurbished, extended or improved but with no evidence or consideration having been given to wheelchair access.

Why is this allowed to happen?

Why is it that the planning authorities do not insist on there being consideration given to wheelchair access and reasonable adjustments being made when an application is being considered for planning permission? If wheelchair access and wheelchair accessible toilets

have not been considered, the planning application should be refused until such time as it has.

If the refurbishments being made are not significant enough to warrant a planning application, then even a refurbishment or an application for a change of use may involve building consent approval or an inspection. Once again if there is an inspection by a building consent manager then why is there no mention or consideration of wheelchair access?

From a financial perspective, it would make much more sense for service providers to incorporate changes and reasonable adjustments for wheelchair users if they did so at the time they were doing general refurbishments and decorating etc.

If a premises is completely altered redecorated and then reopened, the opportunity to incorporate reasonable adjustments has been lost and/or it will be very expensive to undo what has already been done and re-do it at a later date.

This seems to happen more and more and as I say, as a wheelchair user it is very frustrating to pass a licensed premises which has just been changed and refurbished and reopened as an alternative premises only to see that no consideration has been given at all during the process to making improvements for access or adjustments for wheelchair users.

It would be very useful to see more of a cohesive process adopted, so that local authority departments are working together to consider the social environment and how facilities may be improved for everybody with a mobility impairment.

Thank you for considering these extra comments and I hope they are of use to the select committee.

*29 November 2015*

## **Anthony Gorham – Written Evidence (EQD0031)**

I thought it useful to respond to each question although a common theme underlines my concerns and outcomes for people who live with disability.

Question 1. By adding this aspect has brought it in line with the other strands of equality legislation however, it still does focus on physical disability. The proof is in the outcome and dependent on Local Authorities delivering their commitment.

Question 2. There is sufficient legislation surrounding this whole aspect, it is about ensuring and protecting vulnerable people to deliver the opportunity to experience an ordinary life.

Question 3. I refer to question one relating to physical disabilities. This question is about access and the law needs to say access to any public place should be “safe and dignified”. We have gone a long way over the past twenty years and service providers are well aware of their obligations in this respect. As we know dignified and safe access is more about attitude than provision of a ramp.

Question 4. Reasonable adjustment must ensure dignified and safe access.

Question 5. In practice some Local Authority performance has been abysmal. Some still “place” people in residential establishments with the inherent financial and restrictive abuses that result. Care Quality Commission still recognise residential services and indeed specify, dependent on the level of care, a service to be residential rather than the more independent supported living model of service. How can a Local Authority justify controlling a person’s financial wellbeing and therefore their opportunities for being in more control over their lives and be so restrictive. This is totally negates the “Valuing People” legislation, the setting up of Partnership Boards, which in some counties has never been taken seriously. Even more important the contrived delays in delivering personal budgets. People who have learning disabilities particularly find it, in some cases, impossible to advocate for themselves. It is incumbent on the local authority and borough housing departments to be proactive in providing housing and support provision. In terms of social housing how many borough councils allocate 10% of their housing capacity to people who have a disability. On average 10% of the population fall into this category. 6 million people? Of these maybe 10% are wheelchair users. So people who have a physical disability and need the use of a wheelchair amount to ? 600,000. Then why is there so much emphasis in this direction. The remaining people have learning/sensory impairments.

I am sure many disabled people feel that the support in their lives is delivered by “favour and not by right”.

What happened to “person centred planning” and the Local Authority supporting people to live the life they want and be supported to be more independent and less reliant on services.

Just to remind the select committee about the financial difference between residential and supported living models of service.

A residential service will provide care and support together with a room, usually shared bathroom and communal sitting room, dining room , laundry facility, garden. All the person’s

benefits with the exception of £24 per week will be used to fund the service and will be topped up by the local authority to meet the cost charged by the provider. There is no choice as to who you have to support you, you do not have the opportunity to change that support and will find it difficult to change your planned programme of activity. Disposable income £24 per week!!!! I refer to my earlier response to this question where I said that in my opinion the financial restriction and the inflexible service is abusive to a person's right to an ordinary life. Still, a Government body promotes such a service without any apparent regard to a person's right to live with choice. It seems the level of care required is the factor on which a person's life is controlled. Perhaps legislation is in place but it cannot be delivered. If this is the case then Central Government should say so.

I guess the question is "Why are people who need care to live an ordinary life not given the same opportunities as others" This is disenfranchising from leading an ordinary life. They cannot be tenants in the normal way, this is totally illegal in terms of latest equalities legislation.

Question 6. See response to question 5.

Question 7. Yes it does. When the health service and social care really agree that social care assess the needs and any health issues are addresses as they would be for the general population. Health provision for a person who has a disability should be the same as it is for all of us. We do discriminate every time we argue as to who is responsible for picking up the bill. This causes delay and I have heard so often "it's not down to us, we are waiting a decision from health" !!!! or vice versa.

Question 8. From my earlier remarks you will see that, as with many governing bodies they are ineffectual when delivering their standards. No equalities commission would condone the lack of motivation of local authorities to deliver their mission to disabled people. The delivery of personal budgets has been delayed over many years. I have lost count the number of times a questionnaire has been raised asking people what they wanted from their service, I would ask, "whose service? " The partnership boards were formed to enable users of services to direct how they wanted their service to be delivered. This has never happened in many counties.

Question 9. The legislation is in place, what Government department is responsible for implementation? Local Authorities must be told to deliver personal budgets, to deliver supported living, and to change their residential services to a more tenant led supported living service.

Question 10. The answer is no. Too many people cannot take on the Local Authority giants, of course the legal system is in place but this matter, I believe, is endemic in terms of social service and CQC attitudes towards the rights and wellbeing of those who cannot advocate for them selves.

### **General summing up.**

It is not about financial budgets, it is about how we fund the right way in terms of equality of opportunity. One cannot promise to deliver unless the resources are in place or are budgeted

in the right way. No service is cheaper than putting 200 people together in a day centre and generically providing support to keep safe and secure. Likewise 10 people living in a residential home with generic support keeping safe and secure. There is no lifestyle/personal development. Services are not likely to build expectations, in fact, expectation have become non existent as parents have been told, there is nothing for you. As you may be aware many disabled children stay with their parents until the parent is no longer able to cope. This is why carers assessments were introduced and also the short break service. Both these help parents keep their child/adult at home with little or no financial support.

Unfortunately the Care Quality Commission cannot win! Whilst the restrictive residential models of service are socially acceptable they can only work within those very restrictive rules. I would be interested to hear the views of the select committee in terms of their purpose. No, the act has not had a significant impact, has it changed anything for disabled people, I don't think so, has it changed attitudes to service delivery, no.

Until there is a firm, dated, commitment from Local and Central Government to deliver real equality of opportunity in all aspects of people's lives we still have a long way to go.

Thank you for the opportunity to be part of this piece of work, I wish you well and hope the equalities act will apply to all of us at some time in the future.

*24 August 2015*

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Government Equalities Office and Department for Work and Pensions – Oral Evidence (QQ 1-13)

**Government Equalities Office and Department for Work and Pensions – Oral Evidence (QQ 1-13)**

[Transcript to be found under Department for Work and Pensions](#)

**Government Equalities Office – Supplementary Written Evidence (EQD0011)**

Dear Lady Deech,

SUPPLEMENTARY EVIDENCE TO THE LORDS SELECT COMMITTEE ON EQUALITY ACT 2010  
AND DISABILITY – THE USE OF EHRC POWERS

At your Committee's hearing of the 7th July, at which you heard oral evidence from officials representing the Government Equalities Office and the Office for Disability Issues, I promised to send a note on the enforcement powers of the Equality and Human Rights Commission (EHRC) and their effectiveness. I am pleased to attach a note prepared by the EHRC to discharge this commitment, which I hope will be helpful to your Committee. I understand your Committee is due to take evidence from the EHRC next week.

I am aware that we members of the panel on the 7th July committed to supply information on some other issues to your Committee, and I would like you to know that these further notes are currently in preparation. I thought it would best to send the EHRC material across as soon as possible in view of your Committee's forthcoming hearing.

Yours sincerely,

Charles M Ramsden  
Deputy Director  
Government Equalities Office



**Government Equalities Office**

**EHRC: Approvals to use enforcement powers 2011-2015**

Whilst the Commission will invoke formal powers where appropriate, it has also been extremely effective at achieving impact without the need for formal enforcement action. The Commission is committed to acting proportionately in accordance with the Regulators’ Code and - as should be the case - “pre-enforcement” work accounts for a significant majority of what the Commission does in comparison with its use of hard-edged enforcement tools.

The Commission’s broader work to drive change has included resolving issues at pre-enforcement stage, providing initial casework assistance, and (until 2012) providing helpline assistance or making arrangements for conciliation. Pre-enforcement successes include, for example, action to resolve complaints relating to the public sector equality duty, discriminatory adverts, pre-employment health questions etc. So whilst the figures below capture those matters where formal approval to use a specific enforcement power was required under our governance arrangements, the Commission’s impact has, of course, been considerably broader.

**Table1: No of approvals to use formal enforcement powers 2011-15**

	<b>Section of Equality Act 2006</b>	<b>Apr 11 to Mar 12</b>	<b>Apr 12 to Mar 13</b>	<b>Apr 13 to Mar 14</b>	<b>Apr 14 to Mar 15</b>
Assisted cases (full)	s28	13	21	9	16
Assisted cases (limited)	s28	2	3	7	7
Interventions	s30	12	17	20	18
Judicial Review (own name)	s30	1	0	0	0
Agreements	s23	1	1	1	4
Investigations	s20	0	0	0	1
Applications to court	s24	0	0	1	0
Inquiries	s16	0	0	0	2

*Notes:*

- Figures above show the approximate number of matters in which approval was granted in accordance with the Commission’s governance arrangements for the Commission to use the relevant power, even if the matter did not subsequently proceed, settled, or concluded without a hearing, or the decision was later revoked.
- “Full” s28 assistance cases have generally been granted support in the form of in-house staff resources, solicitors costs (if out-house), counsel costs (if required) and

other necessary costs (eg court fee). "Limited / Pre-assistance" s28 cases have been granted limited or initial assistance which does not extend to the anticipated full costs of the litigation. The extent of the "limited / pre-assistance" will be agreed by the Commission and may vary from case to case.

- The figures for s23 Agreements do not include informal agreements
- For the purpose of these figures, where the Commission agreed to be involved in more than one stage of proceedings relating to the same matter (e.g. a first instance hearing and an appeal), each stage is counted separately.
- The figures for Inquiries show only those new s16 inquiries launched in the relevant period. These are:
  - Preventing Deaths in Detention of Adults with Mental Health Conditions
  - (launched June 2014) - *looking at non-natural deaths of adults with mental health conditions in detention in England and Wales*
  - Inquiry into the recruitment and appointment practices on company boards
  - (launched Jan 2015) - *a GB-wide inquiry into the recruitment and appointment practices of the top 350 listed companies at board level in the context of equality law*

In addition, work continued in relation to a number of our earlier inquiries. In total, the Commission launched 7 inquiries prior to 2011:

- Inquiry into home care of older people
- Inquiry into disability-related harassment
- Inquiry into gender discrimination in the finance sector
- Inquiry into human trafficking in Scotland
- Inquiry into recruitment and employment in the meat and poultry processing sector
- Inquiry into race discrimination in the construction industry
- Human rights inquiry

20 July 2015

**Government Equalities Office – Supplementary Written Evidence (EQD0014)**

Dear Lady Deech,

At your Committee's hearing on the Equality and Human Rights Commission (EHRC) on 21 July, there was some discussion of the status within Government of the Government Equalities Office (GEO) in its role as the sponsor Department for the EHRC. One Committee member expressed some concern that both the Department for Culture, Media and Sport and the Department for Education were involved in this arrangement.

I am therefore pleased to confirm an administrative change with respect to the GEO, which is now being brought fully into the Department for Education.

This change will create more coherence in the GEO's ways of working, and will promote the important links between the equalities agenda and the Department for Education's responsibilities, including tackling all forms of bullying, and broadening girls' career choices. The GEO will continue to work across Government departments on cross-cutting equalities issues, and to develop and implement policy to advance women's issues, gender equality and lesbian, gay, bisexual and transgender (LGB&T) equality.

The GEO's position as sponsor Department for the EHRC will continue, and there will be no change in ministerial responsibility.

Yours sincerely,

CHARLES M RAMSDEN  
DEPUTY DIRECTOR, EQUALITY FRAMEWORK  
*27 July 2015*

## **Government Equalities Office – Supplementary Written Evidence (EQD0113)**

### **EVIDENCE FOR LORDS’ SELECT COMMITTEE ON EQUALITY ACT 2010 AND DISABILITY**

Further to my colleague Charles Ramsden’s letter of 17 July, I am enclosing here additional information on a range of issues raised by the committee in its hearing with GEO and ODI officials on 7 July. I am grateful to colleagues at ODI, DCLG, DH, and DfE for providing the necessary information.

The issues covered here, as agreed with the committee’s clerk following the hearing, are:

- the Fulfilling Potential outcomes framework, and measuring progress against it;
- tribunal claims against schools – context, outcomes, and guidance;
- the Department for Health’s plans to ensure local authorities meet their new responsibilities following the closure of the Independent Living Fund;
- details of the range of projects and initiatives on education about reasonable adjustments that the ODI are party to; and
- information about the enforcement of Part M of the building regulations.

Charles Ramsden’s earlier letter covered the issues the committee raised about the EHRC.

### **Fulfilling Potential Indicators**

#### **Background note for the Lord’s Select Committee on the Equality Act and Disability**

##### **Summary**

- In July 2013 the Government published the ‘Fulfilling Potential – Making it Happen’ disability strategy<sup>115</sup>. The Fulfilling Potential Outcomes and Indicator Framework allow us to measure progress on an annual basis, towards the Strategy’s vision of disabled people fulfilling their potential.
- The Framework was developed in discussion with disability stakeholders, analysts from other government departments and academics.
- The Framework was created to monitor progress across six high level strategic themes: Education, Employment, Income, Health and Wellbeing, Choice and Control, and Inclusive Communities.
- We are not aware of any other publication which draws together information on disability from right across government in this way. It is a crucial evidence source about

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<sup>115</sup> The strategy and action plan can be found here: <https://www.gov.uk/government/publications/fulfilling-potential-making-it-happen-for-disabled-people>

disabled people's lives, showing us where progress has been made and where further action may be needed.

- The first annual report was published in September 2014. The next report is due to be published in Autumn 2015.

## **Fulfilling Potential Outcomes and Indicators Framework**

### **The purpose of the indicators**

In July 2013 the Government published the 'Fulfilling Potential – Making it Happen' disability strategy. As part of the strategy, we launched the Fulfilling Potential Outcomes and Indicators Framework. The Framework allows us to measure progress on an annual basis, towards the Fulfilling Potential Strategy vision of disabled people fulfilling their potential. The Framework was created to monitor progress across six high level strategic themes: Education, Employment, Income, Health and Wellbeing, Choice and Control, and Inclusive Communities, with a set of indicators being used to help monitor how and whether disabled people's lives are changing and improving over-time in each of these areas. The government made a commitment to update the Indicators on an annual basis when it launched the Strategy and accompanying Framework in 2013.

The indicators are not intended to be an evaluation tool<sup>116</sup>, but they do enable us to measure trends which indicate the extent to which disabled people are able to participate in different areas of life.

**Development of the Fulfilling Potential Outcomes and Indicators Framework** The Framework and set of supporting indicators was developed in discussion with disability stakeholders, analysts from other government departments and with the Disability Analytical Advisory Group (consisting of academics and stakeholders). We also reviewed the previous Office for Disability Issues (ODI) equality indicators, drew on the evidence from

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<sup>116</sup> However we have worked with disability organisations to create two toolkits to enable organisations to gather the information they need to make changes, influence local decision making, improve outcomes and generally help the lives of disabled people by conducting research and collecting their own data. <https://www.gov.uk/government/publications/using-disability-data>

‘Fulfilling Potential – Building Understanding<sup>117</sup>’, and analysed evidence from the Life Opportunities Survey on the barriers that disabled people face to identify any gaps in what is measured. The Fulfilling Potential Outcomes and Indicators Framework replaced the previous ODI equality and independent living indicators.

The indicator list includes both objective and subjective indicators. For example, measurement of the employment rate of disabled people is an objective measure – a person is either in or out of work, it is not dependant on a particular point of view. Whereas, measurement of people’s wellbeing is subjective – it is a personal/individual perspective. The Framework includes a mixture of objective and subjective measures to provide a broader or more balanced view. Additionally, objective measures do not exist for all of the indicators we wish to measure.

The Framework is based on the following 6 themes and a number of sub themes, which disabled people have said they aspire to: 1) Education 2) Employment 3) Income/Poverty 4) Health and Wellbeing 5) Inclusive communities, i.e. housing; transport; social participation; attitudes; friends and family; access and information and 6) Choice and control.

The indicators are wide ranging to reflect different areas of life, reporting on for example: the employment rate of disabled and non-disabled people; data on health, such as management of health conditions and experience of using the NHS; access to goods and services and any difficulties with transport. We are not aware of any other publication which draws together information on disability from right across government in this way. It is therefore a crucial evidence source about disabled people’s lives, showing us where progress has been made and where further action may be needed.

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<sup>117</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/320509/building-understanding-main-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320509/building-understanding-main-report.pdf)

The aim of ‘Fulfilling Potential: Building Understanding’ was to provide an analysis of the current evidence on disability in the UK to inform the development of the Indicators, inform public understanding and prompt debate about disability and the issues faced by disabled people.

## **Data sources**

There are 11 headline indicators and around 100 supporting indicators in total. They draw on survey data from various publications or online tools produced by a wide range of government departments, agencies or public bodies, such as: the Department for Business Innovation and Skills, Department for Transport, the Office for National Statistics, Department for Education and Sport England etc. The data sources include for example: the Labour Force Survey, the ONS Opinions and Lifestyle Survey, the Community Life Survey, National Travel Survey, the Taking Part Survey and the Crime Survey for England and Wales.

## **Definitions of disability and measuring progress**

From this year (2015) the main definition of disability used for most of the indicators will be based on the Equality Act definition. The majority of UK surveys and social data sources have changed their definition of disability from the Disability Discrimination Act definition to the Equality Act definition. Not all people who are defined as disabled in accordance with the Disability Discrimination Act are defined as disabled in accordance with the Equality Act. For this reason, comparisons between the two different definitions of disability will not be made in the 2015 progress report. This has resulted in a break in time series for many of the indicators. This means that the baseline for measuring progress, for many of the indicators will start again, from this year.

## **Timetable**

The last progress report on the Fulfilling Potential Outcomes and Indicators Framework was published in September 2014<sup>118</sup>. The next report is due to be published in Autumn 2015.

## **Note on Reasonable Adjustments in Schools**

### **Disability Discrimination Act 1995**

From September 2002, when the Special Educational Needs and Disability Act 2001 (which inserted the education provisions into the Disability Discrimination Act 1995) came into force, schools were required to make reasonable adjustments in relation to:

- a) admission arrangements, and

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<sup>118</sup> The progress report can be found here: <https://www.gov.uk/government/publications/fulfilling-potential-making-it-happen-updates-september-2014>

b) education and associated services offered to or provided for pupils, to ensure that disabled pupils and prospective pupils were not placed at a substantial disadvantage.

Schools were not then required to make reasonable adjustments to physical features of premises, nor to provide auxiliary aids and services. However, schools were required to produce and implement accessibility plans to plan to increase the extent to which disabled pupils could participate in the curriculum, to improve the physical environment of the school to increase the extent to which disabled pupils could take advantage of the education and associated services offered by the school, and to improve the delivery of information in writing to disabled pupils. Local authorities were required to produce and implement accessibility strategies that covered the same areas for schools they maintained. Ofsted inspections could look at the school's functions in relation to the accessibility plan.

Disabled pupils who required auxiliary aids and services were likely to have special educational needs, so would have received those aids and services through the special educational needs framework, and in many cases through a statement of special educational needs.

At that time the Department for Education and Skills produced a guidance circular for schools and local authorities on the accessibility duty to complement the Disability Rights Commissions code of practice on the Disability Discrimination Act (*Accessible Schools: Planning to increase access to schools for disabled pupils (2002)*) which set out advice and case studies on the reasonable adjustments duty. Subsequently the Department commissioned a comprehensive resource pack of guidance and information on the accessibility duty and reasonable adjustments duty. It provided a set of DVDs giving schools access to a substantial number and range of practical examples showing schools making reasonable adjustments to their policies and practices (*Implementing the Disability Discrimination Act in Schools and Early Years Settings (2006)*). The pack includes examples related to PE and school sports days, supporting pupils with medical needs and adapting lessons and activities across the curriculum (including school trips). It also includes examples of how to engage with disabled children and young people and their parents to develop inclusive approaches to disability. The pack was made available to every school. A supplementary section was added to the pack during 2006 covering the disability equality duty (as the predecessor to the public sector equality duty).

### **Equality Act 2010**

When the Equality Act 2010 replaced the Disability Discrimination Act 1995 in September 2010, schools were required to make reasonable adjustments to provisions, criteria or practices that put disabled pupils at a substantial disadvantage, in order to avoid that disadvantage. In addition, from September 2012, schools were also required to provide auxiliary aids and services for disabled pupils.

Schools are still not required to make reasonable adjustments to physical features, but the duty to have an accessibility plan, and to keep it under review remains.

The Department for Education issued guidance to schools on their duties under the Equality Act, including the duty to make reasonable adjustments. Schools were made aware of this guidance, which was available on the Department's website and the latest version, dated May 2014 is available on the Gov.uk website.

The EHRC has also issued technical guidance for schools.



### **Children and Families Act 2014**

Part 3 of the Children and Families Act 2014 makes provision for children with special educational needs and with disabilities. The statutory code of practice issued under the Act (*Special educational needs and disability code of practice:0 to 25 years*) gives guidance to schools and others which work with and support children and young people with disabilities as well as special educational needs and refers to the Equality Act duties, including the requirement to make reasonable adjustments.

The Department for Education is also funding a number of organisations to provide advice, information and support to schools and local authorities to ensure they understand their duties and responsibilities towards children with special educational needs and disabilities. It is also funding activity through a range of organisations to support disabled children and young people and those with special educational needs in education and through the transition to adult life. These include the Council for Disabled Children, the National Association for Special Educational Needs, the Communication Trust, the British Dyslexia Association, the Driver Youth Trust and the Autism Education Trust. The Council for Disabled Children's publication *Disabled Children and the Equality Act 2010* (March 2015) is one example of this activity.

Ofsted inspections will look at the effectiveness of schools in meeting the needs of disabled pupils.

The Act also requires maintained schools and academies to make arrangements to support children with medical conditions and to have regard to statutory guidance on this, which will also assist some disabled pupils.

### **Disability Discrimination Claims**

As the duty to make reasonable adjustments has existed since 2002, and there has been guidance issued to schools since then, there is no reason to think that schools are unaware of their duties to make reasonable adjustments.

The fact that there were only 135 disability discrimination claims taken to the First-tier Tribunal in 2012-13 is not evidence that schools are unaware of their duty to make reasonable adjustments. It is more likely to be the case that schools are generally complying with that duty.

It is parents of disabled children that bring cases before the Tribunal, and they are likely to be more than aware of the school's duty to make reasonable adjustments, even if the school is not.

To put the 135 disability discrimination cases into context, there were 3602 claims about statements of special educational needs taken to the Tribunal in that same time period. Of those, 135 were disability discrimination cases, 67 were decided, 33 were successful, 34 were dismissed and 38 were withdrawn and 30 not determined within the reporting period. Of the 3602 SEN claims, 673 were successful.

During 2013-14, there were 126 disability discrimination claims, and 4069 appeals about statements of special educational needs taken to the Tribunal in that period. Of the 126 disability discrimination cases that were registered 69 were decided, 34 were upheld, 35 were dismissed, 30 were withdrawn and 27 not yet determined within the reporting period. Of the SEN claims, 660 were successful.

## **How does DH plan to ensure local authorities meet their new responsibilities following the closure of the Independent Living Fund?**

### **Information provided by the Department for Health**

The Care Act 2014 places a duty on local authorities to assess adults who appear to have care and support needs and to meet those needs which meet the national eligibility criteria. 94% of all former ILF users were receiving services from their local authority prior to the closure, and authorities will now be responsible for meeting all eligible needs for these people. The Department of Health issued statutory guidance to local authorities to help them prepare for the transfer and ensure that peoples care needs continued to be met until they have been assessed by their local authority.

Local authorities are responsible to their population on how they deliver their duties under the Care Act. The Care and Support Reform Programme Board which includes the Department of Health, ADASS and the Local Government Association are monitoring the impact of the Care Act. If anyone with care and support needs, including former ILF users, are unhappy with how their needs are being met they can use the complaints procedure or take their concern to the Local Government Ombudsman.

## **Details of the range of projects and initiatives on education about reasonable adjustments that the ODI are party to**

### **The Accessible Britain Challenge**

The Accessible Britain Challenge, developed and co-ordinated by the Office for Disability Issues, was launched by Mark Harper, Minister of State for Disabled People in September 2014.

#### **Background**

The background was awareness that many disabled people face barriers in their everyday lives that prevent them from being full and active members of their community, and that significant progress has been made in some communities to make them inclusive and accessible. Evidence suggests that progress is patchy and that is why the Accessible Britain Challenge was developed as a challenge for all communities to do more.

#### **Vision of the Challenge**

The vision of the Accessible Britain Challenge was for communities to become more inclusive and accessible by engaging and working with disabled people to remove barriers that get in the way of them being full and active contributors in their community. The Challenge helped to share ideas and examples of how communities could become more inclusive and accessible, including through examples of reasonable adjustments.

**More Information about the Accessible Britain Challenge can be found here:**

<https://www.gov.uk/government/collections/accessible-britain-challenge-creating-inclusive-communities-for-disabled-people>

A range of examples of good practice were published here:

<https://www.gov.uk/government/publications/accessible-britain-challenge-good-practice-examples>

### **Disability Confident**

The Office for Disability Issues supports the Disability Confident campaign. Disability Confident is part of the government's approach to breaking down the barriers to disabled people fulfilling their potential – 'Fulfilling Potential - Making It Happen' which was published by ODI in 2013. Disability Confident aims to encourage more employers to

become more confident about employing disabled people, which might include thinking about how they can make reasonable adjustments.

More information about Disability Confident can be found here:

<https://www.gov.uk/government/publications/disability-confident-1-year-on-breaking-down-the-barriers-to-employment>

<https://www.gov.uk/government/collections/disability-confident-campaign>

### **Accessible Communications**

The Office for Disability Issues has published guidance on accessible communications, including alternative formats, aimed at government communicators, but which might be useful for others. It can be found here:

<https://www.gov.uk/government/publications/inclusive-communication/accessible-communication-formats>

### **How Part M of the building regs is being enforced, including in respect of new build hotels Information provided by DCLG**

Building control is a fully devolved service. Building work – typically the erection, extension or material alteration of a building – should be subject to inspection either by a Local Authority Building Control body or a Government Approved Inspector. Where building work is undertaken to a hotel, this would normally be subject to Building Control.

Part M (Access to and use of buildings) of the Building regulation requires that reasonable provision is made to access a building and use its facilities. Supporting statutory guidance in Approved Document M (Access to and use of buildings) sets out one way of complying with this requirements, and section 4.17 to 4.24 sets out specific requirements for accessible sleeping accommodation in hotels.

It is the responsibility of the person undertaking the building work to comply with the requirements of the Building Regulations, with the relevant Building control Body assessing on a case by case basis whether reasonable provision has been made. Whilst following the guidance in the approved document tends to indicate negative liability in complying with the building regulations, alternative approaches which deliver equivalent performance are equally acceptable. Ultimately, only the courts can decide whether a specific solution does or does not comply.

Because the Building Regulations only apply at the time that building work (as defined in the building act) takes place, they are not retrospective and so there is no on-going control or requirement for existing buildings to comply with current regulations if these were not in force at the time that original construction work took place.

*4 September 2015*

## Government Equalities Office – Supplementary Written Evidence (EQD0169)

Dear Lady Deech,

### FIRSTGROUP PLC – EVIDENCE ON LEGAL CASES

The Clerk to your Committee, Mr Collon, has helpfully brought to my attention the evidence submitted to your inquiry by FirstGroup Plc. In particular, Mr Collon has flagged two apparent discrepancies between FirstGroup Plc’s evidence and that presented by me and my colleague Tracey Kerr during our oral evidence to your Committee on 7 July. These focus on the nuances of the legal cases *Paulley v FirstGroup PLC* and *Black and ors v Arriva Northeast Ltd*.

We have reviewed FirstGroup’s evidence, and welcome their very helpful clarification of two issues.

Firstly, with respect to the *Paulley* case, FirstGroup’s evidence (paragraph 22 and on) quotes (and then disputes) my evidence that:

*The Court of Appeal relatively recently ruled in favour of a mother with a buggy using space on a bus and against a disabled man in a wheelchair.*

My evidence was accurate in that Mr Paulley’s challenge was unsuccessful. However, I very much welcome FirstGroup’s evidence on this subject, which has helpfully clarified the complexities of the case. I agree with FirstGroup that the question of law was whether the bus company’s policy to “request but not require” passengers (such as those with buggies) to vacate a wheelchair space was lawful. The court ruled that it was. The court was not judging whether any particular individual or protected characteristic should take precedence over another. I welcome this clarification. Indeed, in the opening lines of the quote from my evidence to which FirstGroup refer I said:

*In terms of the relationship with other groups within the Act, we are not conscious of disabled people being in what might be called conflict with the other groups.*

That was and remains an accurate description of the position vis-à-vis the different protected characteristics, and I commend FirstGroup’s evidence on this issue to your Committee.

Secondly, with respect to the *Black* case, FirstGroup’s evidence (paragraph 25 and on) disputes my colleague Tracey Kerr’s comment that Arriva North East discontinued their appeal.

This was a case similar to *Paulley*, where the first instance judgment of the County Court held that Arriva’s policy to ‘request but not require’ passengers to vacate a wheelchair space on a bus for a wheelchair user was lawful. We understand that, before it was discontinued, the appeal against that decision was to have been joined with the *Paulley* case (since it raised some similar issues). However, Ms Kerr and I welcome the

clarification that the appeal was actually discontinued by one of the appellant claimants, rather than Arriva.

I hope this is useful. We look forward to continuing to work with you.

Yours sincerely,

**Charles M Ramsden**  
**Deputy Director, Equality Framework Team**  
Government Equalities Office

**Government Equalities Office – Supplementary Written Evidence (EQD0173)**  
**Supplementary evidence submitted by the Government Equalities Office in reply to questions from the Committee**

***Equality and Human Rights Commission***

Q *Question 8 of the Call for Evidence asks “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?” Plenty of other witnesses have given us their views on this. The EHRC of course have their own views, but the Committee is asking for the Government’s views on this, not for a repetition of the EHRC’s views. The EHRC is an independent body. The Government, unlike the EHRC, could increase the powers of the EHRC if it thought this would make it more effective, so we really do need the Government’s own views.*

A In May 2012 the Coalition Government announced a comprehensive review of the EHRC’s budget. The announcement of this review made clear that it and other measures between them reflected the then Government’s desire to enable the EHRC to focus its efforts on its core functions as Great Britain’s independent equality body and “A” rated National Human Rights Institution. “Core functions” included acting “*as a strategic enforcer of the law and guardian of legal rights – promoting awareness and understanding of rights, supporting victims of discrimination, and using its strategic enforcement powers to ensure the law is working as intended.*” The outcome of the review was announced in January 2013; a number of significant changes were made to the EHRC funding; and a number of its functions considered not to be core were abolished through the Enterprise and Regulatory Reform Act.

The current Government believes that these measures improved the effectiveness and focus of the EHRC on its regulation and enforcement powers, assisting disabled people among others covered by particular provisions in the Equality Act. The Government has not as yet undertaken any formal assessment of the EHRC’s effectiveness, but as with all arm’s length bodies a triennial review of the EHRC’s function, control and governance arrangements will be undertaken in due course.

***Uncommenced provisions***

Q *On page 4 the evidence states that “the Government is currently considering the future” of the un-commenced provisions of the Equality Act. Nothing more is said about this. “Considering the future” sounds as if the Government might even be considering the repeal*

*of the provisions, or some of them. Can you confirm that it is not? If not, does it mean “considering whether or not to implement”? And if it means “considering when to implement”, what is the timescale? These are provisions that have been on the statute book for over 5 years, and the Committee want to know just what the Government intends to do about them, and when.*

A The wording of the response reflects the fact that the treatment of un-commenced provisions by the previous Government varied from one measure to another, and included proposed repeal (of the socio-economic duty) as well as delayed introduction (e.g. dual discrimination and adjustments to common parts), and this is no doubt part of the background that Ministers will want to take into account.

Q *On uncommenced provisions, one clarification. The submission says that reasons are given in the Memorandum why provisions have not been commenced, and so they are in relation to some provisions, but not those relating to disability. The only exception is s.14 (dual discrimination) where disability is one of the relevant protected characteristics. The reason given in para 3.42 is that there is “insufficient evidence that it 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.”*

*Why is it more of a burden to business 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.*

A 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, irrespective of how many grounds that claim is made on, so there would be a clear incentive to expand a claim in this way.

Q *At yesterday’s evidence session [i.e. the session with lawyers on 8 September] the question was raised why Part 1 (socio-economic equalities) has not been brought into force. Para 3.39 explains that this is due to the resource implications for the public sector. Since the Scottish and Welsh Governments both wish to implement this Part, it is hard to see why England should not do so too.*

- A The Scottish and Welsh Governments clearly took a different view from the Coalition Government at Westminster on the costs and benefits of implementing the duty, particularly in terms of the requirements that should be placed on the public sector.

It should be noted that the 2009 Equality Impact Assessment, published by the then Labour government to support the passage of the Act, did not list any tangible benefits arising from the socio-economic duty. The assessment claimed that the duty would have a positive impact on “*people from ethnic minorities, older people, disabled people, women, and people of certain religions*”. But it offered no evidence to support this, saying only that the duty would “*enhance and support*” the cover these groups already receive under the public sector equality duty.

The Coalition Government was unconvinced about the specific value of this particular measure, which risked imposing an additional bureaucratic burden on public bodies for no quantifiable benefit.

*12 October 2015*



## Government through the Department for Education – Written Evidence (EQD0121)

### 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?

The Equality Act 2010 (the 2010 Act) replaced nine different Acts of Parliament and over 100 different regulations and case precedents dating back to the 1960s.<sup>119</sup> In keeping with this major simplification, the 2010 Act had, printed alongside it, section-by-section explanations in plain English, setting out the meaning of each provision, rather than the traditional, more limited explanatory notes. An easy-read version of the Act was published and remains available on-line. The 2010 Act was supplemented by substantial statutory codes of practice on employment and the supply of goods, facilities and services by the Equality and Human Rights Commission (EHRC), as well as a range of much shorter “Quick-Start Guides” issued by the Government Equalities Office (GEO).

Although the 2010 Act contained a number of strengthening provisions intended to operate “across the piece” such as a combined public sector equality duty and extended positive action provisions<sup>120</sup>, its primary purpose was to consolidate and harmonise earlier legislation. In the case of disability, the 2010 Act reflected and responded to a number of changes and challenges, particularly in case law, since the Disability Discrimination Act 1995. In particular the 2010 Act:

- Streamlined the definition of “disabled” and “disability”, so that it no longer needs the list of 8 capacities (i.e. mobility; manual dexterity; physical coordination; continence; ability to lift, carry or otherwise move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; and the perception of the risk of physical danger), which hitherto had to be proven in a case of disability discrimination.
- Created the prohibition of discrimination arising from disability, which replaced earlier protections that had been undermined in the courts (i.e. *Malcolm v LB Lewisham*).
- Set a lower threshold for proving disability discrimination. It is now “substantial disadvantage” rather than “impossible” or “unreasonably difficult”.
- Made the provision of reasonable adjustments in goods, facilities and services an anticipatory duty.
- Made pre-employment health checks unlawful

<sup>119</sup> See Memorandum to the Women and Equalities Select Committee on the post-legislative scrutiny of the Equality Act 2010 (Cm 9101), section 1, particularly paragraphs 1.11 – 1.15.

<sup>120</sup> *ibid* paragraphs 1.16 – 1.18.

- Applied indirect discrimination to disability.

The Government therefore believes that under the 2010 Act, the protection available to disabled people has been strengthened compared to the 1995 Act.

The EHRC has been substantially involved with the 2010 Act, as a regulator, as an enforcer and as a provider of guidance to the legislation. Evidence given by the EHRC to the Committee indicates a continuing emphasis on disability interests, both in terms of legal interventions, and also through the continued existence of the statutory Disability Committee. About 60% of the contacts made to the Equality Advisory and Support Service (EASS) concern disability, and the Service is resourced accordingly. The Service has not made us aware of any problems it has in dealing with disability as one of nine protected characteristics. Intelligence gathered by the EASS about disability, as with other characteristics, is shared with the EHRC.

The Government believes that disability’s inclusion as one of nine protected characteristics within the 2010 Act has been to its advantage. Unlike for example religion and belief and certain of the characteristics related to sex and gender, there is little inherent tension between disability and other characteristics; nor have cases that concern disability generally indicated legal conflict with other protected characteristics<sup>121</sup>. One possible exception is the case of *Paulley v First Group* (details of which are included in the response to questions 3 and 4). This is the only type of case that we are aware of where there seems to be any kind of potential conflict or difficulty between disability and any other protected characteristics.

Under the 2010 Act, there have been a number of other significant cases involving disabled people, all of which have related to reasonable adjustments. These include *O’Hanlon v Commission for HM Customs [2006]*; *Croft Vets Ltd. v Butcher [2013] UKEAT/0562/12*; *Environment Agency v Donnelly [2013] UKEAT/0914/13* (details of these cases are included in the responses to questions 3 and 4 about reasonable adjustments).

**2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

The Government is not aware of any gaps relating to disability and equality protection in the 2010 Act (or any other legislation). As a member of the European Union (and the United Nations), the UK is obliged to provide a baseline level of protection for disabled people domestically. Successive Governments have therefore transposed the Equal Treatment Framework Directive (2000/78/EC), Regulation (EC) No 1107/2006 relating to travel by air, Regulation (EC) No 1371/2007 on Rail Passengers’ Rights and Obligations,

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<sup>121</sup> *ibid*, section 4.

Regulation (EU) No 1177/2010 on the rights of passengers traveling by sea and inland waterway, Regulation (EU) No 181/2011 on the rights of passengers in coach and bus transport into domestic legislation. The UK also complies with the UN Convention on the Rights of Persons with Disabilities.

Using both international and domestic case law as an indicator of whether there are any gaps in disability discrimination protection, none have been indicated. For example, the 2014 Court of Justice of the European Union ruling in the case of *Karsten Kaltoft v Billund Kommune*, on whether obese workers can be considered to be disabled and therefore entitled to protection under disability discrimination legislation, was in line with an earlier 2013 domestic ruling in the case of *Walker v Sita INC Ltd*. Neither case required changes to be made to the Act.

The Government is aware, from correspondence handled by GEO and from the management information from the EASS that the most common concerns of disabled people relating to the 2010 Act are about reasonable adjustments. Typically, these involve specific problems – for example, disabled people facing sanctions at work because they are considered by their employers to have taken too much time off as sick leave or for medical appointments; or public authorities' complaint processes refusing to accept verbal complaints but instead insisting they must be submitted in writing. These are matters which for the most part should be capable of resolution within the framework of the 2010 Act.

At a more general level, there are calls for reasonable adjustments to be specified in certain situations, particularly in relation to buildings and premises; and also for an enforcement mechanism which does not require the complainant to seek formal help through conciliation, legal action or the intervention of the EHRC.

Though these are undoubtedly difficult and significant issues, the Government does not regard them as indicating “gaps in the law”. Changes of the sort proposed – if they could be made – would alter the nature of the 2010 Act substantially: the concept of “reasonable adjustments” depending on the nature of the case would start to be overlaid by sets of rules governing specific modifications, while on-the-spot enforcement - if it were possible - would obviously change the whole basis of the 2010 Act away from its general approach of self-enforcement (with advice and/or legal assistance in certain circumstances as appropriate).

Certain sections in the 2010 Act have not been commenced. In a number of cases, reasons for this are set out in the Memorandum on the Act.<sup>122</sup> The un-commenced sections which directly affect disabled people include section 36 (adjustments to the common parts of rented properties) and Part 12 (transportation). On section 36 the previous Government delayed implementation of the provision until Scottish Government experience in implementing section 37 (adjustment to common parts in Scotland) was available, while on taxis, the government is still considering the case for commencing section 165 of the 2010 Act. This would impose on drivers of wheelchair

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122 See for example, - paras 3.39, p.26; para 3.42, p.27; paras 3.58-3.60, p.30; para 3.51, p.29.

accessible taxis and PHVs the duty to assist passengers who use wheelchairs, while also prohibiting them from making additional charges for carrying wheelchair users. In doing this however, careful consideration has to be given to how best to ensure that drivers are fully aware of the nature and extent of these duties.

The Government is currently considering the future of these un-commenced provisions.<sup>123</sup>

**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?**

The concept of reasonable adjustment has been a consistent key element of disability discrimination protection legislation for the past 20 years. The Government therefore believes that the concept of reasonable adjustment is by now well known to employers and service providers alike. Disability Rights UK in its evidence to this Committee said that it believes that the concept of reasonableness is quite useful, because one simply cannot expect the same of the corner shop as one does of BT. What is reasonable for one company may completely not be reasonable for the next. They argue therefore that equality law rightly balances rights and responsibilities in relation to reasonable adjustments.

The reasonable adjustment concept was imported from the Disability Discrimination Act 1995 into the Equality Act 2010. Over the last 20 years therefore, a considerable amount of case law has built up. For example, in *O'Hanlon v Commission for HM Customs [2006]*, the claimant argued that she was substantially disadvantaged by her employer's sick pay rules, which failed to make a reasonable adjustment and should have paid her full pay for all her disability-related sickness absences. The Respondent argued that the Claimant was not substantially disadvantaged because the sick pay rules applied equally to everyone. The Employment Appeal Tribunal did not accept this argument, "*The whole premise of this provision (the reasonable adjustments provision) is that the disabled employee may be disadvantaged by the application of common rules.*" In *Croft Vets Ltd. v*

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<sup>123</sup> An update on s.36 was given on the Red Tape Challenge website in January 2015. "*To evaluate the effectiveness of a similar scheme in Scotland before considering bringing into force in England and Wales a statutory duty on private landlords to consider adaptations to communal areas, such as stairs and hallways, of rented accommodation. This is an extension of an existing duty for landlords to adapt rented accommodation and at the moment is taking place on a voluntary basis. Evidence from the Scottish scheme would help establish whether a statutory intervention is necessary and proportionate.*"

Currently, if a disabled tenant wants to have an alteration made to a shared area of their block of flats they are free to ask the landlord and to pay for any alteration. But the landlord can simply refuse the request without giving a reason. Implementation of the un-commenced parts of s.36 would mean the landlord would have to comply with it unless the request was unreasonable. No costs fall on the landlord; they fall on the tenant, who can use their own financial resources to fund an adaptation, or who might apply to be considered for a (means and needs tested) grant from the [Disabled Facilities Grant \(DFG\)](#), a mandatory means tested entitlement administered by all 326 local housing authorities, which on 1 April 2015 became part of the [Better Care Fund](#) and is now funded by [Department of Health](#).

*Butcher [2013] UKEAT/0562/12*, an Employment Appeal Tribunal held that the employer should have considered paying for private medical treatment to enable an employee to cope with work related stress as part of its duty to make reasonable adjustments. In *Ndebele v Kasterlee UK Ltd and others [2013]*, an employment tribunal held that the employer had failed to make reasonable adjustments for a member of staff who was disabled and had difficulties lifting heavy objects. The employer did not brief other staff on the claimant's disability or request that they provide assistance with heavy lifting. In the case of the *Environment Agency v Donnelly [2013] UKEAT/0914/13*, the Employment Appeal Tribunal held that the employer had failed to make reasonable adjustments by refusing to allocate a reserved parking space for an employee with impaired mobility. The respondent argued that the claimant could have come into work earlier, thus making it easier to find a car parking space and negating the need for an allocated space. This argument was rejected as the onus was on the respondent to make reasonable adjustments, not the employee.

These types of judgments have proved helpful in preparing guidance, particularly on some of the more difficult issues such as anticipatory reasonable adjustment duties and what they might require in practice. The case of *Paulley v First Group* is of particular relevance here, especially as it was widely reported in the press that Mr Paulley had been denied a reasonable adjustment. In this case, the Court of Appeal ruled that a bus company was not in breach of its reasonable adjustment duty because it did not insist that a disabled wheelchair user had priority to use a bus disabled wheelchair space over a mother who had occupied the space with her pushchair. On 8 July 2015 the Supreme Court granted *Mr Paulley* permission to appeal this decision. Though currently under appeal to the Supreme Court, the Court of Appeal did clarify that its ruling was not whether Mr Paulley was entitled to a reasonable adjustment, but rather that its ruling was that bus companies' reasonable adjustment duties do not extend to insisting that a wheelchair user's right to occupy a bus wheelchair space, supersedes that of a mother who occupies the wheelchair space with her pushchair.

The EHRC has a key role in explaining, promoting (section 3 Equality act 2006) and enforcing (sections 20-32 Equality Act 2006) anti-discrimination legislation. The EHRC has published a range of guidance, including on workplace adjustments, matters to be taken into account in determining disability questions and reasonable adjustments for disabled people. The EHRC has also published technical guidance for schools in this area.

The EHRC has also assisted some disabled people either by intervening in court cases to try to ensure a favourable outcome where there have been difficulties over reasonable adjustments.

#### **Education:**

The Department for Education (DfE) provides schools, including academies, with non-statutory advice to help them to understand how the Act affects them and how to fulfil duties under it. The new special educational needs and disability code of practice from September last year reinforces the 2010 Act. It sets out what a reasonable adjustment is and points back to the EHRC guidance on what reasonable adjustments mean for

schools.

As a result of the new Children and Families Act 2014, which reinforces the duties schools have towards children and young people with disabilities, DfE has commissioned a range of voluntary organisations to ensure that schools understand their responsibilities towards children with special educational needs and disabilities. The Ofsted inspection framework requires inspectors to consider how effective schools are in meeting the needs of disabled pupils.

There is also a requirement in the 2010 Act for both schools and local authorities to set out accessibility plans or strategies. Although schools are not subject to the specific reasonable adjustment duty as it relates to making alterations for physical features because this is already considered as part of their planning duties, they are required to set out an accessibility plan, which outlines what would be done in order to make schools more accessible to disabled pupils. In addition where something a school does places a disabled pupil at a disadvantage compared to other pupils, then the school must take reasonable steps to try and avoid that disadvantage. This might include providing an auxiliary aid or service for a disabled pupil when it would be reasonable to do so. Ofsted is able to take that into account in its inspections.

## **Transport**

The Government remains committed to ensuring that disabled people have the same access to transport services and opportunities to travel as other members of society. There has been significant progress made since the introduction of the Equality Act 2010. For instance, bus accessibility has gone up to 83% in 2014 in Great Britain compared to 76% in 2013; while 60% of rail vehicles, up from 46% in 2013, were built or fully refurbished to modern access standards.<sup>124</sup>

Furthermore, a Eurobarometer survey done in September 2013 by the European Commission examined 26,000 rail passengers' satisfaction with domestic rail services, including trains, railway stations and accessibility for people with reduced mobility. The UK scored higher than other EU countries on accessibility for passengers with limited mobility, although a 65% satisfaction rating still means there is room for improvement.

On aviation, we have also taken significant activity to help improve accessibility and to improve provision for disabled passengers when travelling by air. For instance, in order to facilitate implementation of EC Regulation 1107/2006 the Department for Transport published a Code of Practice on access to air travel for disabled persons and persons

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<sup>124</sup> The Rail Vehicle Accessibility (Non-interoperable Rail System) Regulations 2010 place a duty on operators of light rail, metros and trams to ensure that the vehicles they operate are compliant with a set of physical and operational standards. Alongside the Rail Vehicle Accessibility (Non-interoperable Rail System) Regulations 2010, there are a set of regulations which enforce a European standard for accessibility on the mainline (interoperable) network. These are the Railways Interoperability Regulations 2011 and the standard is a technical standard for interoperability for persons with disabilities and persons with reduced mobility (PRM-TSI).

with reduced mobility which is widely used by UK Industry.

Department for Transport also endorsed a booklet produced by the EHRC: "*Your Passport to a Smooth Journey: top tips for disabled and less mobile air passengers*". The booklet gives disabled passengers information on what can be done to make their journey run as smoothly as possible. The Civil Aviation Authority (CAA) and the EHRC provide excellent sources of information to air passengers, and the CAA now has an enhanced suite of civil sanction powers available to it in carrying out its enforcement functions.

Furthermore, a CAA-led compliance review confirmed that compliance with the various Regulations remains high in the UK – and compares very favourably with other Member States.

However, the Government acknowledges that there is more to be done to remove some of the remaining barriers such as the availability and physical accessibility to transport and the Department for Transport's Accessibility Action Plan published in December 2012, seeks to remove or reduce these remaining barriers.

### **Transport (Taxis and PHVs)**

The Government recognises that both taxis and private hire vehicles (PHVs) are a particularly valuable form of transport for disabled people. It strongly encourages all taxi and PHV drivers to assist wheelchair users, wherever possible, and strongly discourage the practice of requesting additional charges to carry a disabled passenger.

The Government is considering the case for commencing Section 165 of the 2010 Act. This would impose on drivers of wheelchair accessible taxis and PHVs duties to assist passengers who use wheelchairs as well as prohibiting them from making additional charges for carrying wheelchair users. Should we go forward with this, we will have to consider very carefully how best to ensure that drivers are fully aware of the nature and extent of these duties.

In September 2010, the Department for Transport published guidance for local authorities and licensed drivers and operators on the provisions in the 2010 Act in respect of taxis and PHVs. This included guidance on the commencement of section 168-171 of the 2010 Act, which covers the carriage of assistance dogs by taxis and PHVs. Drivers of any taxi or PHV that do not have a medical exemption, but who fail in their duty to carry an assistance dog, are liable to a fine of up to £1,000. Enforcement of these provisions is generally a matter for local licensing authorities.

### **Sport**

The Government is committed to ensuring that we learn from the success of London 2012 and build good practice regarding provision for disabled spectators into our sporting culture across all sports. The Paralympic Legacy Advisory Group, established by

Government and the Mayor of London, identified that this should be a particular area of focus for legacy work. This includes helping clubs and stadia owners to understand their obligations towards disabled people under Equalities legislation and providing examples of good practice that clubs can adopt and adapt in order to better serve disabled spectators.

The Department for Culture, Media and Sport (DCMS) continues to work with the Department for Work and Pensions (DWP), and relevant organisations such as the campaigning charity Level Playing Field, on access to stadia for disabled supporters, and to ensure that providers are aware of their duties under the 2010 Act.

DCMS and DWP will shortly be publishing the results of a joint survey of disabled sports fans and sports clubs. The survey will provide evidence for understanding the barriers to attending sporting events for disabled spectators and the challenges faced by different spectator sports in providing access to sporting venues, including the level of awareness of their obligations under the equalities legislation to disabled spectators.

The Sports Grounds Safety Authority will be issuing an updated pamphlet to accompany the existing *Accessible Stadia* guidance, which will detail the current legal framework with which all service providers must comply and will also include advice on how clubs can improve access across a range of different disabilities.

The current consultation on a new sport strategy – published on 4<sup>th</sup> August 2015 - will consider the issues around how to ensure that disabled spectators can have equality of access sporting infrastructure. The consultation can be found at <https://www.gov.uk/government/consultations/a-new-strategy-for-sport-consultation>

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

The duty to make reasonable adjustments aims to remove barriers that prevent disabled people from integrating fully into society (e.g. the workplace, in shops, when using transportation, etc.). Employers and providers of services are required to make reasonable adjustments to any of their “provisions, criteria or practices” that place disabled people at a particular disadvantage compared to non-disabled persons. Parliament therefore took great care in drafting the reasonable adjustments duty, which the then Disability Rights Commission, in its Disability Discrimination Act guidance for schools and universities, referred to as “a cornerstone of disability legislation”.

The reasonable adjustment provisions in the 2010 Act are flexible and therefore enable a case by case approach to disability discrimination cases. To assist with this the EHRC has published detailed guidance and statutory Codes of Practice on reasonable adjustments in employment and Goods Facilities and Services.



There is also a considerable corpus of judicial rulings which have built up over a period of time and which is therefore helpful to those who want to know about rights and responsibilities, for instance in relation to anticipatory reasonable adjustment duties. The duty to make reasonable adjustments for disabled customers is an anticipatory duty and thought needs to be given to the possible disadvantages that could be faced by customers. In the case of *Hosegood v Khalid (2012)*, a restaurant was found to have discriminated against a customer on the grounds of his disability by failing to provide appropriate wheelchair access to its premises. This was despite the fact that they did have a ramp available, stored at the back of the restaurant ready for use, but instead insisted on lifting the claimant's wheelchair.

What is reasonable for one disabled person, and/or for one employer or service provider may not be reasonable for another. Setting standard criteria or giving a standard example of what a reasonable adjustment is or should be could therefore be difficult. For example, in wheelchair access cases, there are different types of wheelchairs and different types of physical disability, which do not lend themselves to a standardised reasonable adjustment provisions for wheelchair users. As noted in the answer to Question 2, Government would be concerned that more explicit legislation on reasonable adjustments would start to overlay the concept of "reasonableness", which has worked with considerable success over 20 years across a wide range of circumstances, with sets of detailed specifications. Not only would these risk becoming over-detailed and prescriptive, they might actually prove less satisfactory to disabled people because of the loss of flexibility involved – with employers and service providers inevitably sticking rigidly to compliance with the exact requirements in the legislation.

**5. How effective has the public sector equality duty (PSED) been in practice? How do you assess its contribution to the aims of the Equality Act 2010?**

The PSED was introduced to: (a) reduce the bureaucracy associated with the separate equality duties on race, gender and disability, by harmonising them into a single duty; and (b) to strengthen protection by extending the new duty to cover a range of additional characteristics. In this respect, its development mirrored the overall objectives for the 2010 Act.

More broadly, the aim of the PSED, as with the earlier duties, is to sensitise public bodies to equality considerations, and so ensure that these (appropriately and proportionately) influence the formation of policy and the delivery of public services. The duty is intended to encourage public bodies do this proactively, in an outcome-focussed way.

The PSED has required public authorities to consider a range of further characteristics (age, gender reassignment, pregnancy and maternity, religion or belief, sexual orientation, and (regarding unlawful discrimination) marriage or civil partnership status, so that aim has been met. And while there has inevitably been some additional bureaucracy associated with considering these additional characteristics, there have

been some bureaucratic savings also in harmonising the three earlier duties into one (and in using the same wording and specific duties for each).

In terms of sensitising public bodies to equality considerations, evidence suggests that most public bodies are aware of the duty, and have procedures in place to ensure that equality issues are given at least some consideration.

Case law has been instrumental in determining what compliance with the PSED means for public bodies. In particular, it has established that merely completing an equality impact assessment is not enough (see comments about the 2013 review below), and that the duty should be considered rigorously; at the appropriate time; and by the appropriate persons. For more information please see this link<sup>125</sup>

The Government announced a review of the PSED in May 2012 as part of a wider package of measures under the Red Tape Challenge on Equalities. The review, which was overseen by an independent Steering Group, concluded in September 2013 with a number of recommendations aimed at improving how it is implemented by public bodies.

Although the review found general support for the PSED and its aims, it found limited evidence of the PSED leading to better equality outcomes and varying rates of compliance. In particular, it was critical of the procedures that some public bodies have in place to consider equality issues, judging that in many cases these are overly bureaucratic, and more focussed on avoiding potential Judicial Reviews than promoting equality outcomes.

In terms of disability, the review found evidence that in practice many public bodies focus more on some protected characteristics than others, with disability being one of those given the most attention. It would seem that disability has not been given any less focus as a result of being included within a broader duty.

The review concluded that it was too early to make a final judgement about the impact of the PSED and recommended that a further review of the PSED is conducted in 2016, by which time it will have been in operation for five years. This would enable the PSED to embed more thoroughly and allow a better assessment of how the PSED is working in practice. GEO intends to do this.

**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?**

<sup>125</sup> <http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/making-fair-financial-decisions/relevant-case-law>

Section 153 of the Act enables Ministers to introduce secondary regulations (also known as ‘specific duties’) to help public bodies to meet the PSED more effectively. This is a devolved issue, so different duties apply to public bodies in Scotland and Wales. The England-specific duties apply to public bodies in England and to the non-devolved functions of GB-wide public bodies, such as Government departments.

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.

In general, the 2013 review of the PSED, referred to above, appreciated and supported this aim, but was critical of the way it had been implemented by public bodies, citing cases of too much information being collected/published in some cases (thus creating unnecessary bureaucracy), and too little information in others (so failing to demonstrate progress on equality issues). Some members of the review’s steering group thought that in practice the specific duties could simply be abolished altogether; others felt that what was needed was much clearer and more prescriptive/ specific guidance around what information should be collected and published. As noted above, GEO intends to review the PSED in 2016, and will consider this issue as part of that review, when the success of the transparency-based approach – which chimes with much of what Government is promoting elsewhere – has been more thoroughly tested.

The review did not consider the Wales- or Scotland-specific duties. However, these have been looked at by the EHRC. It reviewed the PSED in Scotland in November 2011. At the corporate level, the EHRC found that the Scottish Government had complied with their responsibilities under the race, disability and gender duties by offering training, advice and information to assist policy teams to effectively consider equality in the design and development of policies. In June 2013, EHRC Scotland published a report on how Scottish public bodies were complying under the specific duties entitled ‘Measuring Up’, which showed:

- 83% of public authorities published everything that was required of them.
- 89% had published a mainstreaming report
- 92% had published employee information
- 90% had published equality outcomes.

For Wales, the EHRC report into the specific duties in Wales in 2014 suggested that they are working well. For example, the report says that:

- The Wales-specific duties were valued by listed and non-listed bodies for providing clarity about what needed to be done to implement the duty.
- All participating organisations could provide at least one example of evidence demonstrating progress related to the general duty. More typically organisations could give more than one example.
- Overall, consultation and engagement with service users were thought to be

more frequent and better than prior to the PSED. Organisations described ways in which employee networks or groups were expanded or consulted about new developments more frequently.

- Equality impact assessments were being widely used to make a difference to service delivery. They were also being consistently reviewed to make them more user-friendly, more evidence-based and more proportionate.

On whether specific duties support implementations for disabled people specifically, the Government believes that because the general PSED continues to cover disability, there has been no adverse effect on the consideration of disability issues in the policy and decision making processes of public bodies.

**7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?**

No. As is made clear in the Government’s memorandum on the Equality Act 2010, a key objective of this piece of legislation was to consolidate a wide range of anti-discrimination law which had developed since the 1970s. It did not – and was never intended to – consolidate equality and diversity issues in the policy areas involved – housing, transport, race relations and so on – within one place in government. The Government’s view is that it is important that responsibility for equality and diversity issues (including, where appropriate, implementation of the 2010 Act) is shared widely within Government.

More broadly, this is in keeping with the normal approach to legislation which affects all areas of society, such as health and safety law, or all areas of the public sector, such as the Freedom of Information Act.

The Government Equalities Office is, in itself, a unit of 50 staff which does not have sufficient resources to lead on all policy issues concerned with equality and diversity across Government. Its role will be developed over the course of this Parliament and will include a stronger focus on leadership and influence across Whitehall. GEO maintains contacts in all other Government Departments and discussions about implementation of the 2010 Act can take place through these channels as appropriate.

At Ministerial level, the Minister of State for Disabled People, who is based in Department for Works and Pensions (DWP), works actively across government with Ministerial colleagues to ensure that they properly reflect the needs of disabled people in their policy and programme development and that there is a joined-up approach across government.

The Prime Minister said – *“As a government, we need to do more to support disabled people to fulfil their potential – whether that’s in work, education, at home, or in civic life. This is not just about fairness, this is also about tapping into the social and economic contribution that disabled people can and do make to the country. It is vital that every*

*Government department contributes to meeting this challenge.”*

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. The Minister is keen to develop a constructive relationship with disabled people and their organisations. He is an advocate for bringing the voice of disabled people into policy and programme development and using partnership working, for example, through the Disability Action Alliance

The Office for Disability Issues (ODI - a unit of 13 staff) provides support for the Minister for Disabled People in his cross-government role, and is responsible for the disability strategy Fulfilling Potential. The ODI supports the Minister’s engagement with Ministerial colleagues, disabled people and their organisations by acting as secretariat for the Interdepartmental Ministerial Group, the Disability Charities Consortium and the Fulfilling Potential Forum, and supporting the Paralympic Legacy Advisory Group meetings.

**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?**

This is a question primarily for the EHRC to answer. For convenience we note that in their evidence to the Committee, the EHRC explained that:

- it is the courts that enforce equality law and not the EHRC. The EHRC sees itself as a strategic regulator with tools that are not for ‘enforcement’ in the strict sense of the word.
- it has a strategic litigation policy, which is crucial for decisions about where and how it support cases given budgetary constraints. This means that it has to set a criteria for the cases that it gets involved in – they have to be within the EHRC’s remit and they have to have a real chance of success.
- its strategic litigation plan is drawn up in full consultation with its Disability Committee, thereby ensuring the correct input at the stage of constructing the strategy. It also pointed out that disabled people (and other stakeholder groups) were involved in building the strategic litigation plan.
- the majority of its work is pre-enforcement, per the regulators’ code in terms of the most effective and efficient use of its resources. According to the EHRC evidence to this Committee, they believe that it is about trying to make society more compliant, which is the impact of the guidance and codes of practice that it issues.

The Government is aware of some important cases in which the EHRC supported disabled claimants as part of its approach to intervene in strategic cases. These include

*X v CAB* (where EHRC unsuccessfully intervened to argue on behalf of someone with a disability (HIV+), that the Equality Act should apply to volunteers as well as to paid employees); '*Paulley v First Group* (discussed above) and *Stott v Thomas Cook Tour Operators Ltd*, where the EHRC supported the Mr Stott's unsuccessful claim for damages under (EC) Regulation 1107/2006 relating to air travel. In *MM and DM v Secretary of State for Work and Pensions*, the EHRC intervened to assist the Upper Tribunal on the department's duties under the 2010 Act and to ensure that appropriate adjustments are made for people with a mental health condition when being assessed for Employment and Support Allowance (ESA). In *J v Worcestershire County Council (2013)*, the EHRC intervened in a judicial review which challenged the failure of the respondent to provide community care services and special educational needs provision to a disabled Traveller child when out of their jurisdiction.

The EHRC also intervened in the case of *Bracking and Others v Secretary of State for Work and Pensions* on the closure of the Independent Living Fund.

During the 2010 – 15 period, the EHRC was extensively reviewed to ensure that its work focused properly on its key regulatory and enforcement functions. The evidence it has given to the Committee suggests that this approach has worked.

**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?**

Many regulators, inspectorates and ombudsmen, including Ofcom, the Care Quality Commission, the Civil Aviation Authority, and the independent regulator of NHS Foundation Trusts, the Office of Rail and Road, the General Medical Council and the Health and Safety Executive, are subject to the public sector equality duty. This gives them significant obligations under the 2010 Act to promote and protect when carrying out their public functions. If a public authority (or any organisation exercising a public function) fails to comply with the 2010 Act, these bodies have a duty to ensure compliance. Ofsted for example has the power to inspect the accessibility plans of schools. Where they do not comply with the 2010 Act, it can give direction on compliance.

The EHRC works closely with regulators, inspectorates and ombudsmen on the human rights and equality agenda. The Regulators, Inspectorates and Ombudsmen Forum, which is facilitated by the EHRC, is a group of regulators, inspectorates and ombudsmen with an interest in human rights and equality. It meets quarterly to share knowledge and experiences of embedding human rights and equality into practice.

**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?**

Yes. Under Part 9 of the 2010 Act, disabled people, in common with everyone else who has a protected characteristic, are entitled to bring a claim for discrimination in an employment tribunal or a county/sheriff court. Where individuals (including disabled people) require assistance, they can access guidance from the EHRC, who also have powers to assist individuals in bringing claims before the courts and provide financial assistance. The EHRC takes a strategic approach to its intervention in discrimination claims and will only intervene in cases that are deemed to have ramifications for other disabled people in the same situation. However, where there are multiple complaints about a particular issue, the EHRC does have the power to conduct an investigation into that under section 20 of the Equality Act 2006.

Individuals can also contact the EASS helpline for advice or assistance on discrimination claims. The helpline, which has been operational since October 2012, also accepts referrals from organisations who are unable to provide 'in depth help and support' for their local service users. Approximately 2,200 calls per month have been received to the EASS helpline on issues related to the 2010 Act (from October 2012 to March 2015). Disability was the most frequently quoted protected characteristic for calls connected to the 2010 Act, representing over 60% of all enquiries.

The *Early Conciliation scheme*, launched by the Advisory, Conciliation and Arbitration Service (ACAS) in April 2014, provides free, confidential and impartial assistance to help those dealing with an employment dispute. The scheme aims to help parties resolve disputes before proceeding with an Employment Tribunal. After May 2014, anyone wishing to make a claim to an employment Tribunal must contact ACAS in the first instance, although both parties need to agree to participate in the conciliation process.

It is important to note that the rights under the 2010 Act are given to individuals. It is therefore for them, and not the EHRC or the Government, to take their cases to the tribunals/courts.

There has been a decline in the number of discrimination claims being raised at Employment Tribunals in recent years. The post-legislative memorandum on the Equality Act 2010<sup>126</sup> provides statistics on the numbers of discrimination claims for the financial years 2007/8 to 2014/15. Key changes such as the introduction of the mandatory early conciliation scheme and tribunal fees are being reviewed by the Government in order to understand the impact of these measures on the numbers of claims.

Although the number of applications for discrimination claims have declined, we note recent statistics reported in the Equal Opportunities Review (July 2015 issue) which show that the overall number of awards being granted has remained the same for the past two years despite fewer claims reaching a tribunal. The exact same number of awards – 355 – were granted in 2013 and 2014 for discrimination claims. Although the number of awards has actually declined for most jurisdictions, by a relatively small amount, the total has not been affected since there has been a substantial increase in

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<sup>126</sup> <https://www.gov.uk/government/publications/post-legislative-memorandum-the-equality-act-2010>

the amount of disability discrimination awards being granted. There has also been a substantial increase in the quantum of awards being made, with a 77% increase in the total amount of money paid out in 2014 compared to the previous year. The number of awards granted in disability discrimination cases has risen from 94 awards in 2013 to 128 awards in 2014, with the average award increasing by over £10,000 for the same period.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

The post-legislative memorandum on the Equality Act 2010 outlines the background to the legislation and what evidence has been gathered to date on how the legislation is working in practice.

For example, the memorandum sets out the key findings from the organisational surveys (commissioned by the Government in 2011), which examined whether different types of organisations understood the legislation and how they were using it in practice. Following the findings from the organisational surveys, the Government worked with the British Chambers of Commerce to deliver an engagement and awareness raising programme for businesses. The programme, which ran from 2012 - 2013, included a series of regional roadshows for SMEs to increase their understanding of the legislation and a short guide on the Act for businesses entitled 'Business is Good for Equality'. The positive feedback from this programme demonstrates how the Government has used targeted support and tailored guidance to increase awareness.

Although there has not been a dedicated assessment of how the disability provisions of the Act are operating, the Government has undertaken work to review general provisions such as the PSED (which applies across all the protected characteristics). The PSED review examined whether it was operating as intended and made a series of recommendations to help public bodies implement the duty more effectively. Both GEO and Treasury have issued guidance on compliance with the PSED.

The Government is also reviewing key developments which can affect how discrimination claims are progressed, including the review of tribunal fees and the take up of the early conciliation scheme for employment disputes. Monitoring the impact of such changes will enable an overview on how the legislation is being utilised to challenge discrimination.

The EHRC's Disability Committee will remain in existence until 2017, and the Government will work with the EHRC as necessary to ensure that effective EHRC arrangements remain in place thereafter to help promote and enforce the rights of disabled people.

Annex A sets out work undertaken across Government to improve the support available to disabled people. Although this does not directly affect enforcement of the Act, it has the more general effect of helping to improve compliance with the Act in various areas,



thus reducing the need for specific enforcement measures.

## ANNEX A

### WHAT GOVERNMENT DEPARTMENTS ARE DOING ON DISABILITY

The **Department for Transport** is responsible for the transport provisions in the 2010 Act and leads on issues that affect disabled passengers.

- By the end of this year DfT's Access for All programme will have completed more than 150 step-free routes at rail stations. More than 1,200 stations have received smaller scale improvements. To build on this success £160m has been allocated to another 68 stations to be delivered by 2019.
- In addition, all rail infrastructure work must comply with EU and UK accessibility standards. In March 2015, DfT published a revised Code of Practice on Design Standards for Accessible Railway Stations. This Code provides a clear set of standards (including European standards, national standards and best practice guidance). Although it is called a Code of Practice (CoP), it must be followed by train operators and anybody else carrying out rail infrastructure improvements. Operators may apply for a dispensation from the CoP if they can show that it is not possible to apply all standards. The dispensation will be considered by the Department before acceptance or rejection. The Department will always consider alternative ways to improve accessibility if the full standards set out in the CoP cannot be fulfilled.
- These improvements are over and above what is being delivered by major projects such as Crossrail (all 40 Crossrail stations will be step free to platform level by 2019) and High Speed 2 (HS2). The needs of disabled people are explicitly recognised in the HS2 requirements and vision, including the provision of a railway that is "simple to use and accessible to all passengers including people with reduced mobility". The national Design Panel set up to work with HS2 Ltd is expected to consult with the Disabled Persons Travel Advisory Committee (DPTAC) to ensure that the vision is delivered.
- With regard to passenger services, all post 2004 Rail Franchise Agreements cover accessibility and inclusivity; DfT's Franchise Procurement Unit provides guidance on how to consider the Public Sector Equality Duty in running a rail franchise competition.
- Included in their licence to operate, train companies need to have a Disabled People's Protection Policy (DPPP) setting out what services will be provided for disabled passengers. DPPPs also require train companies to participate in the Association of Train Operating Companies' (ATOC) Passenger Assist system. This allows disabled passengers to pre-book staff assistance to help with their journey. Booking in advance is not mandatory, but it does help ensure that staff are in the right place at the right time, especially for usually unstaffed stations. More recently, the Turn Up and Go system available on London Underground and London Overground allows disabled

people who need assistance to arrive at stations and have staff help them without prior notification. The system is also being trialled at 36 stations on the national rail network.

- In 2013, DfT brought the Disabled Persons' Parking Badges Act 2013 into force, giving local authorities new powers to tackle Blue Badge abuse and fraud. In respect of eligibility criteria, from June 2013 any person scoring 8 points or more in the "Moving around" activity of the new Personal Independence Payment (PIP) will be automatically eligible for a Blue Badge (this refers to people who cannot walk further than 50 metres).
- On taxis, the Law Commission's (LC) report on reforming taxi and PHV legislation includes a recommendation that compliance with the 2010 Act should be a condition of the condition of all drivers and operators. It also recommends that local authorities should reconsider rank design to ensure compliance with the 2010 Act. The Government is currently considering the LC's report and will respond in due course.
- As part of the £45 million Taxi Scheme run by the Office for Low Emission Vehicles (OLEV) only wheelchair accessible vehicles will be eligible for top-up grants for ultra-low emission taxis.

The **Office of Disability Issues** in DWP has continued to lead the co-ordination of the delivery of the principles of the UN Convention on the Rights of Persons with Disabilities (the Convention) across Government departments and the Devolved Administrations (the UK ratified the Convention in June 2009). The Convention is a human rights treaty that sets out in one place the rights that disabled people already have on an equal basis as others. It covers all aspects of life including: protection from discrimination; accessibility; education; health; sport; social protection; and employment.

- In 2011 ODI launched the Strengthening Disabled People's User-Led Organisations (DPULOs) Programme, which was an investment of £3 million over four years and aimed to promote growth and improve sustainability. DPULOs are organisations run by and for disabled people, and often provide support and services alongside those provided by the public sector. In the four years to March 2015, Government provided more than £3 million to over 180 DPULOs across the UK. The Government also recruited 15 DPULO Ambassadors and 6 young DPULO Ambassadors (16-24) to work with DPULOs across the UK to strengthen these vital grass root organisations, improve their offer for young disabled people and grow the DPULO network. As a direct result of the programme the first UK DPULO data base was developed and launched on Gov.UK.

The **Department for Work and Pensions** has done the following:

- Introduced Work Choice in October 2010, a specialist employment programme for disabled people who need more help to find and keep a job.
- In March 2012, the Government confirmed that it accepted the Sayce review recommendations to focus support on individuals through services like Access to Work so that it can significantly increase the number of disabled people that could be supported to access the labour market.

- In October 2012 DWP extended Access to Work to provide support to young disabled people undertaking voluntary work experience under the Youth Contract. This change was intended to help young disabled people take their first significant step towards employment.
- DWP has also introduced the Specialist Employability Support (SES) which is a new national provision, designed to help unemployed disabled adults to secure and sustain employment or self-employment. It focuses on helping those for whom other provision such as Work Choice or Work Programme is not suitable. It offers an individually tailored combination of guidance, learning in the workplace and work experience. SES replaces the nine Residential Training Colleges (RTCs) that DWP currently contacts to provide intensive specialist support for disabled people.
- DWP has also extended Access to Work to cover disabled entrepreneurs undertaking business start-up activity as part of the Government's New Enterprise Allowance scheme.
- In July 2013, The Prime Minister launched the Disability Confident Campaign to help increase employer confidence in recruiting and retaining disabled people as part of a diverse workforce, and to provide opportunities for employers and organisations to share learning and good practice. Through the campaign, the Government is working with employers to remove barriers, increase understanding and ensure that disabled people have the opportunities to realise their aspirations and fulfil their potential.
- Last summer, DWP and the Department of Health jointly commissioned the Psychological Wellbeing and Work Project (through RAND Europe) to look at what they can do to improve employment and health outcomes for people with common mental health problems.

Examples of what some other Government Departments have also done are:

- **Home Office** leads on Government policy on hate crime, including co-ordinating cross-Government hate crime actions. It also responsible for some criminal law on hate crime, such as the (offences for stirring up hatred on the grounds of race and religion under the Public Order Act 1986. Legislation covering enhanced sentencing, which gives courts the power to increase an offender's sentence where an offence is committed based on hostility towards a person's disability or perceived disability is covered by the Ministry of Justice). The Home Office also publishes data on police recorded hate crime, including hate crime against disabled people.
- **Department for Business, Innovation and Skills** is responsible for policy relating to those with special needs and disabilities in Further and Higher Education, and for provisions in the Equality Act 2010 relating to Further and Higher Education. BIS supports the development of assistive technologies and create conditions that enable disabled people to play an active part in the labour market (e.g. flexible working arrangements) and enterprise.

- **Department for Communities and Local Government** is responsible for various policies and initiatives which impact on the lives of disabled people. For example, the Disabled Facilities Grant provides funding to assist disabled people adapt their homes. In 2015, the grant became part of the DH Better Care Fund and is paid directly to housing authorities via the Fund. Part M of the Building Regulations deals with issues of accessibility in constructing the built environment.
- **Department of Health** is responsible for ensuring that the health and social care system drives forward improvements for disabled people. DH also develops a wide range of policies, programmes and strategies including in relation to people with mental health conditions, physical disabilities, cognitive impairments, learning disabilities, autism and dementia, that impact directly or indirectly on disabled people. In doing so, DH gives due regard to the Equality Act and the Public Sector Equality Duty. The DH has published its equality objectives and reports progress against these.

In addition, **NHS England, Public Health England, Care Quality Commission, NICE** and other national, regional and local organisations working in the health and social care sectors will individually consider the needs of disabled people in their respective work.

*4 September 2015*

## **Jamie Grace – Written Evidence (EQD0028)**

I am a human rights law and administrative law lecturer and researcher, teaching currently at Sheffield Hallam University. I am pleased to be able to submit the following short set of observations as written evidence to the Lords Select Committee on the Equality Act 2010 and Disability. The following points address only Question 5 of the call for evidence ('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?'):

1. The public sector equality duty (PSED) has become an important tool used by pressure groups and individuals, who seek to slow and reduce the impact of what is popularly known as 'the politics of austerity', through seeking judicial review (JR).
2. A case law database search on 1<sup>st</sup> June 2015 for the phrase "public sector equality duty" showed 74 case reports addressing the PSED in the courts since September 2013, when the Government Equalities Office had reported on the Review of the Public Sector Equality Duty, and had noted that: "Although the [relative] number of JRs brought under the PSED is low, it is still a significant proportion of the overall number of JRs and there have been several high profile cases...".
3. The usefulness of the PSED is that it can be used to challenge the decision-making process deployed by a public body, that may be responsible for reductions in the levels or the quality of services in key areas of social welfare or social care; which in turn may affect the lives of disabled people who use or rely on that service, for example.
4. There have been considerable judicial attempts to systematise the (flexible) nature and degree of the PSED (a duty to have 'due regard' to issues of potential inequality etc.). For example, as Lord Justice McCombe has famously done so in the Court of Appeal decision in *Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345; a case cited in some 19 judgments by 1<sup>st</sup> June 2015.
5. Lord Neuberger described the list of McCombe LJ's points on the PSED in *Bracking*, concerning the nature of the 'due regard' duty of the PSED, as 'rightly' unchallenged in his own judgment in *Hotak v Southwark LBC* [2015] UKSC 30. There have also been some distinct victories for litigants by way of using the PSED as a ground of judicial review - the decision of the Court of Appeal in *Bracking* being one of them; where the decision to close the Independent Living Fund was successfully challenged on procedural grounds involving the PSED.
6. The PSED may have a weakness in the longer term as an exercise in 'campaign litigation', in that it 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, from the perspective of outcomes alone, as indeed had happened in the context of the decision in *Bracking No.2* (the eventual, permanent removal of the original Independent Living Fund scheme following the failed challenge in *R (Aspinall and Others) v Secretary of State for Work and Pensions* [2014] EWHC 4134 (Admin)). But keeping the PSED essentially unadulterated is vital, even in the face of concerns from public bodies, who may say the PSED is too onerous

on them and too bureaucratically costly, given the lack of other powerful ways to challenge inequalities at times, by way of judicial review.

7. When our courts have made it clear that economic costs and financial squeezes may well be a legitimate factor in making tough decisions over cuts to public services, as in the decision of the Supreme Court in *R. (on the application of McDonald) v Kensington and Chelsea RLBC* [2011] UKSC 33, then keeping the PSED intact is indeed vital, so that there is some means of procedurally challenging decision-making which may lead to distinct inequalities, which is now more difficult to challenge on a substantive basis.

8. Furthermore, the Committee must also be aware that the Human Rights Act 1998 is also under wider political pressure and assault. The 1998 Act is another source of legal protection and empowerment for disabled people in society, for example, through the enabling of legal challenges to the decisions of public bodies by way of judicial review, using the right to freedom from discrimination in the enjoyment of other rights, such as the right to respect for private and family life. What is particularly crucial about the HRA 1998 framework is that it ensures our domestic laws have a strong link with the case law of the European Court of Human Rights; which is highly prominent in setting the bar for lawful treatment of disabled people by the state, in human rights terms, in countries all over Europe.

9. As such, the PSED is of course part of a package of anti-discrimination and equality law in the UK which must be kept intact and robust - and the watering-down of any of it should be resisted. With the HRA 1998 under review by this Government once again in the near future, the PSED should be recognised by this Committee as a crucial keystone in the overarching equality law safeguards with regard to public policy.

*21 August 2015*

## **Grapevine – Written Evidence (EQD0079)**

### Equality Act feedback from Nuneaton Speaking Up group

- Only two members of our group had heard of the Equality Act before
- We think there should be public service announcements about equality on TV and radio.
- “Equality is about everyone so more information should be out there”
- There should be pop-ups on the internet to advertise equality
- We should talk more about equality in self-advocacy groups

### Equality Act feedback from Rugby Speaking Up group

- Nobody in our group had heard of the Equality Act before
- We think there should be equal pay for men and women in sports
- We think that people who are Muslim are treated unfairly
- People who have a disability do not have equality either. They find it hard to get a job and use public services
- People who have disabilities need more support, like interpretation or adaptations, to get a good education and housing
- People who work in banks and shops should have more training about equality

### Equality Act feedback from Atherstone Speaking Up group

- Only one member of our group had heard of the Equality Act before
- We think there should be more information about the act. It should be in easy read
- Peer reviewing would be a good way to make sure the Equality Act is being followed. The peer reviews should be unannounced
- There should be drama groups that can make plays about equality
- We should talk about equality more in self-advocacy groups
- “The more people know about equality, the better it is”

*3 September 2015*

## **Guide Dogs – Written Evidence (EQD0041)**

### **Summary**

0.1 Guide Dogs provides mobility services to increase the independence of people with sight loss in the UK. Alongside our mobility work we campaign to break down physical and legal barriers to enable people with sight loss to get around on their own. The Equality Act 2010 is an important piece of legislation for our service users.

0.2 Since the announcement of the call for evidence, Guide Dogs has run a series of focus groups with guide dog owners, which help to inform our response. We have also made use of much recent (ie since 2010) research to support our submission.

0.3 We focus on a number of key areas which demonstrate where the Equality Act requires improvement:

- Guide dog and other assistance dog owners continue to be illegally refused access to services
- The overwhelming majority of the UK's buses remain inaccessible for people with sight loss
- Local authorities continue to approve inaccessible and dangerous planning designs in the way of shared surface schemes.
- Government continues to subsidise quiet hybrid and electric vehicles, without considering the safety implications of their quietness for people with sight loss

0.4 For guide dog owners and other people with sight loss, these areas act as a barrier to independence. This significantly weakens the Equality Act's aim of ensuring a more equal society.

0.5 We therefore recommend the following;

- An amendment to the Equality Act to increase the fine level for offences relating to access for assistance dog owners to taxis.
- Regulations to provide clarity on the term 'reasonable adjustments' and for non-compliance to become a criminal offence, as with taxis.
- Greater consistency amongst regulations arising from equality legislation, particularly in regards to ensuring the Public Service Vehicles Accessibility Regulation is amended to ensure new buses are fitted with audio visual announcements, in line with the Rail Vehicle Accessibility Regulation.
- Strong guidance from Government departments for local authorities to comply with the Public Sector Equality Duty, specifically we recommend the Department for Transport update the Department's 'Inclusive Mobility' guidance to ensure dangerous shared surface schemes are not authorised by local authorities.
- Ensure publically procured quiet hybrid and electric vehicles are fitted with artificial sound generators to ensure pedestrian safety, in line with the PSED.
- Mandatory disability awareness training for public service providers, particularly bus and taxi drivers.



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?

1.1 The Equality Act has not done enough to strengthen and harmonise disability discrimination law. Despite disability being one of the nine protected characteristics, we still see a number of areas where people with sight loss experience discrimination. Our response outlines key areas which demonstrate this as outlined above.

2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?

2.1 A significant gap in the law is that much public transport remains inaccessible to people with sight loss.

2.2 This is largely due to a discrepancy between regulations arising from equality legislation (specifically the Disability Discrimination Act, an antecedent to the Equality Act). The Rail Vehicle Accessibility Regulation states that, in order to be accessible, new trains and trams must be fitted with audio visual announcement systems (AV) to inform people where they are on their journey, and where they are going.

2.3 The corresponding regulation for buses (the Public Service Vehicles Accessibility Regulation or PSVAR) does not extend the same requirement for AV to buses. 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 disabled, as their disability prevents them from driving a car. Recent focus groups of guide dog owners revealed disappointment and confusion about the lack of consistency in the level of support offered by transport services. The lack of AV on buses was earmarked as a key gap in equality legislation.<sup>127</sup>

2.4 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.<sup>128</sup> For a sighted person, missing a stop is an irritating experience; for somebody unable to see, it is distressing, disorientating and sometimes dangerous. The fear of this situation alone is enough to prevent some people with sight loss from attempting to use buses.

2.5 The impact of inaccessible transport upon disabled people's lives is considerable. A Department for Work and Pensions survey showed 37 percent of disabled respondents found transport accessibility a significant barrier to work.<sup>129</sup> Guide Dogs' data reinforces these findings, showing the lack of AV on buses led to people with sight loss missing job interviews, turning down jobs, being late for work and even losing a job.<sup>130</sup>

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<sup>127</sup> Minutes of Guide Dogs focus groups, Nottingham and Scotland, August 2015

<sup>128</sup> Guide Dogs, [Destination Unknown report](#), 2014

<sup>129</sup> Department for Work and Pensions, [A survey of disabled working-age benefit claimants](#). In House Research Report No.16, December 2013

<sup>130</sup> Guide Dogs, [Road to Nowhere report](#), 2013

2.6 In order for buses to be fully accessible, it is essential that AV is installed. Bus companies are not installing this technology to ensure people with sight loss are not discriminated against. Instead some bus companies chose to install luxuries such as leather seats,<sup>131</sup> showing that AV would clearly be affordable. This gap in legislation therefore allows a serious form of discrimination, holding people with sight loss back from living independently.

2.7 The extent of the problem has not been recognised by Government. The Department for Transport’s Accessibility Action Plan states that 65 percent of buses were “fully accessible” in 2011, in spite of the fact that only 19 percent of buses were fitted with AV.<sup>132</sup> It is a significant gap in the law that rail and trams must be fitted with AV to be considered accessible, whilst buses do not.

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?

3.1 An example of a “reasonable adjustment” would be for service providers to amend a “no dogs” policy to permit assistance dogs. Sadly, it is reported that shops, restaurants, and other service providers still frequently refuse access to disabled people on the grounds of their being accompanied by an assistance dog. Such refusals can have a devastating effect on assistance dog owners, who are left feeling humiliated and may be less likely to go out independently.<sup>133</sup>

*“Each refusal is crushing, confidence shattering, rejecting, and traumatic. I always feel that I don’t want to go out after - but work dictates I must.”* Guide dog owner, Stevenage<sup>134</sup>

*“(Access refusals make me feel) awful. Very much like a second class citizen who is not wanted by society no matter who or what the business is. It’s as if we should be stuck away and never seen again. I absolutely abhor the feeling of being useless and made to feel inadequate.”* Guide dog owner, Hove<sup>135</sup>

3.2 A Guide Dogs survey 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.<sup>136</sup> 49 percent had been refused access in the past year, and 33 percent within the last six months. Frequent sites of access refusals include taxis, restaurants, newsagents or convenience stores, cafés and high street shops. A frequent reason given for not permitting entry was that the business or its customers did not like dogs (24 percent).

3.3 This is clear evidence that the duty to make a “reasonable adjustment” is not always understood. We also hear from assistance dog owners who continue to experience a second

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<sup>131</sup> Minutes of Guide Dogs focus group, Scotland, August 2015

<sup>132</sup> Department for Transport, [Accessibility Action Plan](#), 2011

<sup>133</sup> Minutes of Guide Dogs focus groups, Nottingham, Scotland and Wales, August 2015

<sup>134</sup> Guide Dogs, [Access All Areas report](#), 2015

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

class service, for example being put at a table in a restaurant that is in the corner or in a separate area to the rest of the public.<sup>137</sup>

*“Guide Dogs helped me with a challenge to Asda, as they tried to put my guide dog in a trolley” Guide dog owner<sup>138</sup>*

3.4 Given the focus of this question on transport, we here provide more detail on access refusals in taxis and private hire vehicles, which is a particular problem for guide dog owners, with almost half of respondents to this recent survey reporting a taxi access refusal in the past 12 months. We often hear of taxi drivers charging more for assistance dog owners in contravention of the Equality Act, even though they appear to be aware of the law requiring them to carry them.<sup>139</sup>

*“My biggest problem with refusals comes from taxi drivers. I used to have a very tough two hour commute to work. The taxi part of the journey was the shortest bit travel wise, but it always ended up being the bit that held me up the most because I was having to spend time facing drivers who wouldn’t take me with my dog. It made an already stressful situation really stressful and upsetting...it’s good that my contract was flexi hours otherwise I’m sure I would have been sacked for being late all the time - it happened so often.” Guide dog owner, Daventry<sup>140</sup>*

3.5 In order for effective implementation of the law, and better understanding of it, the severity of the offence of refusing carriage to an assistance dog needs to be duly recognised. Currently, under Section 168 (4) of the Equality Act 2010, a person who refuses to carry an assistance dog in a taxi is guilty of an offence incurring a maximum fine of level 3 on the standard scale. This is in line with fines for travelling on a train without a ticket or failing to buy a TV licence. Given the frequency of access refusals, and the hugely negative impact they have on assistance dog owners’ lives, we feel that this level of fine is insufficient.

3.6 It is also rare that prosecutions happen: 69 percent of assistance dog owners who experienced a refusal did not consider taking legal action.<sup>141</sup> Due to the nature of visual impairment, it can be difficult for a person with sight loss to identify the offending driver. Only eight assistance dog owners in our survey of over 1110 said there had been a legal case that had led to a successful prosecution.<sup>142</sup>

3.7 Because it is so rare that prosecutions happen, there needs to be a high enough fine to incentivise drivers to comply with the law. Guide Dogs would therefore like to see the penalty under Section 168 (4) amended to a level 4 (in line with offences such as taxi touting – when private hire vehicles pick people up from the street) in order to ensure drivers and magistrates are aware of the devastating effects a refusal has on the guide dog owner.

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<sup>137</sup> Minutes of Guide Dogs focus group, Nottingham, August 2015,

<sup>138</sup> Minutes of Guide Dogs focus group, Scotland, August 2015

<sup>139</sup> Minutes of Guide Dogs focus group, Nottingham, August 2015

<sup>140</sup> Guide Dogs, [Access All Areas report](#), 2015

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

4.Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

4.1 The definition of a “reasonable adjustment” can be difficult for people with a disability and for service providers to understand.

*“I get no end of people handing me the menu and then walking away”* Person with sight loss.<sup>143</sup>

4.2 In some areas, a degree of additional clarity has been achieved through regulations such as the Public Service Vehicle Accessibility Regulations (PSVAR) and the Public Service Vehicle Conduct Regulations (PSVCR). The PSVAR sets out a series of specifications to make public service vehicles more physically accessible for people with a disability (although, as discussed in Question 2, the PSVAR fails to specify the need for Audio Visual stop announcements). The PSVCR gives specific direction for bus driver conduct to help them accommodate people with disabilities.

4.3 Similar regulations would be helpful in other areas of Equality Law, for example, by stipulating entry for assistance dog owners to shops, hotels and restaurants. This would remove ambiguity for service providers and remove the need to rely on case law and precedents for providers to fully understand their obligations. Case law can be confusing and contradictory, as in the recent case where the Court of Appeal overturned a County Court ruling on bus drivers’ obligations relating to the wheelchair space. It is simpler and easier for disabled people and service providers to understand and follow clear legislative provisions than having to seek clarity in individual cases through a challenge in the courts.

4.4 An example of another area where the definition of a “reasonable adjustment” is more explicit is in the Equality Act in relation to taxi and private hire vehicles carrying assistance dogs. Section 168 of the Act defines the duties of taxi and private hire vehicle drivers for accommodating assistance dog owners, making it a criminal offence for drivers to refuse to carry an assistance dog unless they have a medical exemption certificate. This stipulation is helpful for guide dog owners in understanding their rights and for drivers in understanding their duties. Through an amendment to the legislation, this model could be applied to the obligation to accept assistance dogs in other areas such as shops and restaurants and also made a criminal offence. This would help to overcome the ambiguity of the term “reasonable adjustments” and help people with disabilities and businesses understand and implement the law effectively.

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?

5.1 Despite the Public Sector Equality Duty, we continue to see examples of discriminatory policies from parts of the public sector.

5.2 Under the Public Sector Equality Duty, public bodies have to have due regard to advancing equality through:

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<sup>143</sup> Minutes of Guide Dogs focus group, Nottingham, August 2015

1. Removing or minimising disadvantages suffered by people due to their protected characteristics.
2. Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
3. Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

### Shared Surfaces

5.3 Shared surfaces are streetscapes where the road and pavement are built at the same level, removing the kerb so that cars, buses, cyclists and pedestrians share the same road surface. 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. New schemes are being developed by local authorities frequently: Guide Dogs was made aware of 18 local authorities which commissioned new schemes in 2014.

*“(My council) can be great in some ways, but then they want to bring in a shared surface, we responded to a consultation with some other disability groups and they just ignored it” Person with sight loss.<sup>144</sup>*

5.4 These streetscapes are inaccessible and dangerous for people with sight loss. Research published in 2010 found that 91 percent of people with sight loss interviewed had concerns about using shared surface streets.<sup>145</sup> 42 percent of respondents reported a near miss with a car on a shared surface.

5.5 In January 2013 a partially sighted pensioner was killed in Coventry after being hit by a bus on a shared surface scheme in an area that previously had a pedestrian controlled crossing. The court ruled that the bus driver was not responsible for the death after hearing a statement that the shared surface was so confusing as to make an accident inevitable.<sup>146</sup> In January this year, in two separate incidents, two 90 year old men were hit by vehicles on shared surfaces in south west London.<sup>147</sup>

5.6 By authorising shared surface schemes, local authorities are not “removing or minimising disadvantages” suffered by disabled people but are, in fact, doing the opposite. By failing to install kerbs (or adequate alternative tactile delineation) and controlled crossings, they are not taking steps to meet the needs of people with sight loss which are different to the needs of other people. People with 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.

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<sup>144</sup> Minutes of Guide Dogs focus group, Nottingham, August 2015

<sup>145</sup> TNS-BMRB Report, The impact of shared surface streets and shared use pedestrian/cycle paths on the mobility and independence of people with sight loss, telephone interviews with respondents with sight loss, 2010

<sup>146</sup> [Coventry Telegraph](#), 2013

<sup>147</sup> [Your Local Guardian](#), 2015

5.7 It is clear that the Public Sector Equality Duty is not enough to prevent these dangerous and discriminatory schemes. We therefore believe that, together with the PSED, the Department for Transport must publish strong guidance for local authorities, in the form of an update to the Department’s ‘Inclusive Mobility - a Guide to Best Practice on Access to Pedestrian and Transport Infrastructure’.

### Quiet Vehicles

5.8 A further area of concern over the Public Sector Equality Duty is the number of quiet hybrid and electric vehicles procured by public sector bodies.

5.9 Quiet vehicles are 40 percent more likely to be in a collision with a pedestrian than conventional vehicles.<sup>148</sup> Their quietness is dangerous for pedestrians, and particularly for people with sight loss who rely on the sound of an engine in order to safely cross the road. Guide dog owners report collisions and near misses with quiet vehicles, including one guide dog owner who has been hit twice by the same quiet car.

5.10 To make these vehicles safe, they must be fitted with an Acoustic Vehicle Alerting System (AVAS) to make the audible. AVAS is a simple speaker system estimated to cost around \$35 per vehicle.<sup>149</sup> Government guidance in the Procurement Policy Note - Public Procurement and the Public Sector Equality Duty - Information Note 01/13 28 January 2013 states:

*“‘Due regard’ in the context of public procurement means consciously considering the relevance of the three aims of the duty to the individual procurement.”<sup>150</sup>*

5.11 When the Government and other public bodies invest in these vehicles, disabled people are put at serious risk. The failure to install AVAS on quiet vehicles indicates that the commissioning body has not consciously considered the three aims of the Public Sector Equality Duty in their procurement of vehicles.

## 6. 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?

6.1 Guide Dogs is aware that in certain circumstances the Equality and Human Rights Commission will sponsor an individual case where services have been wrongly denied a guide dog owner but are also aware that resources are limited and pathways for providing this support are not clearly publicised such that individuals who have experienced discrimination are likely to avail themselves of this support. A lack of funding for the Equality and Human Rights Commission was raised as a barrier to cases moving forward in our recent focus group with guide dog owners in Scotland.<sup>151</sup>

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<sup>148</sup> TAS Partnership, Quiet Vehicles – An Update, Nov 2014

<sup>149</sup> U.S Department of Transportation, National Highway Traffic Safety Administration: [Federal Motor Vehicle Safety Standards](#), 2013

<sup>150</sup> Procurement Policy Note – [Public Procurement and the Public Sector Equality Duty](#), Jan 2013

<sup>151</sup> Minutes of Guide Dogs focus group, Scotland, 2015.

7. 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?

7.1 In regards to access to services, Guide Dogs would very much welcome an inspectorate or ombudsmen, which could serve as a significant impetus for businesses to ensure they are aware of their duties. It would help to ensure consistency in compliance and understanding of the law, as called for by guide dog owners in our recent focus groups.<sup>152</sup>

7.2 The inspectorate work would help to build a centralised system of case studies to improve the work of the Equality Commission. We would encourage an inspectorate to include activities such as mystery shopping and certification standards, raising the profile of the need to stop discrimination against people with disabilities, and ensuring that compliance is taken seriously by service providers.

8. 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?

8.1 It shouldn't be left to individuals to take cases under the Equality Act to court. In our recent survey, 69 percent of respondents stated that they did not consider taking legal action after being refused access with their assistance dog. A number of reasons were given: some respondents were deterred from taking cases forward because of the legal fees, and nearly 40 percent said they did not consider taking legal action because it was 'too difficult'.<sup>153</sup>

8.2 We believe the scale of the problem is under-reported as many assistance dog owners lack the confidence to challenge refusals, do not wish to make a fuss, or are unaware of the law themselves.<sup>154</sup>

8.3 If a refusal to admit assistance dogs were to become a criminal offence in all areas, as it is with taxis and private hire vehicles, then a fixed penalty fine would be a simpler and more effective way of enforcing against providers of goods and services who refuse access to assistance dog owners, without the need to involve the courts. It would provide certainty and give service providers a strong incentive to comply. Where cases are disputed, and arbitration is necessary, the appropriate public sector body with responsibility for compliance should be made responsible to take cases forward, rather than the person who has been discriminated against.

9. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

9.1 Awareness of the law and specific duties towards guide dog owners is a key factor affecting the implementation of the Equality Act 2010 in relation to our clients. Training is key to ensuring those providing a service are aware of their duties under the Equality Act 2010 and many of the positive experiences we hear about come about following disability

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<sup>152</sup> Minutes of Guide Dogs focus group, Nottingham, Scotland and Wales, August 2015

<sup>153</sup> Guide Dogs, [Access All Areas report](#), 2015

<sup>154</sup> Minutes of Guide Dogs focus group, Nottingham, August 2015



awareness training.<sup>155</sup> Mandatory training would help to eliminate discrimination against guide dog owners. In particular we advocate mandatory training for bus and taxi/private hire vehicle drivers.

### **Mandatory disability awareness training for taxi drivers**

9.2 As previously stated, access refusals by taxi/private hire vehicle drivers are the most common form of discrimination against guide dog owners and can put people off using taxis for fear of a refusal.<sup>156</sup>

9.3 The Law Commission's report into reform of the taxi industry recommended mandatory disability awareness training for taxi drivers.<sup>157</sup> The objectives of the Equality Act 2010 would better be met, with regards to taxis, if all taxi drivers were required to undertake disability awareness training.

### **Mandatory disability awareness training for bus drivers**

9.4 European Regulation 181/2011 on the Rights of Passengers in Bus and Coach Transport states that all bus and coach drivers have to undergo mandatory disability awareness training. The Department for Transport made use of a derogation to exempt drivers in the UK for five years.

9.5 In a Guide Dogs survey, people with sight loss' experience reflected the lack of awareness amongst drivers of how they can help people with disabilities. 43 percent of respondents said they felt the driver on their most recent journey had not received training on how to respond appropriately to their needs as a disabled passenger.<sup>158</sup>

9.6 That 65 percent of bus passengers with sight loss have missed their stop at least once in the last six months shows how people with sight loss continue to be discriminated against in bus travel.<sup>159</sup>

*1 September 2015*

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<sup>155</sup> Minutes of Guide Dogs focus group, Nottingham, Wales, August 2015

<sup>156</sup> Minutes of Guide Dogs focus group, Wales, August 2015

<sup>157</sup> The Law Commission, [Taxi and Private Hire Services Review](#), May 2015

<sup>158</sup> Guide Dogs, [Destination Unknown report](#), 2014

<sup>159</sup> Ibid.



## Guide Dogs – Supplementary Written Evidence (EQD0195)

Dear Lady Deech

I am writing to you as chair of the Equality Act 2010 and Disability Committee. On behalf of Guide Dogs, I would firstly like to thank you for the work of your committee. I have been heartened by the dedicated nature in which your committee has conducted the inquiry. Having followed the oral evidence sessions with interest, I am writing to address some points raised of relevance to our recommendations outlined in our written submission.

### 1. Retrofitting buses and affordability of audio visual technology

*“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.”*<sup>160</sup> Simon Posner, Confederation of Passenger Transport.

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.<sup>161</sup> This is to ensure it is affordable for bus companies, especially small operators who are more likely to buy buses second hand.

**2. Smartphone technology.** *“RNIB would tell us the great majority of their members now have smartphones and use them”*<sup>162</sup> Simon Posner, Confederation of Passenger Transport.

Smartphones cannot be an alternative to audio-visual announcements on buses. Our data shows that only 65% of people with sight loss own a smartphone,<sup>163</sup> and that concerns over data usage, battery life and sufficient signal are a significant barrier for those who do have a smartphone. 10% of survey respondents said 3G signal in the places they travel by bus was poor. 52% said they would be concerned about the financial costs of using their data allowance to tell them journey information.

**3. Fast paced technological advances;** *“It comes back to this audio-visual thing on buses, if I may. That is an example where you mandate a specific technology on a vehicle, but the technology is changing.”*<sup>164</sup> Graham Pendlebury, Department for Transport

In an environment of emerging technologies of uncertain quality and reach, audio-visual technology is the most comprehensively beneficial system guaranteed to help all bus users. Furthermore, requirements for audio-visual technology in equality legislation would bring buses into line with requirements for trains, creating consistency and promoting a joined up accessible transport network.

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<sup>160</sup> Simon Posner, Confederation of Passenger Transport, Equality Act and Disability Oral Evidence, Session 8.

<sup>161</sup> Transport Select Committee, *Access to transport for disabled people report*, September 2013

<sup>162</sup> Simon Posner, Confederation of Passenger Transport, Equality Act and Disability Oral Evidence, Session 8.

<sup>163</sup> Destination Unknown Report, Guide Dogs, September 2014, Survey of 818 people with sight loss.

<sup>164</sup> Graham Pendlebury, Department for Transport, Equality Act and Disability Oral Evidence, session 9.

Our recommendation, as set out in our written submission, is as follows: *“Greater consistency amongst regulations arising from equality legislation, particularly in regards to ensuring the Public Service Vehicles Accessibility Regulation is amended to ensure new buses are fitted with audio visual announcements, in line with Rail Vehicle Accessibility Regulation.”*<sup>165</sup>

Guide Dogs recently submitted a statement to the Department for Transport calling for legislation on audio-visual announcements. This was supported by over 20 organisations including RNIB, The British Medical Association, Trent Barton Buses, Brighton and Hove Buses, Nottingham City Transport, Age UK, Sense, Action on Hearing Loss, Royal Society of Public Health, Bus Users UK, Campaign for Better Transport, Transport for All and Mencap.

**4. Sentencing guidelines:** *“I know there are sentencing guidelines and guidelines to magistrates about how they are set”*<sup>166</sup> Graham Pendlebury, Department for Transport.

In the oral evidence session it was stated that there are sentencing guidelines to magistrates for offences relating to the Equality Act, specifically referring to part 168 regarding assistance dogs in taxis. I wish to confirm however that there is no specific reference to this clause in the sentencing guidelines.

Our recommendation to ensure compliance with the law, as set out in our written submission is as follows: *“An amendment to the Equality Act to increase the fine level for offences relating to access for assistance dog owners to taxis.”*<sup>167</sup>

As well as a rise in the fine level, we would like guidance to be issued on this offence to help magistrates understand the detrimental and humiliating effect a taxi refusal can have on an assistance dog owner who may be left unable to get safely home.

I would be happy to meet with you to discuss these issues in further detail before the committee is due to report in March, along with participants from our focus group of people with sight loss set up specifically for this inquiry.

Yours sincerely,

James White  
Senior Public Affairs Manager  
Guide Dogs

17 December 2015

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<sup>165</sup> Guide Dogs response to the Equality Act 2010 and Disability’s call for evidence, September 2015, section 2.1 to 2.7

<sup>166</sup> Graham Pendlebury, Department for Transport, Equality Act and Disability Oral Evidence, session 9.

<sup>167</sup> Guide Dogs response to the Equality Act 2010 and Disability’s call for evidence, September 2015, section 3.4 to 3.7

## **Anthony Hall – Written Evidence (EQD0046)**

### **1. Has the Equality Act 2010 achieved the aim of strengthening and harmonizing disability discrimination law?**

Based on my personal experience the Equality act 2010 has not achieved its aim of strengthening and harmonizing disability discrimination law for those young offenders who committed an offence prior to 2001, by them not having the same rights & protection as a young offender covered by legislation under the new Equality Act 2010 they are still presented with barriers in finding employment or doing voluntary work 16 years after the offence.

- 1) The Equality Act 2010 provides disabled people with protection from discrimination in a range of areas that was not available under the **1995 discrimination Act** during the trial for those defendants with mental impairments in 1999.
- 2) Not taking into account lessons learnt during the period **1995 to 2015 (Valuing People Strategy)** was not achieved by 2011 and is still being deployed under a new 3 year strategy in 2015.
- 3) Social Services did not make reasonable adjustments in line with the Special Education needs **Care Act 2001** to provide the necessary support for a first time offender with a mental impairment during a police investigation.
- 4) Not treating those with a mental impairment & their carer's with honour & respect by placing undue pressure on them to change from a commissioned service to direct payments (individual budgets) so that they could meet government targets during the period **2009 & 2015**:
- 5) Not being open and honest in its responses to questions of clarification relating to complaints raised between January 2011 & June 2015 in line with the **Care Act 2014** & the councils **Health & Wellbeing Strategy 2014 to 2017**
- 6) Has not delivered the appropriate level of support to meet the individual's eligible needs between June 2013 & August 2015.
- 7) Undue pressure placed on a vulnerable adult with a mental impairment by their care practitioner to sign a new eligibility criteria self-assessment introduced under the new **2014 Care Act** which the end user did not fully understand and refused to sign.

### **Question 1, part 2: Before the Equality Act there was a separate law on disability. Have things improved or not because disability is now only one of nine groups in the law?**

There may have been some improvement but there are still issues with:

- Having the same rights and choices as everyone else
- Have a right to be treated with dignity and respect
- Have the same chances and responsibilities as everyone else

- Families and carers should have the right to the same hopes and choices as other families.
- 8) A report published by the Royal National Institute for the Blind in 2000, entitled 'The Price of Justice', criticised the framework of the existing protection, suggesting the high costs involved in pursuing claims of discrimination in the provision of goods, services and facilities effectively blocked access to justice in some cases, and called for a review of the way these claims are brought. The report called for greater use of tribunals and more **effective training of judges in disability related issues**.
  - 9) The disability discrimination act had specific rules in **2000** which meant that a defendant with a learning disability **could be treated differently, particularly in sentencing, if they were found guilty of an offence during the trial**. At the trial the court treated the defendant as if he did not have a mental health impairment ignoring the advice given by the psychiatrist, probation officer, Special Educational Needs consultant and the **Disability Act 2001** white paper given to the defendant's solicitor by Mencap.
  - 10) Government policy allows that people with Mental health problems receive treatment and care from health & social services to continue or to begin if someone becomes involved with the police as they transition from childhood to a young adult. Social Services refusal to be involved during the trial because of Police involvement preventing the judge from taking into account the care & support the defendant was receiving from Social Services at that time of the trial which may have halted the prosecution and provided a better alternative solution for a first time offender with a mental impairment such as a community rehabilitation order.
  - 11) Social services unwillingness to treat the individual as a person with rights in 2000 still exist 15 years later 2015
  - 12) The **Disability Act** covered a variety of areas of disability discrimination from employment issues to access to transport. This Act also set up the National Disability Council, which was abolished when the Disability Rights Commission was established in **April 2000**
  - 13) Due to **the lack of staff awareness & training for dealing with young offenders** with Mental impairments in **2000** the prisoner had to be separated from other inmates to prevent bullying and his vulnerability being exploited whilst serving his sentence
  - 14) The arresting officer involved with the case believed that the judge's sentence was too harsh for the defendant especially as the defendant was the prosecution's main witness, and he felt that the vulnerability of the defendant was not taken into account in the sentencing. It was with the assistance of the arresting officer and the prison warden that the defendant obtained early release from the young offender's prison allowing him to be tagged.

- 15) The Disability Rights Commission was replaced in **October 2007** by the Equality and Human Rights Commission, which is now responsible for the work of three former equality commissions: the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission.
- 16) A major new piece of research on disability in Britain was launched in **March 2009** as part of the Government's long-term aim to achieve equality in all areas for people with disabilities. The Life Opportunities Survey (LOS), carried out by the Office for National Statistics on behalf of the Office for Disability Issues (ODI), compares the activities of disabled and non-disabled people in various situations, such as at work, in education, playing sports, and using transport and public services. It also looks at living standards, housing, discrimination and crime
- 17) Legal protection for disabled people was transferred from the Disability Discrimination Act to the Equality Act with effect from **October 2010**. The Act defines a disabled person as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities
- 18) The **Equality Act 2010** provides protection from discrimination in areas such as employment, education, access to goods, services and facilities, and buying and renting land or property. The Act also provides protection from discrimination for people associated with a disabled person, such as a parent or carer
- 19) The Director of Public Prosecutions, Keir Starmer, in a speech in **March 2011** spoke of the "very many" disability hate crimes that the Crown Prosecution Service deals with every year. Mr Starmer said there was "clear evidence" that disability hate crime was widespread and he believed "many thousands of cases" go unreported year on year.

**Question 2 Are there gaps in the law on treating disabled people equally not covered by the Equality Act 2010 or other legislation?**

Yes there are gaps in the law treating disabled people equally not covered by the equality act 2010: from the period 1995 to 2004. Is it right that a young offender with a mental impairment who received a custodial sentence in 2000 is still discriminated by his records which have not been cleared after serving his spent sentence? If the act had been in place in 2000 and the appropriate training for Judges and social services undertaken then the outcome could have been different, people with a learning disabilities have the right to be treated with dignity and respect from all people including those in authority. There continues to be ongoing pressure place on individuals to sign documents they may not fully understand just so that the local authority can meet its targets or that the care provider has ticked a requirement in their procedures.

1. In **2001**, the Disability Discrimination Act (DDA) was extended into the public sector to cover (among other things) the police, prison service and fire service. The Equal Treatment in Employment Directive required the Government to ensure that all employers would come under the DDA by **2004**

2. The Disability Discrimination Act **Mental Capacity Act 2005** made further substantial amendments to the Disability Discrimination Act 1995 building on amendments made previously by other legislation
3. In **2007** an addendum code of practise was made to the MCA taking into account test of capacity for those with learning difficulties and giving examples on how they could be treated equality
4. Irrespective of the availability of legal action against explicit discrimination, there remain considerable prejudices against disabled people and various barriers to their participation in many areas of life
5. One particularly unpleasant aspect of prejudice against disabled people is 'disability hate crime'. Several cases have been reported in the press over recent years and all have attracted public outrage
6. Section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which was brought into force on **10 March 2014**, made two key changes to the 1974 Act. The first change was to extend the scope of the Act to cover custodial sentences of up to 48 months (previously prison sentences over 30 months never became spent), **and the second was to *change the length of some of the rehabilitation periods (in most cases by reducing them)***.

**Question 3, part 1: Do people know about the sorts of changes that should be made to treat disabled people equally**

They may do, but that does not mean they follow them. Policies and procedures may be put in place to adhere to the law but unless these are put into practice they are worthless. There are different levels of disability and not all are understood by all.

**Question 3, part 2: Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?**

Reasonable adjustment duties are not known and understood by all disabled people, employers, service providers and others who have duties under them due to the lack of training and documentation especially in relation to the 'test of capacity' mentioned in Question 2, point 3 above.

**How does this apply in the specific cases of public transport, taxis, education and access to sportsgrounds?**

There have been some improvement in accessible transport and facilities but there is still a long way to go. Not all education facilities have disabled access, and do not always allow for support workers to attend courses with the person thus restricting access to education for those who require additional support to understand as they go through the course, this also impacts on the social aspect to make new friends in a place that anyone can attend.

They are talking about taking the bus pass away for those with a disability this would have a bad impact on those using them as they would not be able to afford to go out. There also needs to be improvement in the working relationships in local government for those transitioning from school age to young adulthood, communications and standardisation of procedures need to be in place so that all are working to the same standards.

**Question 4: Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

The law should be more explicit on what constitutes a reasonable adjustment by:

1. With lessons learnt year by year constantly referring to old legislation it's hard to understand at what point in time reasonable adjustments should become relevant. Having a base line from which to work from in an easy read format would give a reference point for all new lessons learnt in question 2.

**Question 5: Have public bodies (like the government and councils) done what they should do to make sure people are being treated equally and fairly?**

Public bodies like government and councils have not done what they should do to make sure people are being treated equally and fairly see extract below from a press release of the 15<sup>th</sup> May 2014 and other reasons why:

1. Dr Jane Martin, Local Government Ombudsman & Andrea Sutcliffe (Chief inspector of Adult Social Care at CQC) press release on the 15 May stated that "It is important to make sure that people are helped to pass their concerns or complaints about adult social care services to the right people to act on them with the minimum of fuss. The more hoops people have to go through, the less likely they are to report poor care. This new arrangement between CQC and the ombudsman will firmly put the people first
2. Slippage in the main deliverables under the new care act 2014 for a single point of entry into the NHS & Social services.
3. Though a lack of a seamless handover from the commissioning teams through delays in providing documentation to train those responsible for the ongoing delivery of services
4. Reasonable adjustment duties not being known and understood by all disabled people, employers, service providers and others who have duties under them to be qualified to ensure that the 'test of capacity' mentioned in Question 2 point 3 previously is taken into account in any assessment and support package if necessary.
5. Surrey County Council's breaches in its customer promise to respond to complaints within 5 days and for the full response within 30 days as well as their lack of response to questions asked by the Ombudsman as part of his investigation for the period January 2011 to December 2014.

**Question 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?**

The impact of the different approaches in England, Wales and Scotland to the specific duties design to support the general public sector equality duty?

I believe that Scotland have made the right approach in addressing the specific duties to support the NHS and the implementation of services for disabled people. By still remaining part of the UK but having a separate vote on how they move forward.

The NHS has done a similar exercise realigning their area's into Regions which is not aligned to social services & local council boundaries. I believe that realigning the boundaries into regions would make integration of the new Care Act 2014 between NHS & Social services more effective by breaking down some of the existing barriers of which borough or district you live in.

**Question 7: Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?**

The Division of responsibilities and accountability between Local Councillors at Borough, County and with Central Government affect the effective implementation of the Equality Act 2010 in respect of disability for the following reasons:

1. Nobody takes responsibility or is held accountable for resolving inter departmental complaints at all levels of Government and Councils
2. Blame culture still exists and it's time for change if Partnership working is going to work. The prime contractor needs be identified and communicated to all involved in the delivery of Care

**Question 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?**

Based on my experience, the Equality and Human Rights Commission has been exercising its regulations and enforcement powers, but still has a long way to go before we can say it's under control and had a major impact on people with a disability. A big question is what rights have those Vulnerable adults with mental impairments got that were bullied into doing something that resulted in a criminal record that did not have the protection of the law at that point in time when they needed it most and now placing a new barrier in them finding employment or undertaking voluntary work.

**Question 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?**



Other regulatory bodies with a role in the effective implementation of the Equality Act 2010 such as inspectorates and Ombudsman can play a more significant part by:

1. Introduce higher penalties to councils that repeatedly breach councils statutory requirements and the councils own policies that they have previously apologised for, but do not rectify the root causes of the breaches going forward.
2. Resolve the interdepartmental issues at local and county level between the NHS & Social services on who is accountable and responsible for the delivery of service to the end user i.e. who owns the patient?
3. Those councils & providers found to be providing services that are not fit for purpose to meet the new eligible needs criteria for those with a disability should incur heavy penalties if found non-compliant to the new care act.

**Question 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?**

The current enforcement mechanisms available to private individuals (through Employment Tribunals, County Courts and, in Scotland, Sheriff Courts) accessible are effective for people with disability, employers and providers of goods, facilities and services. But fail when councils:

1. Hide behind their policies to justify not providing information under an investigation.
2. Not being open and honest in its responses to questions asked by an investigating officer during a complaint.
3. Do not adhere to its own policies and procedures and do not learn from 'lessons learnt' taking a reactive rather than a proactive approach to prevent risks from occurring

**Question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

Other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of discrimination arising from a disability is by:

1. Clearer guidance for all, in how to better manage the working relationships between an increasing number of partners that includes parents and carers
2. Clearly defining who is the primary lead on who is held accountable and responsible for the effective delivery of the service to meet the needs of the end users of services in the community.

*1 September 2015*

## **Nicholeen Hall – Written Evidence (EQD0017)**

Equality Act 2010.

The Act may or may not be working depending on people's individual views but personally as a wheelchair user I feel much more needs to be clarified.

I regularly feel discriminated against. I can never attend a business meeting an outing or excursion spontaneously. Every aspect of the venture has to be checked and double checked i.e. access around the venue, into a venue and of course most important is there a disabled toilet. I appreciate that under the law all new build will now provide these.

Unfortunately on occasions when I attempt to visit a venue which has undergone complete refurbishment, I have been told, yes flat access but no disabled toilets. Last week I arranged to meet a family member in a recently refurbished bar/restaurant. During my usual enquiries I was told that flat access yes but no disabled toilet. Yet the place is owned by a chain not a family run business. When I contacted the local council I was told this is a "grey area" not clear to anyone. Time to eliminate "grey areas" make hem black or white.

Near to where I live a huge development has been refurbished into hotel accommodation, and two bar/restaurants. If I visit the new bar/restaurant the disabled access is via the fire doors which open directly into the main restaurant area which means other diners have to move to enable me to get inside. The disabled toilet is in the basement - yes there is a lift - but to access the lift a wheelchair user has to exit through the fire doors -- all diners move -- travel outside along the pavement and then go in through the main bar and fight ones way to the lift through usually a very crowded bar - YET ALL THIS IS WITHIN TNE LAW"

No longer do we tolerate discrimination on colour, gender religion or sexual preferences but a disabled person does not seem to be able to rely on this protection.

I am tired of having to feel grateful just because the place I wish to visit is actually going to allow me to enter and let me conduct myself in a normal fashion.

### Shopping

Too many retail shops, large chains, not small independently owned premises, still make negotiating the aisles difficult. It is embarrassing when the staff have to come to the rescue and move rails etc. out of one's way just to enable navigation of the shop. Near to where I live a large supermarket chain has a mini store but wheelchair access to the self- service tills is difficult Admittedly staff training is often very good and help can be obtained but the object should be to provide independence. Even small independently owned shops could make much more of an effort to aid access if the commitment was there. A step can easily be overcome with a ramp but why should they bother if they know they are not legally required to change.

Some listed buildings often hide behind this architectural status to deny or delay progress. Admittedly aids for access can be unsightly but there are so many talented designers available that this excuse can be rejected.

### Travel

Frequently incidents are reported of disabled people being unable to disembark trains as the requested help did not turn up. Why are trains not instructed to have ramps on board then the guard, could just place it down and the wheelchair user can leave.

When at first I became a wheelchair user, I felt somehow this was my fault, this is what I must now expect. No, no, there are young people out there in wheelchairs with their whole lives ahead of them with a right to take part in society with no additional restrictions other than the ones their medical condition inflicts on them. A disabled person has a difficult time already without the addition of out - dated barriers. With a change in attitude, educating of **organisations and a little help from the law these barriers could be removed.**

#### HIGHWAYS

When visiting towns and cities outside London one cannot always rely there will be a dipped kerb in place to enable safe road crossing. When council highway departments are contacted they make notes and say it will be seen to sometime in the future. It does not seem to appear that urgent.

There are countless encounters where trivial obstructions deny me a normal existence. I do not ask for the moon just let me go out everyday and live my life just like everyone else. A much clearer definition of the law is required.

*10 August 2015*

## **Jade Hamnett – Written Evidence (EQD0140)**

Submission by Jade Hamnett. Disabled person, and former Chairperson of Fair Access to Colchester, a local disability access group.

### **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?**

- 1) I believe the Equality Act has caused more confusion, by lumping many separate issues in together. While the idea of having nine protected characteristics is good in theory, issues relating to those with disabilities are completely different to those needed by pregnant women. The law itself is quite hard to navigate when you want to find out a specific piece of information, and it's sometimes not very clear - for example what happens if the protected characteristics clash against each other, with two requests from protected groups?
- 2) While the disability section of the Equality Act is good in theory, in reality it's completely inaccessible to the average disabled person because it's not enforced, and disabled people can no longer take legal action without paying thousands.
- 3) Cases like the wheelchair user vs Arriva to see who should get priority are absolutely vital, as they impact people's daily lives, but they can no longer happen, unless that wheelchair user has thousands to pay the insurance excess.
- 4) This change in law was quietly brought in, without a whisper from the media - but it effectively made the Equality Act useless. Which is heartbreaking - as the act is vitally needed to protect people with disabilities.

### **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

- 5) I think mostly what is in the Equality Act isn't being enforced. Let's start there - by enforcing it, then see where the gaps are. As it's not currently being enforced, it's hard to say if it needs strengthening or adding to.

### **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?**

- 6) No, it's not understood by employers and service providers, and because it's not enforced, they don't have to know. Unless a disabled person takes legal action against them, there's generally no other way of enforcing change.
- 7) And recently disabled people were stopped from using 'no win, no fee' cases in order to take legal action, and now have to pay to take an employer to tribunal. This has removed the ability to use the legal protections available away from us.
- 8) And councils should be doing far more to make sure any business/service starting up in their area is fully accessible. My local council even tells businesses not the bother with ramps, etc - and its own buildings are inaccessible, so are hardly setting a good example.
- 9) I also think most disabled people don't know what their rights are, of if they do are so jaded from trying to get change - it's mostly like banging your head against a brick wall.

- 10) Five years ago I became the Chairperson of a local disability access group. I found the whole process heartbreaking - getting any kind of change was like getting blood from a stone. I would write to shops, including large chain shops and politely request accessibility. They would just ignore me, or write back saying they couldn't afford it. Even if the request was for a simple portable ramp that costs less than £50. And I had nowhere to turn to that would make them carry the changes out.
- 11) If I go in my wheelchair to the centre of the town I live in, I would not be able to get into approximately 60% of the shops, and would struggle to get around easily in the further 30%.

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

- 12) Yes, absolutely! It always seems to be deemed unreasonable to provide the adjustment, when in my mind it's rare that something can't be done to improve things, even if it's providing access in a different way. Shops don't want to spend the money, and as no one enforces it, they continue to get away with it.
- 13) I have now had to leave my doctors, dentist and opticians, all because their premises became inaccessible to me when I became a wheelchair user. I can't find an accessible opticians in my town. When I ask them why their premises are not accessible, they either ignore me, or tell me I should just go elsewhere.
- 14) I used to like the term 'reasonable' as most shops/services can provide some improvements, and how much would depend on how big they 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. You MUST do x at the very least.

**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?**

- 15) I actually feel very emotional answering these questions. When the Disability Discrimination Act came into force in 1995, we thought the country would change. That businesses would have to become accessible, that employers would have to accommodate people with disabilities. Yet in a lot of ways nothing has changed.
- 16) There needs to be an Equality Act department in each council that goes round to every shop and service and says - you need a ramp there, you need to fix your hearing loop, you need to provide that information in large print. You have 30 days to do it, we'll be back, and if it isn't done, the fines will start.
- 17) This doesn't happen, and as most disabled people don't go around suing their local bank, post office and employer - nothing changes!

**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?**

- 18) I don't know about enforcement in Scotland and Wales, but in England there doesn't seem to be enforcement. Even Planning Departments don't seem to be insisting buildings are fully accessible when built from scratch, or when they change use. It doesn't seem to be a priority.

**7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?**

19) I think it means each department points to another and says not my problem. Power and resources must be given to local councils to enforce, and it should be a priority. Revenue could be raised by fining those not complying. After a year of strict enforcement, services and employers will begin to realise they have to do it, and it will become automatic.

**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?**

20) Pretty poor. They seem to pick and choose cases depending on how it interests them, not down to who it's impacting and how much.

21) My local council decided to remove all disabled parking from the town centre, effectively telling all 14,000 local blue badge holders they were no longer welcome in the town centre. We went to the Equality and Human Rights Commission, and they couldn't have been less interested.

22) The case went to the High Court, and the ruling seems to have inferred that councils don't have to provide reasonable alternatives - which impacts every blue badge holder in England. They still weren't interested. Appalling.

**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?**

23) Yes, absolutely. Give power and resources to local councils and insist they use them. It must be a priority or we will never have change.

**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?**

24) No, absolutely not. The mechanism for the average person to take legal action was removed when no win, no fee cases were stopped. Now to take a case the disabled person would have to pay the excess on the insurance policy, which costs thousands. This has made the Equality Act utterly useless, as it can't be enforced.

25) The Equality Act is vital to people with disabilities, and should be strengthened and given back to those who it is supposed to protect.

26) The courts also take too long. A case I took to court over disability discrimination was heard at the High Court in May 2013. (The law about no win, no fee was changed in July 2013, so I got in just in time.) We're now taking it to the appeal court. It STILL hasn't been heard, and now won't be heard until 2016. It's far too late!

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

27) Yes, give local councils the power to enforce it. Resource the new department by fining another not providing reasonable adjustments.

*5 September 2015*

**John Harrold – Written Evidence (EQD0003)**

Dear Sirs,

In response to your call for evidence, I would like to inform you about a real difficulty which I experience on a regular basis. I am severely visually impaired and struggle to read, but Sheffield City Council and my local NHS trust continue to send out letters to me in regular size print. I have asked them on many occasions to send letters in a large font as I am unable to read them and have to rely on other people reading them for me, even when they contain personal and sensitive information. I think that using a large font would be classed as a reasonable adjustment, but I am still waiting for this adjustment to be made.

Yours faithfully,

John Harrold.

*8 July 2015*

## **Martin Henwood – Written Evidence (EQD0044)**

1. The current system of corporate governance relating to effectiveness of Equality legislation for those with disabilities is broken, in theory and practice. The following document demonstrates how and why. The council involved is anonymised as the intent is to demonstrate systemic weaknesses, not name and shame that organisation.
2. I have worked in and for local government in senior positions since 1988. In addition I worked successfully in the private sector for two years and have extensive experience with more than a dozen voluntary organisations. I have a disability due to deafness and tinnitus in my left ear as the result of a virus in 1988/89. I am married and our daughter, who is currently 17, is autistic and has learning difficulties.
3. In February 2015 a County Council (XCC) was found by Judicial Review to be fundamentally not fulfilling its statutory duties towards the disabled. Despite four or more letters before action XCC was found to be failing by:
  - Not holding a statutory register of those with disabilities, and
  - Not implementing the new provisions with relation to SEND (Special Education Needs and Disability) by not creating an adequate Local Offer, even by six months after the legislation required a Local Offer at the start of Sept 2014.
4. This failure by XCC was the culmination of a series of events from December 2012, over two years earlier. In that period and since, I have sought to use all the relevant corporate governance elements available in an attempt to get XCC to satisfy its statutory obligations, without going to law. These included:
  - A. The complaints system within XCC;
  - B. The Freedom of Information system up to and including the First Tier Tribunal;
  - C. The Local Government Ombudsman (LGO);
  - D. Ofsted (The Office for Standards in Education); and
  - E. Seeking a report in the public interest in relation to the accounts for 2013/14.
5. None of these checks and balances worked as they should have done and needed to in order to protect and enable children with disabilities to grow and develop safely, and be supported by their carers within Xshire. As a person who has dedicated his working life to public service, it has been both eye opening and profoundly upsetting.

### **A XCC Complaints system**

6. The background to this situation begins in December 2012. XCC decided to increase savings from Integrated Disability Services (IDS) from c£300k to £1.8m. The budget for IDS in 2012/13 was £5.5m. The explanation as to how the savings would be realised provided in outline in February 2013 had no sound basis as even the most basic data, a register of those with disability, was not in place to ensure the proposals were robust.



7. During 2013 XCC's first attempt at consultation took place. The approach taken was flawed in my opinion. My letter to XCC explaining why this was so was ignored and not addressed in the subsequent report to Cabinet in September 2013. I consequently contacted XCC using its complaints system (which was incredibly user-unfriendly) and received an acknowledgement. No further action was taken by XCC until prompted to do so by the LGO in 2014. There was no process in place to ensure all complaints received a response, never mind an adequate response. I have not received a reply saying that this situation has changed.

8. The Cabinet report in September 2013 led to another round of consultation. I therefore attended a consultation meeting at my daughter's (special) school in October 2013. This was the most depressing meeting I have ever attended since joining local government in 1978. The staff leading the meeting informed parents that there would be cuts happening to their services, and then actually gave explicit personal details to some parents in this open meeting, with positive glee. I have never encountered such inappropriate behaviour. The Leader of the Council subsequently admitted that this 'was not our finest hour' at a meeting in December 2013.

9. I will not continue with extensive further detail, but suffice to say that the savings have not yet been fully implemented, almost 3 years later. There is nonetheless a steely determination to go through with them despite the lack of a legal platform and massively changed circumstances with the SEND legislation.

10. In summary, the complaints system at XCC was not fit for purpose and the necessary remedial action to address this situation does not appear to have taken.

### **B Freedom of Information (foi) and the Information Commissioner's Office (ICO)**

11. In order to try to understand matters I sent in a foi request in October 2013. Unfortunately for me, this coincided with other parents sending in requests. ***These were all lumped together in a refusal of a group action***, and the formal review of this confirmed as a last action before Christmas, sent after 5pm on 23 December 2013.

12. I made a formal request to the ICO for a review on 16 January 2014. Having failed to get a response beyond the automatic reply, I asked what was happening on 10 March. ICO confirmed that the document had not been processed at all and it was subsequently allocated to an Investigating Officer on 21 March. The final decision notice was issued on 9 July, almost 6 months after my initial complaint. The view of ICO is meant to take be made within 4 weeks. Part of the delay was due to XCC not providing information on time.

13. As there were errors in fact and substance I appealed to the First Tier Tribunal. The ICO decision was upheld on 27 January 2015 but the ruling pointed out that if I reworded my submission to ensure it was solely within the Act, XCC would now be required to provide the information given the elapsed time. Therefore even as an experienced senior manager I hadn't managed to follow the correct procedure.

14. It is noteworthy that in autumn 2013 XCC promised to create a FAQ (frequently asked questions) sheet to provide answers to the questions that were raised by myself and other parents. Nothing was ever provided.

15. The lesson from this is that for those seeking to clarify disability issues need to accept that timeliness is irrelevant as there is no penalty for either a Council or the ICO if they do not meet time deadlines.

16. Also, they will need to be experts in the precise wording of foi law. XCC said all the foi requests were part of a campaign but did and would not provide details of what the questions received were or who sent them in. It was therefore impossible to provide a shorter list that would have satisfied their time process requirements. However, that might not have been possible anyway, as the method used by XCC to calculate how long it would take to process a request did not allow for the use of computers or enquiry software.

17. In recognising that the government wishes to restrict the inappropriate use of foi requests, it would be reasonable to expect that any system used operates with elapsed time and process guidance that reflects and requires modern working practices. The current system and its operation definitely creates a significant barrier to those with disabilities.

18. The final point on this foi is that there is also a major weakness within the foi and appeal system. As a matter of course the names of the appellants to the First Tier Tribunal are placed in the public domain unless there is a specific request for this not to happen. There was nothing on the website or in associated guidance about this when making the appeal. This major weakness led to a contact being made to an organisation I worked for at the time was contacted about this, and was a major contributing factor to my subsequent departure. Therefore anonymising the decision was helpful but too late.

19. An additional and related point came when I made a separate foi asking for details of the briefing to the Leader of XCC prior to meeting referred to in paragraph 7. I had provided information to the Leader very similar to the foi request and knew briefing(s) would have been provided on this prior to the meeting. This information, all of which related to documents in the public domain, was refused on the basis that it was provided as a confidential briefing.

### **C. LGO (Local Government Ombudsman)**

20. The LGO appears to be so concerned about its (lack of) capacity to reply to complaints about Councils that it has taken its eye off why it exists. The LGO website is not user friendly and when I used it, it only provided what would have been very helpful advice *after* I had submitted my complaint about XCC.

21. From professional experience I was aware the LGO would probably not take a complaint about the way XCC was implementing its savings. Therefore when I submitted my complaint I was very careful to make a specific complaint about XCC not having an effective complaints system.

22. Despite that, the first LGO reply thought I was complaining about the savings and said that I could not make a complaint as I had not yet suffered any harm. This was noteworthy because it confirmed that the only effective way to raise a concern for a person with a disability prior to its impact is to go to law.

23. Eventually I managed to secure a response to my concern about the lack of an effective complaints system at XCC. The outcome was a reply to my original letter to XCC that had been ignored but no confirmation that the defective system had been improved.

24. It is a sad conclusion, but my experience was that the LGO has made itself irrelevant and minimal help to the public, and adds insufficient value for its £5m p.a. cost.

#### **D. Ofsted (Office for Standards in Education, Children's Services and Skills)**

25. The most fundamental flaws are in Ofsted. There was yet another foul up by XCC – changing our child's transport without informing us in time. As this applied to several children I contacted Ofsted as I was concerned that XCC was seriously failing in its safeguarding responsibilities.

26. I sent my email to Ofsted on 5 May 2014, and received a reply that the email had been forwarded to their National Complaints Team in Nottingham. There was a 30 working days deadline for reply. At the 28 June (35 working days) I contacted Ofsted as I had received no contact.

27. When there was still no contact by 28 September I contacted Ofsted again. The reply sent on 30 September from Ofsted's 'Whistleblowingcentral' in a letter dated 23 April 2014 (i.e. before I complained) was incredible. Although addressed to me the reply was to a different query. It referred to 'my constituent' and advised that my query was outside their terms of reference, without explaining why.

28. I followed this up and received an inadequate reply from the Private Secretary to Sir Michael Wilshaw. Given this was from the team that exist to enable Sir Michael Wilshaw to know what is happening in his organisation it was genuinely shocking. There did not appear to be even the slightest understanding of what Safeguarding actually means in reality, when there are risks that need to be followed up, and where Ofsted should exercise its responsibilities.

29. I therefore followed up their offer to make a complaint, and this was forwarded to the Inspection Quality and Complaints Administration Team. This eventually led to a sensible conversation in November 2014 with someone who not only understood the issues but also the system weaknesses within Ofsted. I was advised there were numerous actions in hand following my complaint, so at least these may in part have helped improve the internal Ofsted processes.

30. The key issue that remains unaddressed is Ofsted's interpretation of how it has to exercise its responsibilities to 'evaluate and report on the effectiveness of the local authority's child protection services.' ***Ofsted believes it is not possible for it to comment on a situation drawn to their attention by a single child, parent or carer, however widespread or fundamental the nature of the issue raised.***

31. Ofsted is firmly of the view that the process to be followed in relation to any issue raised is first the council's complaints procedures and then the LGO. I raised a concern about what happens when these do not work, and this was noted but not commented on beyond passing this feedback on to the file for Ofsted's managers to look at in preparation for their next visit to XCC.

32. Therefore Ofsted's processes at their best, and it took a very long time to get to anything even vaguely adequate, are not fit for purpose when it comes to fundamental issues such as a Council failing to meet its statutory obligations. Given the experience of

Rotherham, Oxford and Rochdale, it is evident that Ofsted's current approach is fundamentally flawed.

33. In my experience with XCC, in the current circumstances there is also literally nowhere a disabled person or parent/carer can go to raise a concern that will be listened to and may lead to action, if it is not an allegation about physical abuse.

34. Given many systemic weaknesses often have the unintended result of neglect or worse of the disabled who cannot speak or verbalise what is happening, this is a dreadful weakness. Even if Ofsted improve operationally, their current approach to their Safeguarding responsibilities is fundamentally flawed in both theory and practice.

#### **E. External Audit**

35. A key part of the internal control regime in a Council is its finances. An effective performance management regime can ensure that there are many explicit and implicit controls and drivers for good performance that can help provide good quality services for vulnerable clients. Additionally, in a time of austerity, a thorough financial regime can ensure that savings made are soundly based so that the impact is clearly known in advance and carefully calibrated to deliver changes as expected.

36. In view of the inadequacies of the process followed I consequently asked the external auditor to XCC to make a report in the public interest about the IDS savings and related issues as part of the 2013/14 audit. I raised my concerns as required in September 2014. In June 2015 I received a reply from the external auditor saying that there would be no report in the public interest. This was despite the judicial review decision in February 2015 identifying that XCC had no sound basis for its IDS budget as there is no statutory register of disabled children. The auditor's decision was made without discussing the matter with myself or those affected by the inadequacies in financial management.

37. I have contacted the external auditor about this and other issues and a meeting is scheduled on 19 September 2015, so I will add no further details here. My overriding concern is that the very effective support and protection for the disabled that comes from a robust finance function has been lost.

#### **Conclusion**

38. The experience of the last 2-3 years has not been easy. The one thing I am certain of is that my decision to follow through this process has led to my departure as the Director to a not for profit community interest company (CIC) for disabled adults in Xshire. Despite XCC's failure identified at the judicial review in February 2015, the nature of some of their defence created a perceived risk to the CIC.

39. My concerns have been rejected by XCC and the ICO as I was deemed part of a group, and by Ofsted and the External Auditor as I was an individual. A Catch 22 as the circumstances precluded an escape from this situation and always will do.

40. I now find that as a disabled person with a disabled daughter I have been excluded from supporting her and other disabled adults solely due to seeking clarification and accountability in the public sector. On their own, these few facts confirm that the current system of corporate governance relating to effectiveness of Equality legislation for those with disabilities is broken in theory and practice.

## **Suggestions**

41. In order to strengthen corporate governance in the regulatory regime it is suggested:

### **A. Council Complaints systems**

42. All Councils need to have complaints systems that are fully functioning and fit for purpose. It needs to be made clear who is responsible for enforcing improvement if this is needed, and what the sanctions are if or when there is no improvement.

### **B. Information Commission Officer**

43. The ICO needs to significantly improve its systems to ensure that it is aware of the progress on claims, with exception reporting on cases that are out of time.

44. The ICO needs to operate on the basis that it is there to ensure the intent of the legislation is delivered by public sector bodies and not just the letter. If there are ways of restating a request to make it avoid a complaint then it will use less ICO resource to provide that advice than to grind through a complaints process.

45. The documentation for an appeal to the First Tier Tribunal needs to be updated to ensure consideration is given as a matter of course as to whether a case should be anonymised prior to consideration, and not when the decision is made.

46. Information provided to councillors that relates to documents in the public domain which do not contain any matters of a confidential nature (e.g. due to individual circumstances or security issues) should not be allowed to be deemed confidential.

### **C. Local Government Ombudsman (LGO)**

47. As the LGO has decided it will not intervene until harm has occurred, the responsibility for dealing with all care and disability complaints should be held in a single point of contact e.g the Care Quality Commission. This will ensure consistency and should reinforce the importance of prevention in safeguarding.

### **D. Ofsted**

48. The role and responsibility of regulators in relation to Safeguarding needs to be reviewed and clarified, with the importance of prevention reinforced.

49. The need for operational improvement within Ofsted was urgent and fundamental. It is suggested that Ofsted provides a report to this Committee identifying the changes made in 2015 and consequent improvements from these.

50. As long as it exists there will always be a continuing role for Ofsted in Safeguarding. There is therefore a need to ensure it starts to provide a coherent service focused on the needs of SEND children, their parents and carers. This needs to be not just an add-on to its other responsibilities, but at the heart of its activities.

51. Ofsted's responsibility needs to be put in to formal Guidance, so that it is clear who is meant to be doing what. In particular, this Guidance needs to ensure that systemic weaknesses can be addressed and improvements required of councils outside the usual inspection regime.

### **E. External Audit within Local Government**

52. Finance is a key strand in corporate governance that can ensure effective implementation of the Equality Act 2010 and it is important it is not excluded. A key issue is often how resources have been / are allocated, and this can be as if not more important than the actual level of resources once an adequate base is established.

53. It is suggested that a further question is asked and evidence is sought on:  
*Has the methodology used in the allocation of resources had an impact on the effectiveness of Equality legislation for those with disabilities?*

*1 September 2015*

## **Hertfordshire Action on Disability – Written Evidence (EQD0024)**

1. There has been little beneficial effect on disability now being one of nine protected characteristics.

Regrettably the badly named ‘Welfare reform’ has a truly detrimental effect on large numbers of disabled people, who are now labelled as ‘skivers and scroungers’.

3. Reasonable adjustment duties are not understood sufficiently well by disabled people, employers, service providers and others.

Public transport outside London is not entirely accessible, in that some buses are not accessible, which would be like playing Russian roulette if a disabled person needs to get anywhere. There is little enforcement and so where this organisation is based there are over 300 licensed taxis, one of which is accessible.

4. Not only should the law be more explicit on reasonable adjustment, it should also be enforced.

5. Public sector equality duty seems to be practiced in isolation to reality, for instance, there are endless NHS meetings, but the NHS continue to build hospitals in vast conurbations where the distance between departments is too great to manage if the disability causes mobility problems.

The Lister Hospital car park was built with disabled people parking on levels 5 & 6 with doors too heavy to egress the car park and space too narrow to safely move from vehicle to doors/lifts.

7. It has been noted that the constituency offices of many ministers are not accessible to disabled people, which indicates that ministers do not know enough to be able to implement the act.

8. I have seen no indication of Equality and Human Rights Commission exercising its regulation and enforcement powers.

9. Local authorities should be given more authority to implement the act in a similar way to the responsibility of housing officers.

10. Buildings in which employment tribunals, County Courts, Magistrate Courts are held are invariably inaccessible and cannot therefore effectively enforce the act.

11. Enforcement would improve the implementation as would publicity about the requirement.

*18 August 2015*

## Hertfordshire Equality Council – Written Evidence (EQD0120)

### Introduction

Hertfordshire Equality Council (HEC) is a registered charity established to work with all protected groups and communities as listed under the Equality Act 2010. HEC is a representative umbrella organisation which has a public interest in the reform and championing of equality for disadvantaged communities.

This submission responds to the Select Committee's questions in the way they are presented to HEC by organisations representing or working directly with disabled people in Hertfordshire.

### Quotes - The Rule of Law in UK

The rule of law is one of the fundamental principles of UK's unwritten or uncodified constitution. The key idea of the rule of law is that the law should apply equally to all, rulers and ruled alike. This, in the words of the 19-century constitution expert, A.V. Dicey ensures a 'government of law' and not a 'government of men'.

Lord Bingham said about the rule of law<sup>168</sup> that:

'First, the law must be accessible and so far as possible intelligible, clear and predictable. This seems obvious: if everyone is bound by the law they must be able without undue difficulty to find out what it is, even if that means taking advice (as it usually will), and the answer when given should be sufficiently clear that a course of action can be based on it.'

The Equality Act undoubtedly makes anti-discrimination law more intelligible, clearer and more predictable than the array of legislation which preceded it.

The focus of this submission is on the weakened voice of disabled people, practical obstacles now presented by in-action of the public sector to implement the PSED and the introduction of court and tribunal fees and cuts in legal aid to those seeking to enforce their rights under the Act.

The barriers to the enforcement of rights are important not only for individual claimants but because in an individual discrimination case can often have an impact beyond providing a remedy for the individual, if a service provider or employer is forced to (for example) make reasonable adjustments that then benefit a wider group of potential service users and employees.

### General

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<sup>168</sup> 2006 lecture ([http://www.cpl.law.cam.ac.uk/past\\_activities/the\\_rule\\_of\\_law\\_text\\_transcript.php](http://www.cpl.law.cam.ac.uk/past_activities/the_rule_of_law_text_transcript.php))



**1. Has the Equality Act 2010 achieved the aim of strengthening and harmonising disability discrimination law?**

Feedback received by Hertfordshire Equality Council (HEC) from Hertfordshire disabled people indicates this aim has not been achieved.

In March 2015 at a HEC ‘Speakers Corner’ event one disabled person speaking at this event stated:

“The Equality Act 2010 is not working and is not benefiting disabled people. The previous Disability Discrimination Act 1995 gave people with disability much greater support”.

Other feedback received directly from disabled people and their advocacy and support organisations in response to this call for evidence:

“The 2010 Equality Act is too big to be really meaningful”.

“The DDA was specific to Disability and whilst large chunks are incorporated within the EA, much of the DDA was not included in the EA. Furthermore, the on-going government cuts, changes to benefits and public transport cuts and the widening of the Equality Act are factors that dilute the effectiveness and authority of prevailing legislation.”

“Good information was available on the Disability Discrimination Act 1995 and in a range of formats. We knew how we were to be involved in agreeing plans for change and what was due to happen and when. Now we don’t know how and where to get involved, what are the action plans and who checks if plans are working in practice”

“We have got a bit lost in the Equality Act”.

“We don’t really know what is in local equality plans”

“We are not invited to be involved now. It is being ‘done to us’ again”.

“There is more consultation and less real involvement now. And it feels like we are a problem if we ask any questions about Equality Duties”

“We don’t know where to bring things up except to Herts People First”.

“When we had the Disability Discrimination law councils tried hard to set up groups that worked for us – since the Equality Act these have stopped”

**2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

Generally, more legislation is not going to be the answer to the practical problems that disabled people face in pursuing their established rights.

There appears to be a specific gap in terms of the impact of regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010 on children and young people with

disabilities. The regulations were recently considered in the case of *X v The Governing Body of a School (SEN)* [2015] UKUT 0007 (AAC) where the Upper Tribunal found that a school had not discriminated against a child with autism when excluding her because the child's level of violent conduct meant that she has a 'tendency to physically abuse'. This decision could have a far reaching impact on disabled children's ability to access local authority provided services such as education, childcare and sports facilities.

Consideration ought to be given to amending regulation 4 to ensure that where a child's behaviour and violent tendencies arise from their diagnosis that they are still protected from disability discrimination under the Equality Act 2010.

### ***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 sportsgrounds?**

Hertfordshire Disabled People told us reasonable adjustment duties are not widely understood.

"I firmly believe that most members of the general public are ignorant of the terms and conditions Equality Act. To them it is, if anything, just a name".

"At the time of the 2012 London Paralympics it seemed to be understood what disabled people needed to be fully involved and changes were made to enable this to happen. Positive images of disabled people were around us and attitudes showed respect. It seemed the government and councils were doing their duty by disabled people".

"Some transport is still not right for disabled people".

HEC has been given lots of examples of how public transport is not working – all of which have been previously stated locally and nationally in previous Equality Reports. There appears to be little knowledge of or enforcement of the duty in this regard.

#### ***Public Buses***

"Everyone does not know their duty. Not all bus drivers know their duties to disabled people".

"Some bus drivers don't put the ramps down"

"Some drivers are very unhelpful and unfriendly".

"Some buses are not accessible. It's like playing Russian roulette as a wheelchair user travelling on the bus". "Buses still don't turn up when they say they will".

"There is a problem with space on the bus for wheelchairs and pushchairs".

#### ***Taxis***

"In Hertfordshire every district has on average between 300 and 400 licensed taxis and on average there is likely to be between 2 and three of which are accessible".

### ***Trains***

“There are Hertfordshire Railway Stations with no lift or staff to help”.

“We do go to other groups – local transport users groups for example – we do try but the meetings are not accessible to us – they don’t know how to involve us / make meetings work well for people with learning disabilities”.

“And when things are not working well – it is not easy to complain – and when we do – about a bus service – bus companies do not respond or pass the buck”.

“It is not always easy for us to get in contact with our MP without support”.

Local equality duty reports are not available in ‘easy read’.

“We need easy to read local information on what we can expect and Equality plans being made – we may need help to get to information and where we can easily get help and support with information such as libraries, college and / or schools”.

“We need an ‘Appropriate Adult’ type equality role to help us to know and get our rights under the Equality Act 2010”.

#### **4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

Whilst it may be difficult for disability groups and individuals to fully understand the language of the legislation, the community do believe that domestic case law, particularly in the employment tribunal, appears to be well developed while the European Court of Justice pronouncement on the meaning of disability and the concept of reasonable adjustments in the case of Ring v Dansk is helpful, the fact remains the everyday experience of disabled people would call for the law be more explicit on reasonable adjustment and should also be enforced.

“Make the Equality Act simple”.

“Education and training on the Equality Act and disability is needed”.

“Explain it better and make it easier to understand”.

“More checks are needed”.

“Make it real”.

### ***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?**

“Public sector equality duty seems to be practiced in isolation to reality, for instance, there are endless NHS meetings, but the NHS continues to build hospitals in vast conurbations where the distance between departments is too great to manage for people with mobility problems.”

“The Lister Hospital car park was built with disabled people parking on levels 5 & 6 with doors too heavy to egress the car park and space too narrow to safely move from vehicle to doors/lifts.”

“The status of disabled people was at the forefront in 2012 with the Olympic/Para-Olympics. Much was expected and promised from that but in my view, disability issues are currently outweighed by other political, economic and social issues. It is no longer the centre of attention and government appears happy for it to remain that way”.

“There are lots of good sentiments but little genuine desire to further improve the overall situation”.

“There are lots of pilots – new projects start and then they just stop”.

“People speak up but then nothing changes”.

“Things get lost between meetings. We need what has been agreed to be written down in an Action Plan and then checked - who is checking?”

“Local Authorities have to do what they need to do to stay within the guidelines and avoid litigation. They can all turn round and tell us in generic terms what they have done/are doing but how many disabled people can you name are involved at a middle management level in any government department”.

“Benefits are a big problem for some. And the way we get treated by the public over benefits is really bad”

“Regrettably the badly named ‘Welfare reform’ has a truly detrimental effect on large numbers of disabled people, who are now labelled as ‘skivers and scroungers’.”

“There is no local evidence of the equality duty being exercised in regard to eliminating this particular discrimination and in fostering good relations. There is a growing concern as to the effect of welfare reforms on the health and well - being of disabled people”.

“The public sector equality duty, in some areas of service delivery, has not been effective. One such area is that of Housing Benefit awards.

“At Citizens Advice in Three Rivers we regularly see vulnerable clients who have received lengthy letters from Housing Benefit who cannot understand the letters. This particularly occurs following any change in circumstances – for example where a client is in and out of work due to poor health – one such client had received several 18 page letters following each change but nowhere on the letters did it simply describe the effect of the change of circumstance and which change had caused the change in benefit. Local authorities do not appear to be considering those with learning difficulties when corresponding with them and they continue to send out lengthy unclear letters. The award letters could be made clearer and more concise”.

“Another area in which the public sector equality duty does not appear to have been effective is that of assessments for ESA and PIP. The clients applying for these benefits

are by their very nature those who are disabled and/or vulnerable and yet they are required to travel long distances to attend medical assessments. Many of these clients are people who have difficulty leaving their home and to require them to undertake a journey to an unfamiliar place on an unfamiliar route (often requiring two or three buses/trains) is not taking into consideration their disabilities.”

“Hertfordshire Disabled people have to travel out of county for their assessments and it is not advertised that in some circumstances home assessments can be undertaken – you have to fight to get that info. Also one of the assessment places is Luton, on the top floor and has often had no working lift if a lift at all”.

**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**

In Hertfordshire the county and the district council have failed to implement the Public sector equality duty (PSED) which seems to be practiced in isolation to reality, for instance, Hertfordshire Equality Council was established in 2011 and we work closely with number of disadvantaged community organisations and groups and it appears that none of the community groups are ever consulted on any policy or decision that have impact on the community.

“Disability organisations have tried to voice their concerns but councillors and senior officers of the local authorities have failed to give any time and consideration to issues of importance to disabled community in Hertfordshire. Disabled people’s organisations would like to find a way to take the senior local authority staff both county and local councillors out in the street and show them what access issues are being faced by 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?**

It has been noted that the constituency offices of many ministers are not accessible to disabled people, which indicates that ministers do not know enough to be able to implement the act

**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?**

It must be said that we in Hertfordshire have seen no indication of Equality and Human Rights Commission exercising its regulation and enforcement powers. We believe the last government striped EHRC of it powers and therefore has a limited role of producing guidance.

The 2011 ‘Hidden in Plain Sight’ report on the Human Rights Commission Inquiry into Disability Harassment was significant in leading the way to establishing a Hertfordshire Disability Hate Crime Action plan and the HMIC Joint Review on Disability Hate Crime ‘Living in a Different World’ (and the follow up report in 2015) provides good recommendations. No matter how good the plan is – it is nothing but paper if not put into action. With no effective enforcement local disabled people are faced with out of date action plans, little action and no real willingness to involve them in the resolution of identified issues

“More checks are needed. We want to be involved in the plans and check if they are working well.”

**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?**

The OfSTeAD regulatory body is the only organisation that we feel implements the Equality Act 2010 – other regulatory bodies should be given similar powers.

“It is a good idea to look at all the different checks going on and who is equality checking within those checks and then bring all of these together in one place”.

“Can we also look to checking organisations such as the Care Quality Commission, Ofsted, and Healthwatch and to checking systems such as the Joint Health and Social Care self - assessment framework and Quality of Life standards and Tool Kit?”

**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?**

Buildings in which employment tribunals, County Courts, Magistrate Courts are held are invariably inaccessible and cannot therefore effectively enforce the act

“Lack of affordable legal advice and representation means that those who are unable to work due to disability or are on low income due to disability - are often unable to access the enforcement mechanisms of court and tribunals. The courts and tribunals do not offer any advice to individuals as to how they should conduct any action.”

Since July 2013 claimants have to pay a fee or apply for a fee remission when lodging a claim with the ET. The issue fee is £160 or £250 and the hearing fee is £230 or £950.<sup>169</sup> The introduction of these fees in July 2013 has meant that the employment tribunal is hard to access for anyone on an average income<sup>170</sup>. Recent research has found that when compared to non-disabled men, disabled men have a pay gap of 11%, and

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<sup>169</sup> <https://www.gov.uk/employment-tribunals/make-a-claim>

<sup>170</sup> The average take home salary is £1,792.27 per month. (Office of National Statistics, Annual Survey of Hours and Earnings, 2013 Provisional Results)

disabled women of 22%.<sup>171</sup> It is arguable that people with protected characteristics are being discriminated against by the fact that the higher fee has to be paid to bring a discrimination claim

Research by the Citizens Advice Bureau found that workers with legitimate grievances against their employers are being deterred from pursuing claims in the ET following the introduction of the fee system. They found that four out of five prospective claimants are put off by fees. Just under half of those people with an employment issue would have to save for six months to afford fees of £1,200<sup>172</sup>. Acas has found that among the 63% who could not reach an agreement through the Acas early conciliation process and then decided not to pursue the claim, the most frequently reason cited was ET fees - 26%.<sup>173</sup>

#### **Non-Employment cases: Civil Court fees and costs**

Redress for unlawful discrimination can be pursued through a claim in the county court, but in fact very few county court claims for unlawful discrimination have been brought. HEC does not have evidence about the extent to which disabled people are being deterred by court fees (and the government is consulting on increasing fees).

### **11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

Cuts in legal aid following the Legal Aid and Punishment of Offenders Act 2013 (LASPO) have undoubtedly had an impact on access to redress.

There are only three firms contracted to provide discrimination advice under legal aid. Anecdotally, the lack of public funding means that fewer firms have experience of providing discrimination advice, and this might be making it more difficult for potential claimants to access advice even on a privately-funded basis.

#### **Legal aid and disability discrimination – the telephone gateway**

Discrimination legal aid is only available through the Civil Legal Advice telephone gateway.<sup>174 175</sup>

Some people may find difficulty in using the telephone. There ought to be multiple entry points, including e-mail, internet and face- to-face interviews, as well as telephone.

Enforcement would improve implementation as would publicity about the requirement

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<sup>171</sup> More information from the EHRC can be found [here](#) and the EHRC report is [here](#).

<sup>172</sup> <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/four-in-five-deterred-by-employment-tribunal-fees/>

<sup>173</sup> Evaluation of Acas early Conciliation 2015. <http://www.acas.org.uk/media/pdf/5/4/Evaluation-of-Acas-Early-Conciliation-2015.pdf>

<sup>174</sup> The helpline is open from 9am to 8.00pm, Monday to Friday and from 9am to 12.30pm on a Saturday. Calls cost no more than 4p a minute from a BT landline. There is a minicom service for people who are deaf, hard-of-hearing or speech-impaired and a type-talk service for people with hearing difficulties.

<sup>175</sup> The Civil Legal Aid (Procedure) Regulations 2012 provide that under-18s are exempt from using the mandatory telephone gateway when seeking legal advice on debt, education or discrimination.

People with learning disabilities are treated a bit better now  
There are some examples where reasonable adjustments are understood and made and this is mainly regards to Health and Criminal Justice agencies. However there is a bit further to go – and to check these works in practice and with education.

***Education and Learning***

“Does everyone know what a Hate Crime is? And what to do about it?”

“We need to know more, to have voice and to be able to do something with it”.

“We can continue to introduce more legislation but until there is a real genuine appreciation of the problems all disabled people routinely encounter then the public in general will continue with the existing levels of intolerance through ignorance”.

“There must be better education starting with young children”.

“Only when there is a real perception of what disability means will we, in my opinion begin to see a change in attitudes and understanding. I don't want sympathy; I want to be treated as an equal, albeit with my own physical limitations”.

The only way attitudes will change is through education

**Contribution from:**

1. Herts People First - a user led charity for people with learning disabilities
2. Welwyn Hatfield Disability Access Group – Chair – a user led group for people with physical disabilities
3. Hertfordshire CABx
4. Hertfordshire Action on Disability
5. Watford Asian Community

*4 September 2015*



## **Hft (Voices to be Heard) – Written Evidence (EQD0020)**

Hft is a national charity, providing services for people with learning disabilities throughout England. We support people to live life the way they choose - whether providing support for just a couple of hours a week, or 24 hours a day.

Our services include Supported Living, Residential Care and Short Break services. We empower people to make their own choices, including finding a job, building friendships and relationships and taking part in activities.

True involvement means providing opportunities to recognise and grow people's capabilities, and actively support them to put these skills to use in their lives. That's why Hft has developed 'Voices to be Heard'; forums recognised and valued across the whole organisation. Our Voices to be Heard group was formed in 2014 and advises Hft on what needs to be changed and has worked on specific projects requested by the management team, aiding the development of Hft. It is this group

It should be noted that many people found that the questions were difficult to understand therefore questions 6, 8, and 11 are left unanswered.

### **QUESTIONS**

1. Not sure but should be easier to understand now it's all one law. Not sure whether things have improved now that disability is now only one of nine groups.
2. People feel like they are almost always treated equally
3. There should be part of the act that makes people nicer to each other. There are still people who are not nice to us.
4. Yes, things should be clearer. If people were spoken to or shown disabilities they would understand it better. People should be taught equality lessons at high school and contractors should understand disabilities and anxieties more.
5. Still some places don't have disabled toilets, or they are kept locked or they are not cleaned. Some of the people supported by Hft need 'changing places' toilets and there are not many of these around the country.
6. Unanswered.
7. Not very well. They (the Government) are taking money away from us, and they say they care about us but they don't. people from the council are always kind to us, but they don't have enough people or money. We don't feel learning disabilities are represented in parliament.
8. Unanswered.
9. People commented that they have never heard of, or seen CQC but felt that staff were doing their jobs correctly.
10. We feel we would be taken seriously. People again did not understand what courts or tribunals were. 'If something is a problem we can complain to our staff and they will help us.' We feel we would be taken seriously
11. Unanswered.

### **Hft Leicestershire**

I got my staffing team to run through this document with about 15 people we support, yesterday. Staff said the people we support were confused by the whole document. This morning I went in with the same group and went through it again, explaining the document as best as I could. I then asked the questions listed.

As a group we agreed that there wasn't enough information given to answer the questions for example: Question 1 – has the act brought together all other laws on discrimination and made them stronger? The response to this was "what other laws".

The other questions were too complicated for them and they very quickly lost interest.

The only thing that came out of this discussion was that Market Harborough does not have a public disabled toilet. As it happens there are a couple of people in the group who attend a local advocacy group call Harborough Action Team so they will bring this up about the lack of a public disabled toilet.

### **Hft Leeds**

3 – not treated equally. One venue is accessible and the buses are accessible. The college helps people to learn about money.

4 – leaflets about disability should be sent out.

5 – don't know, so I think they've handled things quite badly. The part at Searcroft is difficult to get into with wheelchairs due to fixtures to stop bikes getting in.

7 – yes they're good on family and pensions, I am not sure on equality.

8 – don't know what Human Rights is all about.

10 – they are done quite well actually. I am not sure my aunty knows about it. I'll say no actually because I don't know about the bus.

11 – they need to explain the understanding of Human Rights act

### **Hft South Kent**

Equality act feedback Kent South

1 – we are not sure if things have changed we are always treated ok

2 – we don't really know how other people are treated

3 – we know that shops and other places have to make sure we can get in their buildings

4 – we don't really know what the law says

5 – we think we are treated ok

6 – we don't know about what Scotland does

7 – we don't know how they work together

8 – we think we are treated fairly so they must be doing ok

9 – cqc make sure we are treated ok when they do their checks

10 – we don't know anyone that has been to court because they have not been treated ok

11 – you need to make sure people are still treated fairly – but maybe make sure people are helped to get more jobs

*8 September 2015*

## **Becky Hime – Written Evidence (EQD0034)**

From the easy read document:

### **Q 1. Has the Act brought together all the other laws on discrimination and made them stronger?**

Yes because it clearer upon which grounds you may be able to make a case if you think you have been discriminated against. Before they came together, it was difficult to know which Act applied.

I don't think there has been any good/bad impact as a result of disability being one of the 9 groups.

### **Q 3 Do people know about the sorts of changes that should be made to treat disabled people equally?**

Public building managers seem to be aware, but the disabled entrance is often at the rear of the building and is often not well signposted. Often I am required to request assistance to use this entrance and cannot use it independently. Lifts are often only accessible on request only and are often goods lifts rather than passenger lifts and sometimes have difficult to manage hinged doors which don't slide.

Many buildings do not have automatic doors and I often struggle with hinged doors. Therefore, some people are not aware of how the changes should be implemented.

### **How has this worked in transport, taxis, education and using sports grounds?**

Busses can be challenging e.g. Not being willing to put the wheelchair ramps down, assisting wheelchair users on to the bus for personal reasons (bus driver's bad back), parents with pushchairs using the space for a wheelchair/less mobile person and refusing to move. The bus conductor would have sorted this out...

All busses must be made Equality Act compliant as soon as possible.

Taxis have been OK. Up to date (and constantly updated) accessible local taxi information would be useful.

The local sports ground is very accessible.

### **4. Should the law be made clearer about changes that should be made?**

Yes. More information about practical accessibility eg shops not filling isles with racks or displays, toilets not being used as a storage area!, Low level counters in banks, post office etc, shops not putting displays in front of the till area.

### **5. Have public bodies done what they should do to make sure people with disabilities are treated equally and fairly?**

Not enough low level kerbs. Pavements are not smooth or level enough and can be very uneven when using a wheelchair as I do on a daily basis. My last chair broke due to uneven surfaces.

My landlord has adapted my home now, but when I moved in, they didn't ask me if I needed any adaptations. These came later following my request.

**7. & 8. Checking what is happening**

I don't know about 7. & 8.

9. Yes

**10. If people think they have been treated unfairly they can go to courts and tribunals.**

**How well have disabled people been able to use these?**

I don't know what I would need to do to take anyone to court. There is not enough information.

**11. Are there any other ways we could make the equality act work better?**

Provide easily accessible simplified guide to the Act e.g. in libraries, shops, council offices etc

*26 August 2015*

## Matt Hodges – Written Evidence (EQD0001)

1. Many people are unable to drive a motor vehicle by reason of their disability be it sight falling below the driving standard, epilepsy, learning difficulties or other conditions. Many of these people do have scope for independent mobility on foot, bicycle, wheelchair, hand cycle or mobility scooter but suffer the discrimination levied on all those who do not travel by motor vehicle.
2. The footways and shared paths open to them are routinely neglected and obstructed when compared with the condition of the nearby roads.
3. At junctions the routes open to those using non-motor facilities are routinely more devious and disjointed than those designed motor vehicles.
4. In adverse conditions such as snow resources are deployed to assist motor vehicle users while those unable to use motors are left to their own devices.
5. There are other way in which those with disabilities suffer discrimination but I intend to illustrate the above on the next three pages.
6. The discrimination against those not in motor vehicles is not limited to the disabled but is does impact most heavily on those with disabilities.
7. **Condition and obstruction of footways and shared paths.**
8. Footways are typically uneven and broken up compared with nearby roads. This is a typical footway beside a main road in Lancaster.



9. This footway beside a busy main road is completely obstructed for months. If the carriageway were blocked the highway authority would act promptly.



10. This shared path is so overhung the visually impaired are hit in the face.

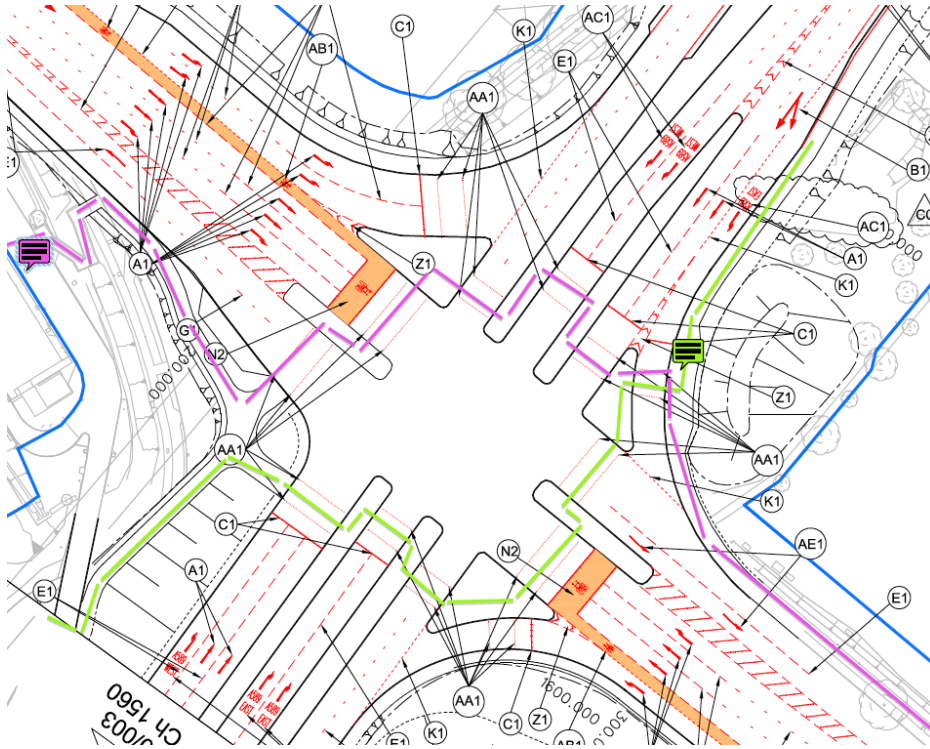


**11. Devious and disjointed routes at junctions.**

12. At this proposed junction pedestrians and mobility users will have a multi stage crossing with waits for the lights on each island while motors go through in one operation. The green and purple lines show typical pedestrian routes. Many junctions favour motor users in this way.

Part of a drawing for a junction currently under construction in Lancaster.





**13. In Snow only motor routes are cleared.**

14. The roads have been cleared for those in motor vehicles but those unable to drive have to struggle with snow and ice.



15. This lady on a mobility scooter struggles home through the snow with a child while car drivers have cleared roads



*6 July 2015*



## **Housing Law Practitioners Association – Written Evidence (EQD0143)**

### **About HLP**

The Housing Law Practitioners Association (HLP) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. It has members throughout England and Wales.

HLP has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves. Presently, meetings take place every two months and are regularly attended by c.100 practitioners.

The Association is regularly consulted on proposed changes in housing law (whether by primary or subordinate legislation or statutory guidance). During 2015 it has given oral evidence to committees of both the Welsh Assembly (on the Renting Homes (Wales) Bill) and the House of Commons (on legal aid reforms). HLP's Responses are available at [www.hlp.org.uk](http://www.hlp.org.uk).

Membership of HLP is on the basis of a commitment to HLP's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

Justin Bates is the author of this paper. He is a barrister at Arden Chambers (London & Birmingham) and the vice-chair of the HLP. He is the Deputy General Editor of the Encyclopedia of Housing Law and the author or co-author of various other books on housing law and local government law.

Sara Stephens is a Solicitor at Anthony Gold Solicitors (London). She is an Executive Committee Member of HLPAs and Convenor of HLPAs Legal Aid Working Group. She is the author of numerous articles on housing and legal aid.

## **General**

### *Question 2: Gaps in the Law*

The Association is very concerned by the following “gaps” which have emerged in case-law, or have been allowed to emerge because parts of the 2010 Act are not in force. Given the nature of the Association, our focus is on Part 4, 2010 Act (management of premises)

#### Reasonable adjustments

A controller of let premises, or a controller of premises to let, has a duty to make reasonable adjustments: s.36(1). This applies to persons who either let or manage premises: ss.36(2),(3). Premises are defined as the “whole or part of the premises”: s.38(2).

The duty only requires the making of adjustments in respect of the disabled person; it does not apply to those associated with a disabled person, *e.g.* their carers: *Hainsworth v Ministry of Defence* [2014] EWCA Civ 763; [2014] 3 C.M.L.R. 43.

This is, in our view, a “gap” of the sort identified in the Call for Evidence. The reality is that a disabled person often cannot enjoy the full use of premises without also being supported by a carer. Yet, if there is no duty to make any adjustments to facilitate the use of that carer, then, in practice (but not in law), the effect is to discriminate against that disabled person. We would call for legislative amendments to make clear that duties owed to disabled persons extend to any carer, insofar as the reasonable adjustment is necessary in able to facilitate the rights of the disabled person.

#### Common parts

Specific provision is made in the Act regarding the circumstances in which a manager might be required to make physical changes to common parts of buildings (*e.g.* install a stair-lift in a block of flats), see s.36 and Sch.4. These provisions have not, however, been brought into force.

This is a very real problem for many elderly and disabled people, especially those who are leaseholders of flats. The authors are aware of a involved in assisting an elderly leaseholder who wanted to install a stair-lift in a block of flats to allow her to access her flat. The

freeholder (a lessee-owned company, although nothing turns on that) refused to allow this, even though the leaseholder concerned offered to cover the installation costs, maintenance costs and additional insurance costs herself (*i.e.* there would be no increase to the communal service charges as a result of the installation). *Prima facie*, this refusal was lawful.

There is no good reason why the “common parts” duties have still not been brought into force.

Questions 10 and 11 – Enforcement and measure to improve implementation

The Association submits that in order to be able to enforce rights, adequate access to legal representation in appropriate cases is essential, including by way of Legal Aid, where appropriate.

Since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force, all discrimination cases must go through a mandatory telephone gateway. Only if the telephone advisor deems the case suitable can the case be referred for face-to-face advice. The Association is concerned that particularly vulnerable clients will struggle with this added barrier to obtaining advice.

Statistics released by the Legal Aid Agency, show that only limited numbers of applications for legal aid in these areas are being made and granted. In the financial year 2013-14, 22 applications were made, of which only 5 were successful. In 2014-15, 29 applications were made, of which only 11 were successful. The Association is concerned with these low levels of certificates.

*7 September 2015*

Housing Law Practitioners Association, Department for Communities and Local Government, Local Government Association, Rachel Smalley – Oral Evidence (QQ 131-140)

**Housing Law Practitioners Association, Department for Communities and Local Government, Local Government Association, Rachel Smalley – Oral Evidence (QQ 131-140)**

[Transcript to be found under Department for Communities and Local Government](#)

## **Inclusion London – Written Evidence (EQD0075)**

### **Introduction**

#### **Inclusion London**

Inclusion London is a London-wide, user-led organisation which promotes equality for London's Deaf and Disabled people and provides capacity-building support for Deaf and Disabled people's organisations in London.

#### **Disabled People**

There are:

- approximately 12.2 million Disabled adults and children in the UK<sup>176</sup>
- approximately 1.4 million Deaf and Disabled people living in London<sup>177</sup>
- just under 1.3 million Disabled people aged 16 to 64 years are resident in the London<sup>178</sup>.

Inclusion London welcomes the opportunity to provide evidence to the Lords Select Committee inquiry on the Equality Act and Disability. Our evidence responds to the 11 questions posed by the committee.

Please find a one page summary of the key points we have raised, our evidence in full is below that. We have also listed all our recommendations at the end of the document.

### **Summary**

**Q1:** The Equality Act 2010 is vital piece of legislation, but progress in Disabled people's equality has slowed since its introduction, especially when compared to progress under the DDA.<sup>179</sup>

**Q2: Gaps in the** Equality Act 2010:

- The provision on dual discrimination needs to be brought into effect.<sup>180</sup>
- Public Sector Socio-economic Duty needs to be introduced.<sup>181</sup>

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<sup>176</sup> Family Resources survey United Kingdom 2012/13:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/325491/family-resources-survey-statistics-2012-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325491/family-resources-survey-statistics-2012-2013.pdf)

<sup>177</sup> <http://www.inclusionlondon.co.uk/all-in-this-together>

<sup>178</sup>

[http://www.london.gov.uk/sites/default/files/assessment\\_gla\\_deaf\\_disabled\\_equality\\_2013.pdf](http://www.london.gov.uk/sites/default/files/assessment_gla_deaf_disabled_equality_2013.pdf)

<sup>179</sup> DDA – Disability Discrimination Act <http://www.legislation.gov.uk/ukpga/1995/50/contents>

<sup>180</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

<sup>181</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

- The Equality Act offence for refusing to take a Disabled person in a taxi needs to be enacted.<sup>182</sup>
- Public sector procurement: A specific equality duty to be introduced directed at promoting equality through public procurement.

Gaps in other areas of law:

- Parity in hate crime law for Disabled people is needed.
- The law needs to be changed to permit job-sharing for MPs
- Changes in legal aid need to be reversed
- Changes in employment law need to be reversed.

**Q3 Reasonable adjustments:** Support needed from those at the top of national government to increase implementation throughout the public and private sectors as many organisations are failing to make reasonable adjustments.

**Q5 & Q6 Public Sector Equality Duty (PSED), Specific duties:** Progress has slowed since the introduction of the Equality Act. PSED need to be promoted by national government to increase implementation and Disability Equality Schemes need to become a statutory requirement again.

**Q8.** EHRC should be retained to monitor, promote and enforce equality and human rights, be well funded and completely independent. It should fund a 'shadow UNCRPD report by DDPOs<sup>183</sup>. Be able to taken on individual cases and continue to intervene in PSED cases and hold inquiries.

**Q10.** Reversal of legal aid changes is needed because they are having a disproportional impact on Disabled people and prevent access to justice.

**Q11.** An assessment of the full impact of all cuts to support and social care for Disabled people is urgently needed.

## 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?**

1.1 The Equality Act 2010 is an important piece of legislation: Disabled people belong to other equalities strands so we welcome a law that covers all protected groups and the Act strengthened law regarding the discrimination of Disabled people in some areas. Removing barriers and reducing discrimination will benefit society as a whole and enable Disabled people's participation in the community and increase the number of Disabled people in employment.

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<sup>182</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

<sup>183</sup> DDPS : Deaf and Disabled People's Organisation

1.2 However, since the Equality Act was introduced in 2010 there has been a slowing of progress towards Disabled people’s equality that followed the passing of the Disability Discrimination Act (DDA).<sup>184</sup> The DDA provided a clear focus on disability equality issues as well as a defined set of duties that effectively helped service providers understand and remove the barriers Disabled people experienced. There is now a lack of focus on the discrimination experienced by Disabled people, in part due to the Equality Act covering all protected characteristics.

1.3 The government’s red tape challenge with its “spotlight on equalities”<sup>185</sup> has emphasised an attitude that sees the duties in the Equality Act as “burdens on business”<sup>186</sup> rather than positive measures to address discrimination and barriers to equality, and this attitude may have contributed to a slowing in the momentum. The DDA supported a culture amongst service providers and employers to address the barriers that prevent Disabled people’s equality but this culture has been weakened. The slowing of progress is also due to the weakening of the Public Sector Equality Duty (PSED) and Specific duties (SPSED) in the Equality Act when compared to the DDA, which we address below under Question 3 and 5.

1.3 We do welcome some changes brought in by the Equality Act 2010 such as:

- Protection against discrimination because of perceived and associated disabilities
- Restrictions on medical questions in recruitment
- Explicit ban on direct discrimination and harassment in services
- Indirect discrimination

## **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

### **Gaps in the Equality Act 2010**

2.1 We believe that the Equality Act should support the 12 pillars of independent living (see appendix) and the rights in UN Convention on the Rights of Persons with Disabilities (UNCRPD),<sup>187</sup> which the UK ratified in 2009. This includes ‘Article 19 – Living independently

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<sup>184</sup> <http://www.legislation.gov.uk/ukpga/1995/50/contents>

<sup>185</sup> <https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome>  
<http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/>

<sup>186</sup> <https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome>  
<http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/>

<sup>187</sup> <http://www.un.org/disabilities/default.asp?id=259>

and being included in the community’ (please see the evidence submitted by ROFA for more details) and Article 24, which gives the right to ‘inclusive education system at all levels’, (please see the evidence submitted by ALLFIE for more details).

**2.2 Dual discrimination:** The Equality Act 2010 provision on dual discrimination needs to be brought into effect.<sup>188</sup> This provision is required because Disabled people can be black, LGBT or older etc. as well as being Disabled and can therefore experience dual discrimination, which should be covered by the law.

**2.3 Public Sector Socio-economic Duty:** The Equality Act 2010 Public Sector Socio-economic Duty needs to be introduced<sup>189</sup> to help redress the disadvantage Disabled people experience.

**2.3 Equal access to taxis:** The Equality Act offence for refusing to take a Disabled person in a taxi needs to be enacted.<sup>190</sup> Currently the only law that can be used is Section 35 London Hackney Carriage Act 183, which has at most a £2 fine.

**2.4 Public sector procurement:** There has been a failing to use the regulation making power (section 155(2)) in the Equality Act to introduce a specific equality duty directed at promoting equality through public procurement.<sup>191</sup> This would be a powerful tool to ensure services are accessible to disabled people.

### **2.5 Burden of taking court action**

Under the Equality Act only an individual can take legal action regarding discrimination – this places a huge burden on Disabled people who are already facing barriers in society. It is also difficult to obtain legal representation to undertake a judicial review due to the cuts to legal aid, (see below under Q10). If class actions could be taken by an organisation such as EHRC this would be welcomed.

## **Gaps in other areas of law**

### **2.6 Inequality under the law re hate crime**

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<sup>188</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

<sup>189</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

<sup>190</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

<sup>191</sup> [DPAC-PIRU Report-Impact of the coalition government on disabled workers-workplace experiences and job quality](#)



Disability hate crime (DHC) continues to be a huge issue for Disabled people because as research reveals, harassment is a commonplace experience<sup>192</sup> and Disabled people continue to be abused, tortured and even murdered.<sup>193</sup> Yet both reporting and prosecution numbers of DHC are disappointingly low: Only 1,985 disability hate crimes were reported in 2013-14, while it is estimated that about 62,000 disability motivated hate crimes are committed on average in one year.<sup>194</sup> According to Mencap only about 3% of incidents are recorded by the police as hate crimes and just 1% lead to convictions.<sup>195</sup> Only 7 out of 810 cases that were ‘flagged’ as disability hate crimes by the Crown Prosecution Service ended with magistrates or judges increasing the sentence.<sup>196</sup>

2.6 As the information above demonstrates, Section 146 of the Criminal Justice Act 2003 is not working well for Disabled people. There needs to be parity in the law for Disabled people with other hate crime ‘strands’ so laws, such those covering racially or religiously aggravated offences<sup>197</sup> or stirring up hatred on the grounds of sexual orientation offences<sup>198</sup> also cover Disabled people, such as:

- the Crime and Disorder Act 1998 (amended by Anti-terrorism, Crime and Security Act 2001 and Part 11 of Schedule 9 Protection of Freedoms Act 2012);
- The Incitement to racial hatred - sections 17-29
- Public Order Act 1986; and the Incitement to religious hatred - sections 29B-29G Public Order Act 1986<sup>199</sup> for disabled people.
- The Criminal Justice and Immigration Act 2008<sup>200</sup>

## 2.7 Change of law to permit Job-sharing for MPs

There are lamentably few Disabled MPs in parliament. About 19% of the population is Deaf and Disabled in the population, 123 Disabled MPs would currently be sitting in parliament if this percentage was adequately reflected, yet there is nowhere near that number. The laws/regulations need to be changed to allow job-share for MPs to enable more Disabled

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<sup>192</sup> <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-disability-related-harassment/download-inquiry-report>

<sup>193</sup> <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-disability-related-harassment/download-inquiry-report>

<sup>194</sup> <https://www.justiceinspectorates.gov.uk/hmic/publications/living-in-a-different-world-joint-review-of-disability-hate-crime/>

<sup>195</sup> <https://www.mencap.org.uk/blog/four-things-you-probably-didnt-know-about-disability-hate-crime>

<sup>196</sup> <http://www.hmic.gov.uk/news/releases-2013/005-a-joint-review-of-disability-hate-crime-living-in-a-different-world/>

<https://www.justiceinspectorates.gov.uk/hmic/publications/living-in-a-different-world-joint-review-of-disability-hate-crime/>

<sup>197</sup> [http://www.cps.gov.uk/legal/p\\_to\\_r/racist\\_and\\_religious\\_crime/#a21](http://www.cps.gov.uk/legal/p_to_r/racist_and_religious_crime/#a21)

<sup>198</sup> [http://www.cps.gov.uk/legal/s\\_to\\_u/sexual\\_orientation/](http://www.cps.gov.uk/legal/s_to_u/sexual_orientation/)

<sup>199</sup> [http://www.cps.gov.uk/legal/p\\_to\\_r/racist\\_and\\_religious\\_crime/#a21](http://www.cps.gov.uk/legal/p_to_r/racist_and_religious_crime/#a21)

<sup>200</sup> [http://www.cps.gov.uk/legal/s\\_to\\_u/sexual\\_orientation/](http://www.cps.gov.uk/legal/s_to_u/sexual_orientation/)

people to stand. We were disappointed that a recent judicial review was not granted but note that Mr Justice Wilkie in his summing up stated:

*“...there can be no doubt as to the seriousness of this issue, which is fundamental to the function of democracy, or that job-shares would increase diversity in Parliament”.*<sup>201</sup>

Dr Sarah Wollaston, the Conservative MP for Totnes, who previously was a job sharing GP supports job sharing for MPs to increase the number of women MPs.<sup>202</sup> We recommend that the laws/regulations are changed to permit job sharing for MPs in all of the UK.

## **2.8 Reversal of changes in employment law**

We are concerned about the following cuts to employment law and suggest they are repealed:

- Unfair dismissal. Doubling the normal qualification period for protection from unfair dismissal from one year's continuous employment to two years.
- Employer liability for third party harassment. Abolishing employer liability for failure to take reasonably practicable steps to prevent third parties (such as customers or clients) repeatedly harassing an employee.
- Health and safety. Cuts to health and safety law protections.

## **Reasonable adjustments**

### **Q3. 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 sportsgrounds?**

3.1 Services providers and employers started the process of putting reasonable adjustments in place following implementation of the DDA, but progress has become stuck and there are still numerous examples of a lack of adjustments by organisations / service providers, which need to be urgently addressed, please see examples below:

### **3.2 Failures by DWP**

The Department of Work and Pensions (DWP) regularly fails to make reasonable adjustments for Disabled people, for example Access to Work (AtW) letters are sent out in hard copy not electronically to blind people and telephone contact with ATW does not meet needs of Deaf British Sign Language customers. Failure to make reasonable adjustments is not confined to AtW communications, for instance the RNIB considered taking legal action because the DWP was failing to provide accessible information for visually impaired people,

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<sup>201</sup> <https://www.greenparty.org.uk/news/2015/07/29/job-share-mps-greens-will-continue-to-fight-for-a-fairer,-more-representative-parliament/>

<sup>202</sup> <http://www.theguardian.com/commentisfree/2013/feb/24/david-cameron-women-politics-mps>

including a blind man who was forced to take out payday loans to feed himself because the DWP stopped his ESA and housing benefit.<sup>203</sup>

### 3.3 Adjustments regarding reporting and prosecution of DHC

As mentioned above, there are very low rates of reporting and prosecution of Disability Hate Crime (DHC). Efforts need to be made to increase the reporting of DHC but there are concerns that the police and the crime prosecution services are not making reasonable adjustments, especially when a hate crime is first reported: For instance a survey<sup>204</sup> of 361 people with ‘severe mental illness’ revealed that participants in their engagement with the police were being perceived as ‘unreliable or not credible; and not being taken seriously and not being believed when they reported crimes.’<sup>205</sup> People with learning difficulties have had similar experiences. It is important that reasonable adjustments are made throughout the justice system so Disabled people can report DHC, understand the court process and are appropriately supported to give evidence.

### 3.4 Disabled offenders

There are serious concerns regarding the disproportionate percentage of people with learning difficulties and mental health conditions that are in prison:

- 72% of male and 70% of female sentenced prisoners have two or more mental health conditions.<sup>206</sup>
- In 2013, 25% of women and 15% of men in prison reported symptoms indicative of psychosis. The rate among the general public is about 4%.<sup>207</sup>
- 20–30% of offenders have learning disabilities or difficulties that interfere with their ability to cope with the criminal justice system.<sup>208</sup>

We are concerned that the justice system may not be making appropriate reasonable adjustments to enable Disabled suspects to give evidence in their defence and understand the court process, so justice cannot be done.

3.5 Also once Disabled people are convicted there is also lack of reasonable adjustments while in prison:

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<sup>203</sup> <http://www.theguardian.com/uk-news/2014/feb/19/rnib-dwp-blind-court-action-benefits>

<sup>204</sup> At risk yet dismissed report at: [http://www.mind.org.uk/media/187663/At-risk-yet-dismissed-report\\_FINAL\\_EMBARGOED.pdf](http://www.mind.org.uk/media/187663/At-risk-yet-dismissed-report_FINAL_EMBARGOED.pdf)

<sup>205</sup> At risk yet dismissed report at: [http://www.mind.org.uk/media/187663/At-risk-yet-dismissed-report\\_FINAL\\_EMBARGOED.pdf](http://www.mind.org.uk/media/187663/At-risk-yet-dismissed-report_FINAL_EMBARGOED.pdf)

<sup>206</sup> <http://www.prisonreformtrust.org.uk/ProjectsResearch/Mentalhealth>

<sup>207</sup> <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Factfile%20Autumn%202014.pdf>

<sup>208</sup> <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Factfile%20Autumn%202014.pdf>

- ‘Over two-thirds of prisoners have problems filling in prison forms, which rises to three-quarters for those with learning disabilities. Consequently many miss out on things such as family visits and going to the gym, or getting the wrong things delivered such as canteen goods.’<sup>209</sup>

3.6 Part of the problem is that there is no routine assessment to identify prisoners with learning difficulties or mental health problems to enable reasonable adjustments to be made.<sup>210</sup>

### 3.7 Health inequalities

Health inequalities arise because reasonable adjustments are not made and because of discrimination for instance:

- Deaf people often find their access to health services is hampered because of limited provision of British Sign Language interpreters (BSLI) and community language interpreters.<sup>211</sup>
- ‘Deaf people’s health is poorer than that of the general population, with probable under-diagnosis and under-treatment of chronic conditions, putting Deaf people risk of preventable ill health.’<sup>212</sup>
- Approximately 37% of the deaths of people with a learning difficulty of those surveyed were considered avoidable:<sup>213</sup>
- 28% of people, who have had a stroke and have schizophrenia die, compared with 12% of people without schizophrenia.<sup>214</sup>

There is also a need for gender specific mental health services across all services.

### 3.8 Reasonable adjustments for health/care assessments

We are concerned that reasonable adjustments are not being made for Disabled people with autism, learning difficulties or mental health conditions as a result they been sent away from

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<sup>209</sup> <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Factfile%20Autumn%202014.pdf>

<sup>210</sup> <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Factfile%20Autumn%202014.pdf>

<sup>211</sup> <http://www.actiononhearingloss.org.uk/supporting-you/policy-research-and-influencing/research/access-all-areas.aspx>

<sup>212</sup> <http://bmjopen.bmj.com/content/5/1/e006668.full>

<sup>213</sup><sup>213</sup>

<sup>214</sup> <http://bma.org.uk/healthparity> Recognising the importance of physical health in mental health and intellectual disability - Achieving parity of outcomes

home for long periods to hospital units.<sup>215</sup> It can be extremely stressful for Disabled person to be sent away from home for long periods and their wellbeing and presenting behaviour can deteriorate. A vicious circle then occurs whereby a Disabled person's behaviour becomes more challenging and then an even longer stay in the hospital is deemed necessary.

3.9 In many instances an accurate assessment cannot be obtained by removing a Disabled person from their normal environment. As a norm, assessments should be conducted in the Disabled person's own environment i.e. in their community and at the Disabled person's home. Local authority and NHS professionals need to make 'reasonable adjustments' to accommodate this and truly work in a Disabled person centred way.

### **3.10 Higher Education**

Higher education is vital because it can open up job opportunities and career prospects, so it is worrying that universities are still failing to put reasonable adjustments in place: For instance City University in London failed to make reasonable adjustments throughout a student's first year and then tried to bar the student from continuing her studies in her second year.<sup>216</sup> The simple adjustments the student requested had previously made by a student's school and college. City Law School failed to make adjustments, which a student needed during exams. These adjustments had been previously made by Oxford University and enabled the student to gain a first class degree.<sup>217</sup> Universities have been unwilling to make reasonable adjustments for a student with mental health support needs and failed to ensure a lift is repaired so a student in a wheelchair cannot access the building and is being forced to complete her course from home. These are just examples that have come to our attention recently.

### **3.11 Work programme**

A London councils briefing published in August 2015 said the work programme (WP) is 'performing poorly for participants with a recorded disability'; in fact non-disable participants achieve more than twice as many 'outcomes. The briefing highlights that the WP is performing particularly badly for people with 'mental health problems' and says that the WP is not built on a 'proper understanding' of 'what support people with mental health problems need to move closer to work'.<sup>218</sup> It could clearly be argued that Work Programme

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<sup>215</sup> There were 3230 hospital in-patients with learning difficulties/autism, and 'patients had an average length of stay of 547 days and were staying 34.4km from home' according to the HSCIC 2014 census figures.

<sup>216</sup> <http://www.disabilitynewsservice.com/student-kicked-off-degree-after-year-spent-fighting-for-adjustments/>

<sup>217</sup> <http://www.disabilitynewsservice.com/student-kicked-off-degree-after-year-spent-fighting-for-adjustments/>

<sup>218</sup> [http://www.londoncouncils.gov.uk/sites/default/files/Policy%20themes/Tracking%20welfare%20reforms/150420\\_WPEqualitiesAnalysis\\_v6b\\_combined.pdf](http://www.londoncouncils.gov.uk/sites/default/files/Policy%20themes/Tracking%20welfare%20reforms/150420_WPEqualitiesAnalysis_v6b_combined.pdf)

failed to make reasonable adjustments for Disabled people particularly for people with mental health support needs. This failing is not isolated to London as Dame Anne Begg highlighted in 2013 the Work Programme was not effective generally in helping those who have major barriers to work, such as those have a disability.<sup>219</sup>

### 3.12 Employment

The cuts in the public sector appeared to have led to a reduced willingness to make adjustments for Disabled employees. Previously adjustments tended to be regarded in a positive light. However, now adjustments can be resented as "special treatment" by other employees and some employers have refused to make adjustments leading to Disabled workers losing their jobs. According to research, Disabled people surveyed believe this change of attitude and behaviour is due to negative rhetoric around welfare benefits regarding Disabled people being a burden or fraudsters impacting on attitudes at work places.<sup>220</sup>

### 3.13 Leisure, culture and sport

A study has shown that only three Premier League clubs provide the minimum wheelchair space in their grounds as recommended by the Accessible Stadia Guide.<sup>221</sup> Lobbying work by organisations run by Deaf and Disabled people is still needed to ensure that venues are accessible.<sup>222</sup> However, there are positive examples of theatres and galleries are ensuring performances and exhibitions are accessible.<sup>223</sup> But it interesting to note that the National gallery's last comprehensive access review was conducted in 2010, which bears out our concerns that progress has slowed since the introduction of the Equality Act<sup>224</sup>

3.14 As the evidence above indicates, the lack of reasonable adjustments is evident across many areas, as a result barriers to Disabled people's equality continue. The implementation

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<sup>219</sup>[http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131010/halltext/131010h0001.htm#131010h0001.htm\\_spnew22](http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131010/halltext/131010h0001.htm#131010h0001.htm_spnew22)

<sup>220</sup> [DPAC-PIRU Report-Impact of the coalition government on disabled workers-workplace experiences and job quality](#)

<sup>221</sup> <http://www.levelplayingfield.org.uk/news/clubs-are-neglecting-their-responsibility-disabled-fans>

<sup>222</sup> <http://www.attitudeiseverything.org.uk/>

<sup>223</sup> <http://www.nationalgallery.org.uk/visiting/access/blind-partially-sighted>

<http://www.nationalgallery.org.uk/visiting/access/deaf-hard-of-hearing>

<http://www.nationalgallery.org.uk/visiting/access/mobility-access>

<http://www.rsc.org.uk/whats-on/a-mad-world-my-masters/caption-and-audio-description.aspx>

<http://www.royalcourttheatre.com/your-visit/access/facilities-for-deaf-and-hearing-impaired-people/>

<sup>224</sup> <http://www.nationalgallery.org.uk/about-us/organisation/policies/access-statement/>

of reasonable adjustments needs to be supported and promoted by those at the top of national government to increase implementation throughout the public and private sectors.

**Q4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

4.1 There is a strong view that the current criteria for determining what is reasonable is too low and is allowing far too many organisations / service providers to continue delivering inaccessible services.

4.2 Clearer and more specific information about what constitutes a reasonable adjustment would help as would the creation of statutory guidance that provides a comprehensive range of examples of reasonable adjustments in order to increase understanding about adjustments and to dispel the myths that all reasonable adjustments costs lots of money.

4.3 As it stands inadequate information about reasonable adjustments is compounded by the fact that individual Disabled people have to undergo long and lengthy complaints and County court battles to secure reasonable adjustment, which generally do not have a strategic impact and do not 4.4 change an organisation or service providers policy resulting in continued failure to provide accessible services. .’

4.5 The overall impact is a de facto recognition by organisations / service providers that they can “get away” with not making reasonable adjustments

**Public Sector Equality Duty**

**Q5. 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?**

**Q6. 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?**

5.1 The introduction of the Public Sector Equality Duty (PSED) under the DDA was extremely important as it galvanised & focused efforts to improve access and equality for Disabled People, especially at local government level. It is important that PSED stay in place and are strengthened. Disabled people can use the PSED to stop discriminatory policies from going forward and public bodies have think about the impact of their policies on Disabled people and this can bring about positive changes in policies or services. Up until recently, if Disabled people wished to make a legal challenge regarding the failure to fulfil the PSED access to

good quality legal advice was available through legal aid, but this access has been seriously undermined by the changes in legal aid, which we address under Question 10.

5.2 Unfortunately, since the introduction of the Equality Act the PSED have increasingly been treated as a simple bureaucratic red tape process and the principle of mainstreaming equality has slowed for Disabled people, as the requirements on authorities to take action to advance equality for Disabled people have been reduced to a minimum. Momentum needs to come from government to ensure that PSED are acted on.

5.3 The duty to take ‘due regard’ regarding the impact of a policy on Disabled people needs to be strengthened. Currently, it appears that if a Minister understands the impact of a policy on Disabled people they can still choose to go ahead with a policy regardless of its likely negative impact on Disabled people, as shown by the judgement concerning the closure of the Independent Living Fund.<sup>225</sup>

6.1 Disability Equality Schemes, under the DDA, made a significant contribution to year on year progress. The schemes contained concrete disability equality outcome objectives that had to be achieved and required meaningful and evidenced involvement of Disabled people. However, this progress has all but ground to a halt with the introduction of the Equality Act, which only requires one or more equality outcome objectives every four years across all protected groups, so it is possible for Councils to have no objectives involving Disabled people over a four year period. Disability Equality Schemes need to be a statutory requirement again to ensure there is progress in Disabled people’s equality.

## **Oversight and enforcement**

### **Q8. 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?**

8.1 It is vital to have independent body that monitors the implementation of equality and human rights in Britain. We believe that the EHRC should be retained for this purpose and that it well funded and able to be completely independent.

8.2 The EHRC has made effective interventions through Judicial Review regarding issues that concern Disabled people,<sup>226</sup> which have contributed to the positive impact of the Equality

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<sup>225</sup> <http://dpac.uk.net/tag/scott-moncrieff-associates-and-deighton-pierce-glynn/>

<sup>226</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2012/2967.html>

[http://www.localgovernmentlawyer.co.uk/index.php?option=com\\_content&view=article&id=12836%253Athe-](http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=12836%253Athe-)



Act 2010. We recommend that EHRC to continue supporting and intervening in cases taken under the PSED in relation to equalities impacts on Disabled people.

8.3 The research conducted by the EHRC is vital such as the two reports on disability hate crime<sup>227</sup>, reports on Disabled people's employment<sup>228</sup> and the cumulative impact of welfare reform.<sup>229</sup>

8.4 We regret that the EHRC no longer undertakes individual case work and there is only an outsourced telephone helpline. If EHRC was enabled to take on individual cases we believe this would enable equality to progress.

8.5 Article 33.3 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) states that Disabled people and their representative organisations 'shall be involved and participate fully in the monitoring process'<sup>230</sup> of the implementation of the UNCRPD. Therefore it was disappointing that the EHRC refused funding in 2014 for such a Shadow / civil society report to be produced by Deaf and Disabled people's organisations.

8.6 A clash between health and safety and equality issues, as well as mis-information about health and safety requirements trumping reasonable adjustments often occur; for instance people with large electric wheelchairs cannot use cabs because the wheelchairs cannot be secured; and Inclusion London was recently asked to carry out 80 risk assessments on individuals by a venue for a sports event it was holding. It would be helpful if EHRC provided guidance on this issue.

8.7 It is discouraging that the commitment to involving Disabled people has been watered down with the introduction of a number of non-disabled people onto EHRC's Disability Committee.

**Q9. 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?**

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[public-sector-equality-duty-homelessness-and-the-pieretti-principles&catid=60&Itemid=28](http://www.bailii.org/ew/cases/EWHC/Admin/2013/897.html)  
<http://www.bailii.org/ew/cases/EWHC/Admin/2013/897.html>

<sup>227</sup> <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/hidden-in-plain-sight-the-inquiry-final-report/>  
<http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/>

<sup>228</sup> [http://www.equalityhumanrights.com/sites/default/files/documents/research/rr77\\_opening\\_up\\_work.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/research/rr77_opening_up_work.pdf)

<sup>229</sup> <http://www.equalityhumanrights.com/publication/research-report-94-cumulative-impact-assessment>

<sup>230</sup> <http://www.un.org/disabilities/default.asp?id=293>

9.1 All inspectorates should be promoting the principles of Equality Act and monitor progress in its implementation.

**Q10. 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?**

### **10.1 Legal aid changes jeopardises justice for Disabled people**

There are concerns that the changes to legal aid have disproportionately impacted on Disabled people's access to justice:- government's own statistics show a greater proportion of those claiming civil legal aid are from 'BAME origin and with a disability',<sup>231</sup> The Law Society's evidence revealed, 'The hardest hit are those in receipt of means tested benefits and low incomes',<sup>232</sup> which many Disabled people are.<sup>233</sup> Also it is very concerning that the number of new civil legal aid cases and new cases involving discrimination has dropped by 80%.<sup>234</sup> The legal aid changes need to be reversed and/or Disabled people should be protected from them as Disabled people's access to expert lawyers and access to justice is being seriously jeopardised.

**Q11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

### **11.1 Cumulative impact assessment needed**

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. The Equality and Human Rights Commission's report says:

*"The impacts of tax and welfare reforms are more negative for families containing at least one disabled person, particularly a disabled child, and that these negative impacts are particularly strong for low income families".<sup>235</sup>*

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<sup>231</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366575/legal-aid-statistics-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366575/legal-aid-statistics-2013-14.pdf)

<sup>232</sup> Law Society evidence [Justice Select Committee inquiry into LASPO civil legal aid](#)

<sup>233</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437481/family-resources-survey-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437481/family-resources-survey-2013-14.pdf)

<http://www.poverty.org.uk/40/index.shtml>

<sup>234</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366575/legal-aid-statistics-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366575/legal-aid-statistics-2013-14.pdf)

Law society evidence 7.6 [Justice Select Committee inquiry into LASPO civil legal aid](#)

<sup>235</sup> <http://www.equalityhumanrights.com/publication/research-report-94-cumulative-impact-assessment>

11.2 Disabled people with high support needs will lose on average 19 times more than most other citizens<sup>236</sup> due to the impact of welfare reforms together with cuts in funding for care. There is an urgent need for a impact assessment to 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 – already one of the most disadvantaged and excluded groups in society – in order to make informed and effective decisions about current and future policy. The first recommendation in the report on cumulative impact assessment commissioned by the EHRC<sup>237</sup> is that:

*HM Treasury's distributional impact analysis of tax and benefit changes should incorporate analysis by groups sharing different protected characteristics in particular disability, ethnicity, age and gender. The analysis should:*

- *show the impact of tax and benefit changes by different groups;*<sup>238</sup>

11.3 The Commission also says:

*.....modelling cumulative impact assessment by equality group is feasible and practicable....*

Yet, despite numerous calls by Disabled people,<sup>239</sup> their organisations and MPs<sup>240</sup> the government has repeatedly refused<sup>241</sup> to undertake a cumulative impact assessment.

## Key recommendations

Inclusion London's key recommendations are as follows:

- The Equality Act 2010 provision on dual discrimination needs to be brought into effect.<sup>242</sup>
- The Equality Act 2010 Public Sector Socio-economic Duty needs to be introduced.<sup>243</sup>
- The Equality Act offence for refusing to take a Disabled person in a taxi needs to be enacted.<sup>244</sup>
- Public sector procurement: A specific equality duty is introduced directed at promoting equality through public procurement.

## Gaps in other law

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<sup>236</sup> <http://www.centreforwelfarereform.org/library/type/pdfs/a-fair-society1.html>

<sup>237</sup> <http://www.equalityhumanrights.com/publication/research-report-94-cumulative-impact-assessment>

<sup>238</sup> <http://www.equalityhumanrights.com/publication/research-report-94-cumulative-impact-assessment>

<sup>239</sup> <http://epetitions.direct.gov.uk/petitions/20968> <http://epetitions.direct.gov.uk/petitions/43154>

<sup>240</sup> <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140227/debtext/140227-0003.htm>

<sup>241</sup> <http://www.parliament.uk/business/news/2013/july/mps-debate-effect-of-government-policy-on-disabled-people/>

<sup>242</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

<sup>243</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

<sup>244</sup> <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

- There is equality of legislation for disability hate crime with other hate crime strands.
- The law/regulations are changed to permit Job-sharing for MPs
- The changes in employment law are reversed

#### Reasonable adjustments

- The implementation of reasonable adjustments needs to be supported and promoted by those at the top of national government to increase implementation throughout the public and private sectors.
- Clearer and more specific information about what constitutes a reasonable adjustment is provided would help as would the creation of statutory guidance that provides a comprehensive range of examples of reasonable adjustments

#### PSED

- The PSED is supported and promoted by those at the top of national government so implementation is creases throughout the public sector.
- The PSED are strengthened.
- Mandatory Disability Equality Schemes are re-introduced.

#### EHRC

- The EHRC continues supporting and intervening in cases taken under the PSED in relation to equalities impacts on Disabled people.
  - The EHRC continues to hold inquiries in to issues of concern to Disabled people
  - The EHRC funds a DDPOs shadow UNCRPD report.<sup>245</sup>
  - The EHRC is able to take on individual cases
  - The EHRC gives guidance regarding health and safety issues/equality issues.
  - The EHRC's Disability committee is composed of Disabled people only.
- 
- Regulatory bodies: All inspectorates promote the principles of Equality Act and monitor progress in its implementation.
  - Enforcement mechanisms: The changes in legal aid are reversed.
  - Other legislative or non-legislative measures: The government to urgently conduct an cumulative impact assessment of all cuts to support and social care for Disabled people.

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<sup>245</sup> <http://www.un.org/disabilities/default.asp?id=293>

## **Appendix**

The 12 pillars of independent living:

1. Appropriate and Accessible Information
2. An adequate income
3. Appropriate and accessible health and social care provisions
4. A fully-accessible transport system
5. Full access to the environment
6. Adequate provision of technical aids and equipment
7. Availability of accessible and adapted housing
8. Adequate provision of personal assistance
9. Availability of inclusive education and training
10. Equal opportunities for employment
11. Availability of independent advocacy and self- advocacy
12. Availability of peer counselling

That concludes Inclusion London's evidence.

### **This response is supported by the following organisations:**

- Asian Peoples' Disability Alliance
- Disability Action in Islington
- Disability Advice Service Lambeth
- People First Advocacy
- WISH – A voice for women's mental health

*3 September 2015*

## **Inclusion Scotland – Written Evidence (EQD0082)**

### **1. Introduction**

- 1.1 Inclusion Scotland is a national network of disabled people’s organisations individual disabled people and social partners who share our aims. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and to encourage a wider understanding of those issues throughout Scotland.
- 1.2 As the national intermediary organisation for disabled people’s organisations, Inclusion Scotland has engaged widely with disabled people on the issues surrounding Access to Justice as well as Equality and Non-discrimination for the disabled community over several years. We have carried out an online survey in 2014 on the United Nations Convention of the Rights of Disabled People (UN CRPD) which highlights the varying experiences of the achievements of the rights of both rural and urban Scottish disabled people. We have also drafted a report entitled ‘List of critical issues for Disabled People on the United Kingdom’s performance under the UNCRPD’<sup>246</sup>
- 1.3 We provide this written evidence in submission to the House of Lords Select Committee in its consideration of the Equality Act 2010 and Disability to show the effect of discrimination about disabled people and how having multiple protected characteristics including a disability is not protected by the Equality Act 2010.
- 1.4 In addition, this written evidence will demonstrate how the right of Access to Justice (Article 13) as well as the right of Work and Employment (Article 27) under the UNCRPD are not being fully addressed in practice by the Equality Act 2010.

### **2 Equality and Non-discrimination (Article 5)**

- 2.1 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.
- 2.2 There is a duty on Scottish Local Authorities to publish equality outcomes and take reasonable steps to involve people with protected characteristics in order to identify ways to meet their equality duty as outlined under the Equality Act 2010 and the General Equality Duty.<sup>247</sup> It was noted by the Equality and Human Rights Commission Scotland in 2013 that just over half of Scottish Local Authorities provided evidence of involving

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<sup>246</sup> Inclusion Scotland’s shadow report is in draft due to the delay to the examination of the UK state party by the UN Disability Committee following its uptake of a confidential inquiry with regard to a serious breach of human rights.

<sup>247</sup> While the Equality Act 2010 is legislation reserved to Westminster, the General Equality Duty is devolved to Scotland and the Scottish Public Sector Equality Duty was agreed in 2011.

people with protected characteristics. Across Scotland the ‘disability’ outcomes varied, with 40% of local authorities rated as ‘mixed’ and 29% rated as ‘poor’.<sup>248</sup>

- 2.3 Inclusion Scotland is concerned that the equality outcomes set by some Scottish Local Authorities do not reflect the needs of local disabled people and limit progress in reducing existing discrimination at various levels.
- 2.4 The Ethnic Minority Disabled Community faces a decline in health and the ability to be included socially due to the financial cuts made both to ethnic minority specialised services and disability services.<sup>249</sup>
- 2.5 In addition, our work with the Equality Network shed light on the fact that poor services exist for the Lesbian, Gay, Bisexual and Transgender (LGBT) disabled people. This is due to a limited social awareness about how their identities overlap with their disability. They are more likely to experience institutional and other discrimination against more than one of these characteristics.
- 2.6 It is a fact that disabled people who have experienced discrimination or abuse are less likely to express other protected characteristics such as sexuality and are therefore less likely to access the correct information and services that they may be in need of.

### **3 Disabled Women (Article 6)**

- 3.1 The Scottish Census 2011 disclosed that there are more women in the 25+ age groups with long-term health conditions or impairments than men. Inclusion Scotland is aware that disabled women are extremely impacted by the current austerity measures within the UK.
- 3.2 A smaller number of disabled women are in full-time employment than non-disabled women.<sup>250</sup> Also, analysis by Engender reveals that only 45% of disabled women are in employment compared to 49 of disabled men.<sup>251</sup> However, disabled women are more likely to be the primary carer as well as the primary homemaker.<sup>252</sup> The consequence is that disabled women are excessively and particularly impacted, compared to non-disabled women and men, by UK austerity measures. Disabled women are more likely to be disproportionately impacted by cuts to both disability and non-disability benefits.<sup>253</sup>

### **4 Disabled Children (Article 7)**

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<sup>248</sup>[http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/PSED\\_in\\_Scotland/measuring\\_up\\_3\\_final.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/PSED_in_Scotland/measuring_up_3_final.pdf)

<sup>249</sup> Inclusion Scotland August (2014) ‘List of critical Issues for Disabled People on the United Kingdom’s performance under the UN CRPD’

<sup>250</sup> Metcalf, H. (2009) ‘Pay gaps across equality strands: a review’

<sup>251</sup> Coleman, N., Sykes, W. and Groom, C. (2013) ‘Barriers to employment and unfair treatment at work; a quantitative analysis of disabled people’s experience’ Equality and Human Rights Commission (Research report 88)

<sup>252</sup> <http://www.engender.org.uk/content/publications/engenderwelfarereport.pdf>

<sup>253</sup> <http://www.scotland.gov.uk/Resource/0043/00432337.pdf>; and see also Engender Welfare Report [http://www.scottishwomensaid.or.uk/sites/default/files/engenderwelfarereport\\_0.pdf](http://www.scottishwomensaid.or.uk/sites/default/files/engenderwelfarereport_0.pdf)

- 4.1 In Scotland the specific needs of disabled children are not being addressed appropriately and disabled children are more vulnerable to poverty than non-disabled children.
- 4.2 The Children and Young People (Scotland) Act 2014 cites the Scottish Government's Getting it right for every child well-being indicators, SHANARRI.<sup>254</sup> Inclusion Scotland and organisations representing disabled children raised concerns that disabled children's needs were not addressed compared to those of non-disabled children.
- 4.3 Overall, one in five children in Scotland live in poverty, rising to one in three in deprived areas.<sup>255</sup> One in three children who live with a disabled adult live in poverty, compared to 19% of children who live with a non-disabled adult.<sup>256</sup>

## 5 Access to Justice (Article 13)

- 5.1 There are one million disabled people in Scotland.<sup>257</sup> 70% of disabled people know either little or nothing about their rights.<sup>258</sup> One reason for this maybe the shortage of independent advocacy in Scotland<sup>259</sup> and also the fact that places providing specialised legal advice for disabled people are scarce.<sup>260</sup>
- 5.2 England has a number of legal services that specialise in disability discrimination but there are none in Scotland. Therefore, the legal profession has a limited understanding of disability issues and this has a huge impact when taking cases for disabled people.<sup>261</sup> Existing services such as the Citizens Advice Bureaus and regional law centres provide general legal advice and support.<sup>262</sup> Disabled people lack confidence that there are suitable mediation or alternative dispute resolution services available to solve issues without going to court.<sup>263</sup> As a result disabled people's confidence in the advice they need and the probability of accessing that advice is further reduced.
- 5.3 Disabled people still face barriers to accessing justice despite improvements in access to Scottish courts. An example of this is that the cost of going to court is increasing and there is less financial help available which is a huge barrier to disabled people bringing cases to court. Other free legal advice is available by using the Equality and Human

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<sup>254</sup> Safe, healthy, achieving nurtured, active, respected, responsible, included.

<sup>255</sup> <http://www.cpag.org.uk/scotland/child-poverty-facts-and-figures>

<sup>256</sup> Cf. Family Resources Survey, Households Below Average Income Dataset 2008/09, in Scottish Government's 'Child Poverty in Scotland: a brief overview of the evidence'

<http://www.scotland.gov.uk/Resource/Doc/304557/0107230.pdf>

<sup>257</sup> <http://www.gov.scot/Topics/People/Equality/disability>

<sup>258</sup> Gore & Parckar (2010) 'Rights and Reality – disabled people's experience of accessing goods and services' for Leonard Cheshire Disability.

<sup>259</sup> The Scottish Independent Advocacy Alliance (2013) 'Ten years of advocacy provision'

<sup>260</sup> <http://www.ilis.co.uk/independent-living-policy/new-policy-entry/rights-to-reality-implementing-article-19-of-the-uncrpd-in-scotland>

<sup>261</sup> Inclusion Scotland August (2014) 'List of critical Issues for Disabled People on the United Kingdom's performance under the UN CRPD'

<sup>262</sup> The Independent Living in Scotland Project (March 2015) 'The Solutions Series: Justice is served? Disabled people's access to justice'

<sup>263</sup> Capability Scotland, (June 2010) 'Justice Disability Steering Group: Access to Justice Final Report'



Rights Commission’s free legal advice service. However, the Equality and Human Rights Commission lacks resources to support all disabled people’s cases. As a result disabled people have to rely on pro-bono cases, but there is notable lack of pro-bono lawyers that specialise in disability discrimination in Scotland. Furthermore, solicitors themselves may not be taking up the cases of disabled people due to the cost of communications and other disability-related support.<sup>264</sup>

5.4 Disabled people face specific barriers to challenging systems, services, policies and structures. This regularly involves challenging the deficiency of support available to disabled people and disabled people may rely on such support to prepare a challenge in the first place. Therefore, fear is a huge barrier to disabled people getting to court.<sup>265</sup>

5.5 The introduction of fees for employment tribunals by the UK government<sup>266</sup> has created a financial barrier to justice for disabled people.<sup>267</sup> Since the introduction of the fees there has been a 46% year-on-year reduction in disability cases.<sup>268</sup>

5.6 The success rate of disability discrimination cases at employment tribunals is very low. It was at 3%<sup>269</sup> in the year 2011 -2012.<sup>270</sup>

5.7 Other barriers to disabled people accessing justice are that the premises used by the justice sector are not accessible. In terms of accessibility for disabled people the justice sector needs to consider signing, lighting and colour contrast on addition to ramps and lifts to be able to cater for people with a wide range of impairments. There is also an information barrier which prevents disabled people from being able to access the information they need. Examples are that the justice sector websites are not fully accessible and there is often no BSL interpretation online or on DVDs.<sup>271</sup>

5.8 There are communication barriers that exists in accessing justice for disabled people. In civil matters each party in an action has to provide their own interpretation or other support system which is an expense for disabled people that they may not be able to afford. In addition, on-demand assistance is not available in reasonable timescales to deaf, hard-of-hearing people and deafblind people.<sup>272</sup>

## 6 Work and Employment (Article 27)

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<sup>264</sup> Capability Scotland, (June 2010) ‘Justice Disability Steering Group: Access to Justice Final Report’

<sup>265</sup> <http://disabilitybarrier.co.uk/getting-legal-advice-and-assistance/>

<sup>266</sup> <https://www.gov.uk/government/publications/employment-tribunal-fees>

<sup>267</sup> [http://www.citizensadvice.org.uk/press\\_20140727](http://www.citizensadvice.org.uk/press_20140727)

<sup>268</sup> Trade Union Congress (July 2014) ‘At What Price Justice?’

<sup>269</sup> The figure could be that low due to the fact that a high proportion of disability discrimination cases are settled out of court.

<sup>270</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218497/employment-trib-stats-april-march-2011-12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218497/employment-trib-stats-april-march-2011-12.pdf)

<sup>271</sup> Capability Scotland, (June 2010) ‘Justice Disability Steering Group: Access to Justice Final Report’

<sup>272</sup> Capability Scotland, (June 2010) ‘Justice Disability Steering Group: Access to Justice Final Report’

- 6.1 Disabled people of working age are only half as likely to be in employment as non-disabled people. The May 2014 figures disclose that employment of disabled people has fallen to 44%, while the non-disabled employment rate is 80%.<sup>273</sup> However, the situation is worse for certain impairment groups, for example: only 13% of adults with learning disabilities who are of working age are in full-time employment or training in Scotland.<sup>274</sup>
- 6.2 Analysis of the Life Opportunities Survey revealed that disabled people were more likely than non-disabled people to select difficulty with transport, the attitudes of employers or colleagues, anxiety or lack of confidence, lack of qualifications or experience, issues relating to access to buildings and lack of support as limitations to work.<sup>275</sup>
- 6.3 As disabled people are more likely to be unemployed, unemployed for longer or to work part-time in lower paid jobs, earnings among disabled people are lower with 30% earning less than the Living Wage compared to 26% of non-disabled people.
- 6.4 Employment rates are lowest in the youngest and oldest age groups of disabled people at 35% of those aged 16 – 24 and 38% of those aged 55 – 64. The transition from full-time education to work is more difficult for young disabled people and especially young disabled men.<sup>276</sup> In addition, older non-disabled people are more likely to be in more senior jobs, possibly linked to career progression, but this pattern is less noticeable for disabled people.
- 6.5 Investigation by ethnic group shows that disabled people of Pakistani, Bangladeshi and mixed ethnicity are less likely to be in employment than White disabled people. However, disabled people from the Chinese/Other, Black/Black British and Indian ethnic groups have the smallest employment gaps.<sup>277</sup>
- 6.6 Research found that disabled people were discriminated against for job interviews. Non-disabled people were twice as likely to get a reply from the employer, and non-disabled applicants were invited to twice as many interviews as were disabled applicants.<sup>278</sup>
- 6.7 Some employers perceive a range of barriers to making workplace adjustments and some are unwilling to absorb the expenditure involved to make reasonable adjustments in the workplace for disabled employees. As a result some disabled employees had to

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<sup>273</sup> Labour Market Brief (May 2014) Scottish Government using figures drawn from the Labour Force Survey <http://www.scotland.gov.uk/Resource/0045/00450779.pdf>

<sup>274</sup> Inclusion Scotland August (2014) 'List of critical Issues for Disabled People on the United Kingdom's performance under the UN CRPD'

<sup>275</sup> Coleman, N., Sykes, W. and Groom, C. (2013) 'Barriers to employment and unfair treatment at work; a quantitative analysis of disabled people's experience. Equality and Human Rights Commission' (Research report 88)

<sup>276</sup> Department for Work and Pensions (February 2013) 'Fulfilling potential: building a deeper understanding of disability in the UK today' London: DWP Available at:

<http://odi.dwp.gov.uk/docs/fulfilling-potential/building-understanding-main-report.pdf>

<sup>277</sup> Office for National Statistics, (2012) Labour Force Survey

<sup>278</sup> MacRae, G. and Laverty, L. (2006) 'Discrimination Doesn't Work: Disabled people's experience of applying for jobs in Scotland', Leonard Cheshire, Scotland

leave work and become unemployed due to the reasonable adjustments not being made.<sup>279</sup>

## 7 Conclusion

7.1 Whilst in theory disabled people enjoy protection from the Equality Act 2010, in reality, due to policy, practice and multiple discrimination against their various characteristics, they are not experiencing the protections that it should provide. Discrimination against multiple characteristics is not fully recognised by the Equality Act 2010 and this needs to be addressed. Some disabled people felt that prejudice against them on the grounds of their disability or health problem would be compounded by racism or prejudice towards their gender, sexuality or lifestyle.

7.2 In addition, as the evidence has shown there is a lack of access to justice and this prevents disabled people from using the Equality Act 2010 to address the discrimination they experience.

7.3 The right to work and employment for disabled people is being counteracted by prejudice from employers and staff. Some disabled employees felt that their employers were able to ignore the law on making reasonable adjustments without penalty. In some cases most disabled applicants are rejected for interviews compared to their non-disabled applicants. Employment is low amongst disabled people due to barriers preventing them from doing a job. Furthermore, ethnic minority disabled people are less likely to be employed than White disabled people.

*3 September 2015*

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<sup>279</sup> Adams, L. and Oldfield, K. (2012) 'Opening up work: The views of disabled people and people with long-term health conditions'

## **Independent Parental Special Education Advice (IPSEA) – Written Evidence (EQD0040)**

### **Introduction**

IPSEA (Independent Parental Special Educational Advice) was established in 1983 and currently advises over 4,000 parents and carers every year who have children with special educational needs (SEN) and/or a disability. We also represent parents who are making appeals or claims to the Special Educational and Disability Tribunal (SEND). IPSEA regularly trains other bodies including Information, Advice and Support Service (formally Parent Partnership), education professionals and parents.

Our opinions are therefore based on evidence from what these parents tell us and our experience whilst supporting them through the current system.

We have responded to questions 1, 3, 4, 10 and 11 as these questions are relevant to our case work and experience.

### **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?**

The Act has achieved some of the expressed aim but from our evidence the changes made have not gone far enough. The change we welcomed in particular, was the new category of discrimination, discrimination arising from disability (section 15). This addressed the issues which had arisen as a result of the House of Lords decision Lewisham LBC – v – Malcolm [2008] UKHL 43. Following the decision in this case, the ground “less favourable treatment” had been rendered ineffective.

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. We find through our case work and training that one of the biggest misconceptions is the assumption of equal treatment for disability. 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. Better promotion of the Act could work towards increasing awareness.

Through our casework, IPSEA estimates that there is a significant overlap between children who are deemed as having a special educational need (SEN) and a disability. For those with a disability that do not meet the statutory threshold of having SEN, their only protection is under the Equality Act 2010. However, the Act is less effective than the SEN legal framework in defending children’s interests. We explain this in greater detail at question 10.

The number of disability discrimination claims to First-tier Tribunals has been consistently low and are not indicative of the success of the Act. The Ministry of Justice tribunal statistics

demonstrate that from 2003 to 2014, the number of claims registered per year range from 81 to 126. The consistently low numbers could point to areas of weakness such as poor awareness of rights and lack of effective remedy. We do not believe the low numbers reflect mean children are not being subjected to discrimination as unfortunately, we hear many examples of serious and blatant discrimination through our case work.

IPSEA is concerned that the Act is falling short in affording some children protection when they are deemed to have an *'excluded condition'*. An excluded condition is a condition of a prescribed description which regulations provide is to be treated as not amounting to an impairment for the purpose of the Act. By regulation 4(1)(c) of the Equality Act 2010 (Disability) Regulations 2010 (SI 2010 No.2128) *"a tendency to physical ... abuse of other persons"* is an excluded condition.

We have seen an increase on the number of Responsible Bodies relying on Regulation 4 ('tendency to physical abuse') to rebut claims of discrimination. Many children with SEN also have associated behaviour problems. It is very common in some conditions such as autism that children will exhibit behaviour which would also present as an excluded condition.

Case law has reinforced the legal position that some disabled children will lose the protection of the Act where their behaviour amounts to an excluded condition. Thus, tendencies which are derived from and consequential upon a protected disability are not protected. The public policy reasons for excluding certain conditions are obvious. However, in some cases this has removed children's protection under the Act. We believe that Regulation 4(1) should be amended to make clear that for children, it only applies where there is no underlying disability.

**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?**

Reasonable adjustments are not simple to explain. There is non-statutory guidance published and available to schools on the operation of the Act. It sets out what a reasonable adjustment is and points back to the Equality and Human Rights Commission guidance on what reasonable adjustments mean for schools. However, IPSEA believes better promotion of the reasonable adjustments duties is needed and this should be set out clearly in a statutory Code of Practice.

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

Yes. These are the issues which could be made explicit in a Statutory Code of Practice, drawing on the non statutory guidance on this subject which is already available.

**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?**

As a result of the Children and Families Act 2014, the new SEN framework covers those from 0-25. This means that the SEND tribunal can now hear SEN appeals for young people up to the age of 25. The same tribunal also hears claims of disability discrimination concerning schools. But, if the claim is against a college the young person has to make their claim in the county court. IPSEA does not have any experience or knowledge of such claims due to them being heard in a court. However, IPSEA believes the tribunal's remit should be extended to hear claims of disability discrimination concerning colleges. The tribunal is a specialist judicial body and accessing it is cost-free. The tribunal has specialist members who are very well placed to deal with these cases for colleges in the same way as they do for schools. IPSEA believes it is unjust that if disabled young people want to make a claim of discrimination they have to go to the county court which would involve court fees, is not as accessible as the tribunal and is a more formal setting.

It also means that it is not possible, as would be with a child in a school, to consolidate an SEN appeal made by a young person with a claim under the Act so that both could be heard together.

IPSEA believes there should be consideration of extending the powers of the Tribunal so that more appropriate orders can be made when discrimination is found.

A significant weakness is the lack of an effective remedy when discrimination is found by a Tribunal. Normally, the sum total of recompense is a letter of apology, which is of limited practical benefit to the victim of discrimination and has limited deterrent effect on the discriminating body. Parents are often very aware of the potential souring of relations by insisting on rights and making a claim, especially when the remedy is disproportionate to the time and effort placed into making a claim.

If the Tribunal had the power to make an order for costs it would give the Tribunal more "teeth". If for example a school has refused to make a reasonable adjustment for a child, such as the making available of a particular aid or service, and the parent spends their own money to enable the child to have the benefit of this aid or service, the parent should be able to recover what they have spent from the school if the Tribunal finds in their favour.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

Currently, there are four pieces of non statutory advice available for schools covering their duties under the Act. There is a substantial statutory Code of Practice devoted to children with SEN through the implementation of the Children and Families Act 2014. IPSEA would welcome the introduction of statutory Code of Practice for education providers which has the potential to provide clarity and information in one place.

*1 September 2015*

Independent Parental Special Educational Advice (IPSEA), Department for Education and Ofsted – Oral Evidence (QQ 113-122)

**Independent Parental Special Educational Advice (IPSEA), Department for Education and Ofsted – Oral Evidence (QQ 113-122)**

[Transcript to be found under Department for Education](#)

## **Andrew Jones MP, Rt Hon Nicky Morgan MP & Justin Tomlinson MP – Oral Evidence (QQ 174-192)**

### Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Faulkner of Worchester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### **Examination of Witnesses**

**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, and **Andrew Jones MP**, Parliamentary Under Secretary of State, Department for Transport

**Q174 The Chairman:** Good afternoon, Minister. Good afternoon, Mr Tomlinson and Mr Jones. Thank you very much for coming; we appreciate it. We have a large audience this afternoon. You will be interested to know that this session is open to the public and a webcast of this session goes out live and is subsequently accessible via the parliamentary website. It is also being televised but not broadcast live. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. We would appreciate it if you could advise us of any corrections as soon as you can.

If, after this evidence session, you wish to clarify or amplify any points made during your evidence or have any additional points to make, you are welcome to submit supplementary evidence to us. As you know, we do not have that much time and you have to be pretty concise, so, if you think of something afterwards or something comes up to which you do not have the answer, please feel free to write in afterwards and give us that information.

The members here will declare any relevant interests that they have before they put a question to you. In order to save time, I will now read out the rather long list of interests of Baroness Campbell. She is a patron of Just Fair, a patron of the National Disability Archive, founder and member of Not Dead Yet UK, recipient of a social care personal budget, disability living allowance and Access to Work. She was a disability rights commissioner



throughout the life of the Disability Rights Commission and a commissioner of the Equality and Human Rights Commission for three years.

The first question comes from me. It is to all of you, although, if one person has answered fully, there is no need for everyone to chip in every time. At a time when cuts are being made to the budgets of various government departments, what role does the Minister for Disabled People take in preventing any disproportionate impact of cuts on disabled people? Are you consulted when the Chancellor is seeking to understand the impact on disabled people of decisions in the Budget or Spending Review? I should say that a theme throughout our months of taking evidence has indeed been impact on disabled people, so I would be interested to hear your views.

**Justin Tomlinson:** I will take the lead on this one. It comes into two parts. First of all specifically with regards to the Chancellor, I can assure the Committee that the Chancellor and HMT officials meet regularly with colleagues in all departments and, in line with the equality duty, take due consideration of the total impact of policies on disabled people at fiscal events, including the Spending Review. This is highlighted in the annexe to the Spending Review document published by HMT. The assessment of these impacts often incorporates departmental analysis.

Then, on the broader perspective of my role as the Minister for Disabled People, in our department, disability spending will be higher every year up to 2020 from the 2010 figure. We are currently spending about £22 billion on disability benefits. Disability benefits and carer's allowance are protected from the freeze and are being uprated by CPI. On disability employment support, we have seen a real-terms funding increase to help disabled people find and remain in work, and that was announced in the Spending Review. We continue to get exemptions so households that include a member who is in receipt of DLA, PIP, the support component of ESA or universal credit equivalents are exempt from the benefits cap. Treasury has been very receptive to commissioning a series of pilots and new approaches to test and learn what really works for people with health conditions and disabilities as we look to build a case to get further funding.

On a broader perspective, DWP, in developing our policies, has embedded the equality analysis as laid out in the Equality Act 2010 into the process we use to develop and evaluate our policies, practices and services. We use this to assess the likely and actual effects of what we do on people with protected characteristics to inform our decision-making processes. In conclusion, as required by the public sector equality duty, the department publishes information annually relating to people who are affected by our policies and practices who share protected characteristics, for example our customers and our employees.

**The Chairman:** Can you think of any issue where the needs of disabled people have trumped, in effect, the cuts that your department has been required to make?

**Justin Tomlinson:** One of my main roles is championing the Prime Minister's commitment to halving the disability employment gap. As we have looked at the wider reforms to the Work Programme, there has been a real emphasis on looking at those with long-term health conditions, those with disabilities. We will be setting out the future changes in the White Paper consultation next year, but we have seen just over a 14% increase in real terms funding for this sort of thing, because it is connected to the Prime Minister's personal commitment to halve the disability employment gap. It is recognised that we will need to do new initiatives to help further engagement with businesses, creating the right support to remove barriers and help people get into work. This is one of many examples.

**The Chairman:** I know that theme will come up later. When it comes to negotiating for disabled people, do the three of you meet regularly? Do you have cross-departmental ministerial meetings?

**Justin Tomlinson:** Yes, we do, but it is not just the Secretary of State and the Minister here; it is right across government. I have been pleasantly surprised how receptive departments are. One thing I have done is a little bit different. All departments get a number of Ministers lobbying for their particular area to try to get that to be a priority. What I found particularly helpful is, when I get the invitations to have meetings, to engage and put across a number of areas and issues that we wish to raise, where there are either Members of Parliament or Members of the House of Lords who have particular expertise, I will bring them along to those meetings to have technical support.

A good example is that, when I first met with Andrew, the Minister here, I brought Lord Holmes, because we were looking at a number of issues relating to transport where Lord Holmes had commissioned extensive research. I was not just going into the meeting saying, “I understand there are some issues in this particular area”. We were able to back that up. We had constructive suggestions. It was a really positive meeting. Further meetings have followed and, as we go through some of those later questions, we will be able to bring across how that has made a real, tangible difference.

That is cross party. In a lot of my stakeholder engagement meetings, we will try to find a relevant all-party parliamentary group with a connection. I met with the Spinal Injuries Association at a stakeholder meeting. We have an APPG on spinal injuries, chaired by Ian Lucas, Labour MP for Wrexham. We called him up and asked him to come along to that meeting and further work was then agreed. Right across my diary, we are trying to increase that engagement so I have that opportunity, and I try to make sure I make the most of that opportunity with the collective expertise that we have in both Houses.

**Q175 The Chairman:** Are the three of you made aware of the full cumulative impact of cuts in recent months and years on disabled people? We as a Committee have not been able to lay our hands on anything that amounts to a statement of the full cumulative impact.

**Justin Tomlinson:** There are huge efforts to consider any policy change and look at the effect on disabled people in line with legal obligations included in the Equality Act. The cumulative distribution analysis published by HMT is 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. Welfare spending, though, is not the only way to help disabled people. Further support includes health spending, employment support, investment in infrastructure. Her Majesty’s Treasury analysis included these wider public spending impacts.

But it is not possible to produce a cumulative impact assessment of policies on disabled people using this model. It uses the Living Costs and Food Survey, which does not have information on disability status but is crucial to HMT’s modelling. HMT’s Ministers would be better placed in answering specific questions on how they do that modelling.

The big challenge is how you compare static analysis to the dynamic effects going across. This is a debate that has been going on probably since the beginning of time, but you would need to speak to Treasury Ministers and officials.

**The Chairman:** The EHRC has made us aware of a Landman Economics report, which they commissioned, which said it was perfectly feasible and practical to produce a cumulative impact assessment on disabled people in particular. We feel that that would be very

valuable and would show us and you exactly what that cumulative impact is, because, as I said, we have not been able to come across it specifically so far. On that note, I will hand over to Lady Brinton.

**Baroness Brinton:** I will stay on this question, if I may. It is good to see that, in the Autumn Statement this year, the Treasury published an analysis of impact, because when a civil servant from the GEO gave evidence to us earlier on and we asked a specific question we were told that there was none and never had been any impact. My concern is that the six items that relate to disability seem to be very focused on particular areas. My question, based on those six, is whether the focus of this Government is moving away from accepting that disabled people have additional costs for living that are separate from the benefits system that anybody can face.

It seems that much of the emphasis is on getting people back into work. For instance, those of us who require the use of taxis because we cannot get around otherwise still have extra costs of living, but the Government focus entirely on employment. I am not asking for an answer on that specific question, but it is all about how that impact assessment is looking at these issues. That is why the report the Chair referred to is vitally important. Is there going to be progress on specifically looking at these issues, rather than trying to hold it to the other traditional Treasury techniques?

**Nicky Morgan:** Good afternoon, members of the Committee. I do not know whether Justin wants to take that specific issue. I would push back and say that the Government are not moving away from that. I am glad you mentioned the impact assessment that was published at the time of the Spending Review. That was something we very much wanted to see. I am not aware of the EHRC report mentioned. They have not raised it specifically with me as the Minister, but I am very happy to follow it up.

**Justin Tomlinson:** I will give a broad response to that about the wider costs. You are right to highlight them, because a lot of focus is on halving the disability employment gap, but we have had the introduction of the personal independence payment system replacing DLA. The principle behind that was recognising we needed to get money to the most vulnerable. Two and a half years into this new system, we have seen that, while under DLA about 16% of those who claimed got the highest rate of benefit, under PIP 22% to 22.5% are now getting that.

Specifically on additional travel costs, a significant part of the Access to Work funding is going into travel. In the recent Spending Review, the Chancellor confirmed additional funding. We currently help about 37,000 people a year, and additional funding is being provided for an extra 25,000 a year by 2020. Again, it is recognising those extra costs.

Scope did a brilliant report looking at the wider extra costs. They calculated that the combined spending power of people with disabilities is about £212 billion. That is the “purple pound”. It is not Nigel Farage’s utopian country; it is a term they have come up with. A lot of my work has been with commercial organisations in the private and public sector to highlight that it makes sense to recognise that combined spending power and to help bring down those costs as a collective.

**Q176 Baroness Campbell of Surbiton:** I believe that same report also said that the extra costs met by the majority of disabled people who are using DLA or PIP are £550 a month; that is not met by any benefit. That is disproportionate to the extra costs that non-disabled people face in work. There is a burden of extra cost of significant value, so it depends what

piece of report you look at. They are very keen that the Government look again at the PIP assessment, in order to reflect those extra costs within the benefit.

In answer to your other question, the London School of Economics have again and again been ready to do a cumulative impact of the costs that disabled people meet in their day-to-day lives. They say that it is a potentially easy exercise but obviously it would cost money, and they have never been able to get the Government to commission them to do that work. Julian Le Grand, one of our greatest researchers in this area, was turned down. It is not like it is not out there, and, of course, that analysis would have been independent of government.

**Justin Tomlinson:** It is right that there are a lot of different reports looking at those extra costs people with disabilities face. They produce different figures, but I think we would all accept the principle that there are extra costs. The point of DLA and PIP was not necessarily to exactly match those. It is a contribution from society towards those additional costs that you will face in your everyday life. I am pleased that the level of PIP has been increased by CPI; it is not part of benefit freezing. We recognise that we need to continue to do so.

The important work going on at the moment is the rollout of transferring existing claimants from DLA to PIP. That is something I am looking particularly carefully at on a daily basis, because it is an incredibly important change for those who have been on DLA particularly for a long period of time. PIP had a very difficult launch and a lot of lessons have been learned, in part responding to the recommendations from the Paul Gray review. I personally take responsibility for analysing those on a daily basis. For about nine months, we have had a very settled response.

It was never meant to be an exact replacement, but it helps focus the mind. I do a lot of work with organisations like Scope. After they have done those reports, they come and talk to me to identify where we can make a difference, whether that is in the Government, the private sector, the public sector, by challenging organisations and doing that. All that information is useful. Going back to the point about whether more could be done on the cumulative analysis, it is for Treasury to look at and work out how to do that. I feel genuinely, as I go and raise issues with all departments, they are receptive to be challenged and to respond to things we push forward.

**Q177 Baroness Brinton:** We have heard that the public sector equality duty is ineffective because policymakers do not have to consider the impact of proposed policies any more. What are the Government doing to counter this? Why did the Government decide not to lay before Parliament the codes of practice on the public sector equality duty for schools and for further and higher education?

**Nicky Morgan:** First, I should point out that the fundamental purpose of the public sector equality duty is precisely to ensure that people consider the impact of proposed policies. It is what is called a due regard duty. The evidence we have had, and I think the evidence you have heard from government equalities officials in earlier sessions, was that there was a review of the public sector equality duty, which concluded in September 2013. It was quite critical of the way that duty had been implemented by public bodies, often citing cases of too much information being collected or published, and too little information in others.

I am focused on the fact that the way to meet the duty is not to collect endless reams of paper; it is really to consider the duty or the decision being made. It was recommended as part of that review that we should look again at the public sector equality duty in 2016. We are currently working through that at the moment and deciding what any review might be.

In relation to the codes, they were not laid before Parliament by the last coalition Government simply because they were just too long and were going to increase burdens. I speak with my education hat on as well. Schools are not going to plough through pages and pages of guidance. I do not think the way to get people to really think about equality duties is to give them so much paper that they lose sight of the wood for the trees. However, the EHRC produced the original text of these codes as technical guidance, which is available to educational institutions and which can still be taken into account by the courts. It is not the case that there is no guidance available.

**Baroness Brinton:** In oral evidence, we were told that the other thing that has diminished the duty to a large extent is a lack of requirement to engage disabled people particularly, which was there under the disability duty in the past. Would the Government consider the reinstatement of that obligation to engage with disabled people with regard to the PSED?

**Nicky Morgan:** As I say, it was recommended that we would have a review in 2016. We are currently looking at that and I am waiting for some advice on the shape of that review. That is not an issue and I am happy to take your particular request away. We will carefully look at the report from this Committee when it is published. Perhaps we will get on to it later, but, in some of the earlier sessions that you have had, the questions this Committee asked were about what has happened to the duty regarding those with disabilities as a result of the coming in to force of the 2010 Act, which brought so much together. It has been an improvement, but I am sure that will be part of the review.

**The Chairman:** Minister, you seem to think that having due regard was adequate. But, as in the case where the Master of the Rolls was involved, about the Secretary of State of Work and Pensions, having due regard—and you are a lawyer—just means having due regard. It is not the same as requiring a public authority to take positive or even proportionate steps towards achieving an end. It is a very passive duty. Is that sufficient, in your view?

**Nicky Morgan:** The two particular legal cases you mentioned brought under the duty were brought by or on behalf of those with disabilities, so this is not about people not having grounds on which to bring cases. In all these things, 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 changes which are going to take forward the programme of government.

**The Chairman:** But having due regard just means you can have due regard and still go ahead with a decision that is unfavourable to the disabled. It is simply a process.

**Nicky Morgan:** But that decision, as we have heard, can then be challenged in the courts, as it was in those cases.

**The Chairman:** It was challenged, and the court said, as long as you go through the process, you do not have to reach a different view. You just have to go through the motions. In oral evidence, over and over again we have been told that this simply is not sufficient.

**Nicky Morgan:** I think it is. We want Ministers to have regard to the protected characteristics under the 2010 Act when they are making decisions on legislation and regulations to be implemented as part of the programme of government. 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.

**Q178 Baroness Brinton:** From the evidence we have seen, part of the problem with the Red Tape Challenge, particularly for some of the disability issues, is the move from a statutory

responsibility to a much softer one. While I absolutely endorse the idea of schools and further and higher education not having to wade through tomes of paper to understand things, having due regard, either for the Minister or even for institutions, completely disappears the moment there is something too complex. Will the Government ensure, through the consultation, that what comes out the other side of it will be easily understandable and, therefore, institutions that have to hold to it will be accountable for it, rather than the weasel words of “having due regard”, which enable the Minister or institutions to say, “We have thought about it a bit”?

**Nicky Morgan:** I would not agree with you that they are weasel words. They are clearly accepted legal terms and they encourage Ministers and institutions to think and be very mindful of the impact of the decisions they are taking on those with protected characteristics. We do, for example, in the Department for Education publish guidance on how schools should think about the Equality Act 2010 in everything that they are doing. You highlighted in your question that it is that balance between wanting people to think about these important issues and allowing them to get on with what they are doing, so, in the case of schools, providing education to all pupils to the highest possible standard.

**Baroness Campbell of Surbiton:** I was involved with the codes of practice when I was at the Disability Rights Commission. In our experience, we felt that the codes enabled schools, local authorities and institutions to have the wherewithal to know what to do. I agree that large tomes do not get read, but large tomes can be disaggregated; they can be used as a bible from which you can then produce summaries, training courses, et cetera. That is exactly what the Disability Rights Commission did, so the codes became a live code, not a dead code that, as you are trying to say, does not get read and it sits on a shelf. Of course that is wrong, but we have an Equality and Human Rights Commission that can promote codes and use them as a resource and a place of knowledge.

Would you not accept that? Local authorities say, “Actually, we need these codes; we need something tangible because we do not know what to do. Then we can go on and do things in the way we think is right for the community”, but you need that knowledge. You need that tangible, written-down knowledge of what you can and cannot do in order to empower institutions to do the right thing. It seems to me we now have just a process-driven way of looking at disability.

**Nicky Morgan:** I would not agree that it is process-driven. My worry is that it is all very well to have a code or a bible, as you refer to it, but nobody in my job ever says to me, “Please send me more paper”. We want to drive a cultural change across our public institutions to have a proper regard to those with protected characteristics and genuinely think about the equalities impact of everything we do. I want them to think about that, not to read endless pieces of paper, find the particular situation is not covered in the endless pieces of paper and then not have the wherewithal to be able to think their way through the problem and how they are going to make their service available for those, in this case, with disabilities.

**Lord Harrison:** Why does the code of conduct need to be long?

**Nicky Morgan:** I agree with you, Lord Harrison, but unfortunately these were long.

**Lord Harrison:** Yes, but why does it now? Why should we not aspire to have short, sharp codes of conduct, which clearly impart to those who have need of them exactly that?

**Nicky Morgan:** I agree. I think codes of conduct can be—

**Lord Harrison:** Would you like to make the effort?

**Nicky Morgan:** I think the question being asked was about these particular codes of practice.

**Lord Harrison:** I am talking about codes that might be formulated by you and your department that are effective because they clarify what is required and needed and can be implemented.

**Nicky Morgan:** We try very hard now, I can tell you, with both my ministerial hats on, to make everything we send out as short, snappy and user-friendly as possible. The question asked was about these particular codes from several years ago, which were too long and too burdensome.

**The Chairman:** So they could be re-written.

**Nicky Morgan:** Anything can be rewritten.

**Q179 Lord Foster of Bishop Auckland:** I have no relevant interests to declare. May I read out to you what William Hague, then the Minister for Disabled People, said in 1995 when launching the White Paper? “The door-to-door service which taxis provide makes them ideally suited for use by disabled people. It is not acceptable for disabled people to be restricted to arranging hirings in advance, which many have to do at the moment because they cannot be sure that a taxi they hail on the street or at a rank will be able to accommodate a wheelchair”. As you know, the White Paper became an Act, and yet, 20 years after that Act, the main taxi provisions of the Equality Act are still not in force. You have said that you fear they would create a burden on drivers. What evidence do you have for this? How have you balanced it against the existing burden on disabled people as a result of inaccessible taxi services?

**Andrew Jones:** I think that is heading my way. First, can I say good afternoon to all the Committee? There are several sections in the Equality Act 2010 that have not yet been commenced. It might be worth taking them separately. There is one group, which covers the practical requirement, Sections 160 to 164. This was basically saying that we need to have all taxis in England and Wales be wheelchair accessible. Section 165 is a slightly different one. That is dealing with culture and behaviour and I will come to that separately.

We know that about 56% of taxis are wheelchair accessible. We know that from a biannual survey undertaken by the department across all the licensing authorities in England and Wales. You asked what evidence there would be if we implemented it. I do not think we need to have every single taxi be wheelchair accessible. We need to have a significant number that are wheelchair accessible so that people who require them can access them, but, if we had every single one, there would be a cost of replacing the 35,500 non-wheelchair accessible taxis in this country. The lead-in price for a London taxi is £39,995. We can all do the maths. It would be very expensive. You ask: what is the burden? That is the burden. On the other side of it, we know progress is being made and that 56% of all taxis in England and Wales are wheelchair accessible, so I am not sure the problem necessarily exists.

If we go to Section 165, that is a different question altogether and one that I feel requires a different approach. It tackles the point of assistance. It basically would provide the obligation to carry a passenger in a wheelchair and would make a prohibition on charging extra for doing so. Then there would be a reasonable assistance requirement to help a passenger in entering and leaving the vehicle. This has not been implemented. I am personally very supportive of all the motives that we have here and want to make sure that all our public transport is much more accessible for people with disabilities, whichever their disability is. 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.

**Lord Foster of Bishop Auckland:** Minister, I am very surprised to hear you say that you do not think the problem exists, because all the evidence we have had in front of our Committee suggests—stronger than that—that this is one of the biggest problems that disabled people have: not just in managing to get a taxi, but very often being charged supplementary fares, which ought not to be the case either.

**Andrew Jones:** I was not talking about fares; I was talking about wheelchair accessibility. Some 56% of taxis in England and Wales are wheelchair accessible. That was the question you asked and that was the question I therefore answered.

**Lord Foster of Bishop Auckland:** I think it was wider than just wheelchair accessibility. The group of disabled people, as you well know, is very much wider than that.

**Andrew Jones:** Absolutely, and I am extremely keen to see good progress made in making all our public transport modes, with taxis at their heart, much more accessible. I fully recognise that taxis, private hire vehicles and buses are of fundamental importance for disabled people. There is no question about that. We possibly are agreeing.

**The Chairman:** It has been the will of Parliament for 20 years that taxis be accessible. How many more decades is this going to take?

**Andrew Jones:** It is going to take 10 minutes, because I have to go and vote. I will come straight back very shortly.

**The Chairman:** It is the will of Parliament and we are all here to get that will carried out.

**Andrew Jones:** We will come back to that directly after we have voted, if you will excuse us, Baroness Deech.

*The Committee suspended for a Division in the House.*

**Q180 Lord Foster of Bishop Auckland:** In view of the fact that 100% of London taxis have to be wheelchair accessible, what do you think is the percentage in your beautiful but highly rural constituency?

**Andrew Jones:** My own constituency is not that rural, actually. We know it does vary outside London. It varies between metropolitan, urban and rural areas. In rural areas, it is a low number; it is only 13%. The majority of the taxi market there is private vehicle, because there is no hailing of a street-side vehicle. It goes up to 84% in England in the metropolitan areas outside London. In other areas, it is 36%, so it reflects that mix of business in the area.

**Baroness Brinton:** One of my great concerns is the definition of an accessible taxi. My town of Watford has recently done a survey, which included going back. Under 20% of taxis are accessible; a very small percentage of those are wheelchair accessible; and an even smaller percentage are electric wheelchair accessible because of the issue of one ramp or two ramps. Please will the Government consider making one ramp compulsory for anyone who purports to be a wheelchair taxi? Personally, I am fed up in my town of having a taxi driver give me two fingers, which is meant to indicate he has two ramps and cannot take electric wheelchairs. Many taxi drivers hide behind the accessibility label and cannot deliver. It is very easy to sort out, given the price of ramps these days.

**Andrew Jones:** That is a very fair and very good point. Regulations have not always kept pace with the changing technology of wheelchairs and I am very happy to take that forward. It is an extremely fair point.

**Baroness Thomas of Winchester:** I am recovering from a broken kneecap. My knee has to be set like this. In London, I found one taxi who could take me when I tried to come here a week



or two ago. It was very expensive. For the other taxis, it was the same sort of problem. If your leg has to stick out in front of you, it is very, very difficult. All the common taxi firms say they cannot take you if you are a bit longer than they expect. That is another thing. It might be that somebody has a problem and they have to keep their leg out straight. I am having problems.

**Andrew Jones:** Was this a private hire vehicle or a traditional black cab?

**Baroness Thomas of Winchester:** It was not a traditional black cab because I really do not know that I would get in one. I know that you go in sideways, but this was a private hire one.

**The Chairman:** I do not imagine that any taxis are 20 years old. People must have bought new taxis. Unless you bring those regulations into force on a rolling basis, taxi drivers will never get cars that are big enough to take wheelchair riders. They cannot all be driving taxis that are still 20 years old. We have a real chicken and egg situation there. We feel that those regulations, as the will of Parliament, should be carried out.

**Q181 Baroness Browning:** I should declare that I am a vice-president of the National Autistic Society, patron of Research Autism and a vice-president of the Alzheimer's Society. The Government's evidence states that you are waiting to bring into force Section 36 of the Equality Act in the common parts. You are waiting until you know about the experience in Scotland, but, as we have heard and as I am sure you know, Scotland's legislation and requirements are different. Both leasehold and commonhold law are different in Scotland. They have not been put in to effect yet in Scotland. I wonder why the English provisions are not brought into force now. It is not often we hear the Government pray in aid Scotland in this way.

**Nicky Morgan:** We are all better off together. Thank you for that question. My understanding is 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. As you say, our understanding is that the Scottish Government have not been able to develop workable relations on this.

We are considering the uncommenced provisions of the Equality Act 2010, of which Section 36 is one. I have asked the Government Equalities Office to review this now as a separate exercise, to see where we go from here, given the non-experiences of the Scottish Government. I would of course be happy to keep the Committee up to date on that, should we come to a conclusion about it before the Committee's report is published.

**Q182 Baroness Browning:** That sounds very encouraging, thank you. Does that mean that the Government have changed their mind about this issue in relation to the Red Tape Challenge? We took oral evidence from Bob Ledsome of DCLG, who told us, "The Government took the view in the Red Tape Challenge that there were issues of potential burdens on landlords"—for example, common parts in blocks of flats and community housing—"and so on, and therefore took the view that they did not at that point want to commence the relevant parts of Section 36". Can I ask you why the Government thought that these provisions belonged to the Red Tape Challenge?

**Nicky Morgan:** The Red Tape Challenge is cross-government. It is all about burdens on businesses, public institutions—really, anyone—in terms of implementing legislation and looking at the balance of requirements to build the equal society we all want to see and other things, but also the burdens on those having to implement those regulations. Disabled

tenants can already ask the permission of landlords to make adjustments to the common parts of the properties that they rent.

I have to say my concerns about red tape and burdens have not gone away. I was not the Minister who made the decision in the last Government but I think, in spite of that, it is definitely worth looking at again as part of the uncommenced provisions of the Act. We now know that Scotland has not been able to make this work, so I think we should take a decision of our own.

**Baroness Browning:** That is very encouraging. I think the Committee is concerned about the Red Tape Challenge. Are you able to confirm whether the Government still have the view that, across government departments, when a department comes forward with legislation that is deemed to impose a burden, they should also offer up something in return: the one-in, one-out policy? It seems to us that there is a pattern developing where the one out applies to legislation affecting people with disabilities.

**Nicky Morgan:** Let me push back on that. I do not think that is the case. It has become more challenging. It is now one in, two out.

**Baroness Browning:** That is even worse.

**Nicky Morgan:** We do not want to be a Government that, by 2020, has more regulations, more red tape, more burdens on people. But there is a balance to be struck in relation to equalities, particularly regarding those with disabilities, as we are discussing today, which is why I want to take another look at this provision.

**Q183 Lord Northbrook:** This is another Red Tape Challenge question. I have no relevant interests to declare. The Red Tape Challenge has been given as a justification for repealing the provisions on statutory questionnaires in tribunals and, secondly, on tribunals making recommendations. What evidence do you have that these were or would be a burden on businesses?

**Nicky Morgan:** The evidence we have had is that employers needed, or were taking, legal assistance before responding to the questionnaires because tribunals had the legal power to draw inferences from “an evasive or equivocal answer”. Therefore, employers were getting legal advice and that added hugely to the burden on the employers’ time. 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. In relation to the questionnaires, the process had become legally burdensome. 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.

I should just say that what was repealed was the time limit for employers’ responses and the tribunal’s power to draw an inference from the lack of a response, just to make that clear for the benefit of the Committee.

**Lord Northbrook:** You felt there was no advantage to these statutory questionnaires.

**Nicky Morgan:** They can still be used. In fact, they can still be used in the format that they were before, but what has been repealed is this time limit and this power to draw an inference from a non-response. It was costing employers quite significant sums of money to comply and then perhaps to deal with the recommendations.

**The Chairman:** At this moment, may I please welcome our visitors? We have a group of parliamentarians here from south and south-east Asia who have come over for a Commonwealth Parliamentary Association workshop entitled Building a Community for

Change, on promoting gender equality. Welcome. I hope that your visit here today is enjoyable and profitable. Thank you for being with us.

**Q184 Lord Faulkner of Worcester:** I have three relevant interests to declare. I am president of the Heritage Railway Association, which the Secretary of State knows well, chairman of the Great Western Railway advisory board and I am vice-president of Level Playing Field. I have a Private Member's Bill, which is about to leave the House of Lords and head your way, on disabled access at sports stadia. I shall ask a supplementary question of Mr Tomlinson relating to that in a moment, but my question is for each of you. Are you satisfied with the remaining legal provisions concerning disabled people and are there any changes that you would recommend?

**Nicky Morgan:** First, Lord Faulkner, I am very sorry not to be seeing you on a steam railway this afternoon, but I look forward to your next visit to the Great Central Railway in Loughborough. The Equality Act introduced important new protections for those with disabilities and the bulk of disability-related provisions and the age-related ones have now been implemented. We believe that the Act is working as it should do and our post-legislative scrutiny memorandum on the Act shows that the two key objectives that were originally set, harmonising the equalities legal framework and strengthening the law to support progress on equalities, have substantively been achieved. In light of that, there are not any specific changes that I, as the Equalities Minister, would wish to put to the Committee, but of course we will look at the conclusions of the Committee and we will no doubt be reviewing the Act again. I have already mentioned some of the uncommenced provisions that we will be looking at again.

**Justin Tomlinson:** I would echo those comments.

**Andrew Jones:** I would echo but add something, which I am not necessarily sure is a legal issue. We have been talking about access to public transport and I think we need to keep a watching brief. We often define access in physical terms. We need to be aware that dementia is a growing feature in our communities and that one in three people over the age of 85 will suffer some form of cognitive impairment. We need to make sure our communities are very dementia-friendly. That needs to be borne in mind as well in transport planning. I am not sure that is necessarily a legal issue, but it is something I feel personally strongly about, so I thought I would mention it.

**Lord Faulkner of Worcester:** This is my supplementary to Mr Tomlinson. I have armed myself with some splendid quotes of his, most of them from Wiltshire newspapers or his website. I will start with this one: "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". A second one is: "Frankly, some of it is disgraceful"—that is, provision for disabled people. "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'".

Since you made those comments, Mr Tomlinson, the Premier League came up with its encouraging commitment to make its grounds accessible to disabled people by 2017. Can I ask what the Government are doing to make sure they stick to that commitment and how they are monitoring progress between now and that date?

**Justin Tomlinson:** I think you can tell that I was very passionate about that subject and keen to take that forward. For probably 20 years, the Premier League had been encouraged to take action. It is a collective body that has an income of about £6 billion a year, so money is no excuse in this area. A combination of the fantastic work you did with your Private Member's Bill, which highlighted the issue, and some extensive research into this subject highlighted what a major problem this was.

We immediately challenged the Premier League. They came in. To their credit, their chief executive, Richard Scudamore, was very proactive on this. He had personal experience and acknowledged that something needed to be done. We made it very clear that something would be done and it would be preferential if they could do that quickly. They came back and confirmed that all stadia would be fully accessible by 2017. We invited them in to explain why 2017, not 2016 or 2018, and how we could be sure, which is the thrust of your question.

The principle is that the majority of the physical changes to the stadia need to be done in the off-season, in the summer. Therefore, they have two windows to do that in. They are setting out a very clear timetable of which grounds will happen when, on which we will have regular meetings with them to hold them to account. If this is not done, it is something that we would be keen to take further action on. In the spirit of what I was talking about earlier, where either MPs or Members of the Lords have expertise in a particular area, I would very much welcome them joining me in those meetings.

I am encouraged that they recognise that, as a principle, this should be done and that £212 billion spending power is something that, as an entertainment business, they simply cannot afford to ignore. It is an absolute right that this be sorted out.

**Lord Faulkner of Worcester:** Bearing in mind that my Private Member's Bill has almost passed all stages in the Lords and it will probably be with you in January or February, would it not make sense for you to take that over and give yourself the legal powers to make sure these timetables are adhered to?

**Justin Tomlinson:** Those are discussions I have with my colleague, Tracey Crouch, the Minister for Sport. It certainly helped to focus minds, but I genuinely believe that the Premier League, through Richard Scudamore, are determined to see this happen. I think what they are proposing is realistic, but we will keep a very close eye on that.

**The Chairman:** Are there any other changes in the law you would like to see? Given the dissatisfaction we have heard from you, and indeed in our evidence, about transport and about the PSED, do you think there are any changes in the law that should be made?

**Nicky Morgan:** Andrew might want to answer on transport. He has already been quite clear about some areas that he thinks need to be looked at again. I have not expressed dissatisfaction with the public sector equality duty, but I have said that there will be a review as recommended in the 2013 report.

**The Chairman:** Clarity and brevity of writing, I suppose, is not a matter for changing the law, but I think we are agreed that that is what is necessary.

**Q185 Baroness Campbell of Surbiton:** My question is to the Secretary of State and the Minister for Disabled People, Justin Tomlinson. You will smile when I start asking the question. Ms Morgan, what role did you take when the decision was made to close the independent living fund? Could more proactive involvement by the GEO have prevented the policy-making failures that led to the loss of the first judicial review of the closure?

**Nicky Morgan:** Justin will answer in detail. 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. That is very much a matter for them and I am sure Justin will explain the DWP's decision-making process in this area.

**Baroness Campbell of Surbiton:** Considering the significance of this particular fund, were you personally involved in giving any guidance to the DWP on the first judicial review?

**Nicky Morgan:** I personally, as the Minister, was not. I can certainly find out whether Government Equalities Office officials were involved in any decisions or legal advice on the judicial review.

**Baroness Campbell of Surbiton:** That would be really helpful, thank you.

**Justin Tomlinson:** Just to be clear, the decision to close to the ILF was taken by the then Minister. I am relatively new to the post. One of my first meetings, actually, was with Baroness Campbell—a very enjoyable meeting. In making this decision, he considered the rationale for closure, the impact on those affected and the wider impact, as well as the responses received from the consultation and the equality analysis conducted by the department. We do not believe that greater involvement by the GEO would have had an impact on the decision to close the ILF or the court's decision. The court criticised the original analysis on technical legal grounds and made no findings on the merits of the decision to close the independent living fund. Crucially, the final decision was based on the new evidence and a new equality analysis.

**Baroness Campbell of Surbiton:** Yes, I am very aware of that legal decision. Tell me, who and which department has responsibility for the independent living fund now?

**Justin Tomlinson:** It is many of us.

**Baroness Campbell of Surbiton:** Yes, but one department has to have ultimate responsibility. Who is that?

**Justin Tomlinson:** The Department of Health makes sure that the Care Act 2014 is being looked after. The DCLG is responsible for the local authorities that are delivering. We are responsible for looking at those who transferred over, particularly as we go forward with the consultation, and Treasury are the people who will confirm ongoing funding.

**Baroness Campbell of Surbiton:** Of course, but who has the overarching decision-making power on the independent living fund? Who do disabled people go to when they want to collaborate and help with reforms in this area? It is a very interesting answer that you have just given me, because the natural assumption was, until very recently, that the Department of Health would have primary responsibility for this, as it very much sits within the Care Act. When asked, the Minister at the Department of Health replied, "No, this is not my responsibility. It is the responsibility of the local government department", at which there was a shriek of "What?" across the room. Do you not think this leaves disabled people confused and very much torn between departments?

**Justin Tomlinson:** To be absolutely clear, DCLG administer the funding for adult social care and former ILF users, via the local government finance settlement. The Department of Health have ownership of the adult social care policy and oversee the implementation of the Care Act 2014.

**Baroness Campbell of Surbiton:** To whom do disabled people go to negotiate for a wider understanding of what this fund is for and what its intention is? We all know that the UN

committee has come over here because it was brought to its attention that the decision on the independent living fund itself was possibly in contravention of Article 19 of the Human Rights Act. It is an incredibly important issue, so who is the Minister responsible who makes the final decision on this, in collaboration with all these departments?

**Justin Tomlinson:** First of all, on the UN convention, we strongly contest the allegations that were made to the UN. The Government undertook a thorough equality analysis and extensive consultation prior to closure and the Court of Appeal confirmed that this consultation was fair, proper and unbiased. It is an ongoing review. We will take part, but the ongoing work is confidential.

The point it comes back to is that it depends on which angle you come from. Is the Care Act 2014 being implemented and enforced? That is the Department of Health. Is it the day-to-day activities of the individual local authorities? That would be DCLG. We keep a watching brief and my role is predominantly to meet with stakeholders, who may raise concerns, and then I will take it to either of those two, depending on which angles it goes through.

I am encouraged. Some 94% of those who were existing ILF users already used local authority adult social care. Remember, under ILF, that was a discretionary service and significant changes were made in 2010, whereas local authorities are mandated through the Care Act 2014 for minimum standards. Therefore, there are stronger protections for those who utilise that service, and rightly, through the better care fund, through the opportunity for local authorities to have a social precept. There is access to potentially an extra £3.5 billion for adult social services each year by 2020. It is recognised that local provision is far better to match those local needs. This is something that we very much support.

**Baroness Campbell of Surbiton:** Absolutely. It is the same question: to which Minister would you advise the disability lobby to go when they want to negotiate on the independent living fund? It is jolly well not fair to ask them to go to all four.

**Justin Tomlinson:** They can come to me as somebody who can go and work across government. If the question is “How is the Care Act being implemented?”, that is the Department of Health. “How are local authorities sharing best practice? Are there inconsistencies?” would be DCLG. On the broader principle of funding for adult social care, it would be the Treasury.

**Baroness Campbell of Surbiton:** You are monitoring the situation, are you?

**Justin Tomlinson:** Very much.

**Q186 Baroness Pitkeathley:** I have one interest to declare. I am vice-president of Carers UK. We are back to taxis here. We heard from Sheffield Council that they impose disability training on taxi drivers before they can get a licence to work in Sheffield, but the Deregulation Act 2015 now means that drivers with no disability training and with a licence from elsewhere can come from other areas and work in Sheffield. Those in Sheffield who think the licence will be too difficult to get go and get it elsewhere; they do not do the specific disability training.

First of all, did you know that the Deregulation Act would have this effect or was that an unintended consequence? Could you ensure that all licensing authorities imposed similar conditions so as to be sure that taxi drivers knew all the issues with which this Committee is so concerned?

**Andrew Jones:** It is not the Deregulation Act, but the legislation states that taxi and private hire vehicle drivers must be fit and proper. It is a statutory test, although it is not defined in

statute. Licensing authorities have broad discretion to set their own licensing standards that ensure public safety and best meet the needs of their own local area. My department has issued a best practice guidance to assist licensing authorities determine their policies. The guidance states that all local licensing authorities should encourage their drivers to undertake disability awareness training. We know that a third of all licensing authorities in England and Wales now require their drivers to undergo mandatory disability awareness training.

Drivers are not restricted to work only in the area of the authority that issued their licence. The Deregulation Act did not change that. I am afraid the evidence you have heard from Sheffield Council is not correct. I am grateful to the Committee for highlighting this because I have now been able to write to the leader of Sheffield Council to correct the situation. This is with reference to Section 11 of the Deregulation Act. That allowed private hire vehicle operators to subcontract bookings to operators licensed by other authorities. It is that subcontracting that is the point here. In some ways, it is about enabling operators to provide a better service to their customers and to better meet customers' needs. It has not changed the underlying principle of where people can work.

**Baroness Pitkeathley:** Do you support the idea of imposing disability training requirements?

**Andrew Jones:** It goes back to the conversation we had earlier. The leadership we provide from the department is all about encouragement rather than mandate. We are seeking to encourage local authorities to take more responsibility for themselves through a huge devolution package. The devolution agenda is at the heart of the Government's work. We are not planning to enforce by mandate, though it is clearly good practice. We recognise that, according to the latest information we have, 34% of authorities have a requirement for all their taxi drivers to complete disability awareness training. The last data I have is from 2013, and it has gone up from 28% in 2011 and 30% in 2012 to 34% in 2013. I hope that provides a bit more clarity.

**The Chairman:** What I hear from you is a theme, which is understandable, of wanting to deregulate and get rid of red tape. What concerns me is whether there is a body that sits down and says, "Well, on the one hand this will alleviate the burden on a certain group, such as tribunals or landlords. On the other hand, look at the extra burden that is thereby pushed over on to the disabled. How do we balance it?". Is that exercise undertaken? Is there a group that does that?

**Nicky Morgan:** I am sure there is great scrutiny. It is done through equality impact assessment work. When Government make decisions about repealing things or changing things, the equality impact assessment is done by the relevant department and the relevant Minister, looking at relieving somebody of one burden, what that does and the wider equalities impact.

**The Chairman:** If something is not brought in to force, like the taxi regulations, there is therefore no equality impact assessment, is there? They just languish.

**Nicky Morgan:** I am happy to take advice, but I think an equality impact assessment would have been done when the original Act was published and passed through the House. I think you are right to say there would not be a separate one done for uncommenced provisions.

**Q187 Baroness Thomas of Winchester:** I must say, in my experience of equality impact assessments, some of them are very good, but, to be honest, some of them are tick-box exercises. For example, you might see something that is supposed to have been

rural-proofed and yet it clearly has not been, in my view, or there is no evidence that it has been. I am not sure that I think they are the answer to everything.

I must give you some interests. I receive DLA. I am a trustee and vice-president of Muscular Dystrophy UK. I am a member of the disabled access committee for Lord's Cricket Ground and I am a patron of Thrive. Now, this is about local authorities and the licensing powers again. They could use their licensing powers to force licensed premises to comply with the Equality Act, if this was made a specific objective under the Licensing Act. It would mean a change to primary legislation. Witnesses certainly support this. Do you, Ministers?

**Nicky Morgan:** It is a very interesting idea and we will read with interest the conclusions of this Committee. Licensing and the Licensing Act is a matter for the Home Office, so I am going to respond on their behalf. Clearly, your report will be read across all relevant government departments and we will respond accordingly. We have to be careful not to duplicate requirements in the Equality Act 2010 that licensed premises, in terms of those providing public services, are also subject to.

My understanding is that some local authorities already include awareness and compliance with equality law as a consideration when inspecting licensed premises. One example of that is Camden Council, which has specific wording in its policy that talks about enforcement decisions and actions being made with due regard to equal rights and anti-discrimination legislation. Again subject to the report from this Committee, officials in the Government Equalities Office could liaise with the Home Office officials to consider the scope for spreading good practice.

I have to say I am instinctively against adding more and more into legislation because I do not think it always changes practices. Exactly as you have said, it can end up with some sort of tick-box exercise without people really thinking about making their premises or the offering of their services as accessible to everybody as possible.

**Justin Tomlinson:** I am particularly interested in this one, because I made a guest experience on "Watchdog". I was very excited; I am a big fan of the TV programme. I suspected that they were not inviting a government Minister on to do a film of something that was wonderful and to thank me for the hard work we had done in that area. It was on accessible venues ahead of the festive period, particularly restaurants. I presumed that the big chains would have been pretty good and the small and medium-sized independents would have been pretty terrible, and that would have been the nature of it.

That was not the case. There were two particular restaurants that deemed it acceptable that the disabled toilets became also an office for the managers and storerooms. This was all filmed. It was clearly unacceptable. There were also lots of examples of where the intentions were right, ie with hearing loops, but they had not used them so they did not know how and the batteries had gone. They had ramps; they used the ramps wrong.

This is, in effect, a bit like where we were with the Premier League. We have had a meeting already with officials to work out whom we need to talk with. We are organising a round table in the new year, with representatives of the industry and people with direct experience in this area, to look at how we do this. My hunch is that there are a lot of laws already in place. I think the point of the question was: are these being enforced? We need to go and have a look at that. We need to raise this. It is a good example of where I will be doing cross-government work in the private sector.

What is happening is clearly unacceptable, as I said on "Watchdog", partly because it is £212 billion-worth of spending power and these venues are the first to complain that they are not



making enough money and they are turning business away. Secondly, I do not genuinely believe that industry wakes up in the morning and says, “Do you know what? Deliberately, we are going to make our facilities inaccessible”, but poor training and poor awareness is the key problem.

To conclude on this, the comparison here is that I am also responsible for health and safety. I am the Minister for health and safety. If we go back in time, businesses really did not like health and safety and, in fact, they switched off and did not engage. A decision was taken to simplify communication. I know we talked earlier about whether we have the tombstone or whether we make it clearer. We went down that way. They were a lot more proactive on the visits and, rather than the surprise enforcement visits, they would come, give advice and recognise. If they did not respond, we would be very tough in the enforcement, but, unsurprisingly, satisfaction and engagement went up. Our standards of health and safety in this country are now so good that we export our expertise in this particular area.

I am conscious that there are individuals, such as the licensing officers who tour these venues, who could say “Do you have your hearing loops? Are the batteries live? Can I check your disabled toilets?”. We may not have to go to court. At the moment, we are relying on angry customers going through the court process, when, more often than not, a prod in the right direction will solve this. I was very unhappy with what I saw in that film and I am keen to take action in that area.

**Baroness Thomas of Winchester:** That is very encouraging. I am thinking of a lot of pubs and pub restaurants that are totally inaccessible. Sometimes they are in listed buildings and the whole time I get told, “We cannot do anything about access or about disabled toilets, because we are a listed building”. That is not true, as you know, but it needs to be got out to these places that they can do something. I just wonder if local authorities all round the country could not be told about some of these myths, like health and safety myths.

**Justin Tomlinson:** That is a really important point. I have to say, in my very first graduate job, I was a nightclub manager, much to my mother’s disappointment, and we were fully accessible. It did not cost a huge amount to make ourselves fully accessible. Groups go out and, if one member of a group cannot access a venue, none of that group goes anywhere. Commercially, we benefited hugely from that.

To the point on listed buildings, you are right. Often, it is too easy to say, “We cannot do that”. Actually, there are lots of examples of listed buildings that have been able to make reasonable adjustments. I am very excited that we have the Built Environment Professional Education Project, which is looking at the future architects, chartered surveyors, build professionals and all these very clever people. It is now being embedded. Every one of the building professional organisations has signed up. It is embedded into training courses and universities will have modules on access, so it becomes a given when that next generation is doing things. We now have prizes for this.

It seems a small thing, but that has really focused minds, building on the legacy of the Paralympics 2012, where we showed that you can make huge accessible facilities commercially make sense, so that becomes the given, the norm. That is something we have helped implement just by looking at this and saying that, while we can always do things as a Government, the long-term solution is that it is embedded into their knowledge and it becomes a given.

**Q188 Baroness Thomas of Winchester:** Could I just go off-piste about this Disability Confident campaign, which I know you are keen on? This is about workplaces being

accessible. I know that disability covers many different disabilities and there are a lot of people who are disabled and want a job who are mobile, but this is particularly about people who may be wheelchair users. An awful lot of buildings that businesses are in around the country are still not yet accessible. Even if you make employers aware of how very, very useful a lot of disabled people would be to their businesses and how they would enhance them, if they cannot get in and if there are no disabled toilets, for example, that is not going to be possible. An awful lot of employers will not have these facilities. What can you do about that particular problem, as well as making employers aware in their heads of the landscape that they are operating in?

**Justin Tomlinson:** This is a big part of my work: the commitment to halve the disability employment gap. I want to recruit you as part of my team to advocate this to officials.

**Baroness Thomas of Winchester:** I will do that any time.

**Justin Tomlinson:** It is very important. The whole point of the Disability Confident campaign is that it recognises a lot of businesses simply lack the confidence to employ somebody with a disability. The truth is that there is a huge wealth of talent out there. There are a lot of myths— for example that, if I employ somebody with a disability, they will have higher level of sickness. It is actually the reverse. They are often the keenest people to come to work. They have a huge amount of expertise. The lion's share of disabilities are acquired, so these could be people who have been in professions at high levels in their career, have a disability and suddenly are forgotten by the workplace. For the sake of the economy, for the sake of businesses who are telling us there is a skills shortage out there, they just need to make some small changes. I can say this with authority: I have employed people with disabilities, to my benefit.

The Disability Confident campaign is about signposting businesses, particularly small and medium-sized businesses. As a rule, big businesses are pretty good. They have HR teams, personnel teams with great expertise. They do good training and employee engagement. It is those small and medium-sized businesses that provide 45% of the jobs in the economy. It is signposting them to help. It is things like Access to Work, which will pay for the physical changes—ie, getting disabled toilets, getting ramps into an office—but too many small and medium-sized businesses are unaware of this.

In the new year, we will be upgrading our communication on Disability Confident and we are changing everything on the website. We have just tested something for the Disability Confident events we do. We used to invite the great and the good in a town, have three and a half or four hours of presentations—it was pretty dedicated—and everybody would agree, but they were already the converted. We did a reverse jobs fair about a month ago. We had 25 different organisations that support people with disabilities to go into work. They had a stall. We had no formal speeches, so busy businesspeople did not feel they would be trapped for four hours, so they could come by. We offered tea and cake as a good incentive. We had 70 different businesses come along, 250 businesspeople, who could come and say, "I am looking to recruit. These are the types of skills I want", and these organisations would say, "We have people. You will be concerned, but we will sort it. We will provide the training. Access to Work is a scheme. We will fill the forms in for you".

Already, within a month, a number of individuals desperate to find work are now in work and helping us towards our commitment to halve the disability employment gap. In my stakeholder agreement, engagement is one of the key things I am repeatedly asked about, particularly by younger people. Disability Confident is crucial.

**Baroness Campbell of Surbiton:** Minister, I really do not want to burst your bubble, but, as you were talking there, I was transported back to my days at the Disability Rights Commission, where we were doing exactly the same thing. We held job fairs. It was like you were there beside me. What makes you think that your Disability Confident programme, this time around, will work? You have dedicated organisations doing this. I trained 120 trainers to go round the country to talk to employers about being disability confident, when I was working in local government 25 years ago.

What makes you think that you will change people's minds now? Is it not also time to ramp up the stick? The carrot is all very well, but the disabled people who have been coming to see us over the course of the weeks say, "Awareness helps, but it will not change things substantially. We must enforce the law". That is where they feel the Government are letting them down. Actually, my question is to all of you. It is carrot and stick. I feel there are too many carrots being handed around at the moment. Where are the sticks?

**Justin Tomlinson:** That is an important challenge, because, in all Governments of all political stripes, there are initiatives. We are not the first Government that suddenly said, "This would be a good thing to do". It is a really important challenge you have made, but there are differences.

First of all, there is the significant increase in funding to extend Access to Work to up to a further 25,000 places. We are already making good progress: 339,000 more people with disabilities are in work in the last two years. That is a trend we want to continue. We are reforming the Work Choice programme with the Work and Health Unit, and we will have the White Paper in the new year. I am already lobbying on that front. I am not the ultimate decision-making here, but the clear direction of travel, from talking to stakeholders and the current programme providers, is that there will be greater local flexibility so they can match individual needs. The potential jobs in my constituency will be very different to the two other Ministers here. It needs to recognise that. Too much of what we do at the moment is a "one size fits all".

On greater engagement, I accept the point that there has always been business engagement. There has not been enough with those small to medium-size employers. There is a lot of business engagement with big business, which is receptive and everybody feels great: "Yes, we will carry on doing what we were already doing, but we will put a new badge on it because it is a new Government". It is about getting to those busy businesspeople, that 45% of jobs.

In terms of the questions, we are going to the big businesses and saying, "Right, it is good that you are already doing this, but we will now challenge you further. You have supply chains that you can go and question. You can extend this. When you do your training days for your staff, why not open that up to your supply chain? If you are training 100 of your staff, your supply chain could come along". Another 20 people in a room is not going to add an expense to it.

There is a lot more we have to do, but I genuinely believe in the White Paper that is coming forward. It recognises that we should not work in isolation as DWP and the Department of Health, because this addresses health challenges that individuals will face at the same time. It is about getting support right at the beginning: ie, if you have a mental health condition, do not wait nine months to do that.

**Baroness Campbell of Surbiton:** Will enforcement be part of that White Paper? Will enforcement of the Equality Act in all areas be part of the White Paper?

**Justin Tomlinson:** Yes.<sup>280</sup>

**The Chairman:** We are coming to that.

**Q189 Lord Harrison:** Secretary of State, at £1,200 a throw for tribunal fees, is it not the case that disabled people find it too expensive to enforce their rights through the courts? Is that right, and what are you going to do about it? To show you the parlous effect it had when you bumped the fees up in March of this year, Sir Brian Langstaff, the president of the Employment Appeal Tribunal, has said in evidence to the Commons Justice Committee that there has been a cliff-face drop-off in the number of applicants. This is a parlous situation.

**Nicky Morgan:** I want to pick up where Baroness Campbell left off, on enforcement. We were talking about carrots and sticks. The first thing we want to do is change cultures and behaviours, and I am not always convinced that sticks and enforcement are the right way to do that. They are a necessary backstop. I say this as a former solicitor. At the end of the day, we would much rather have less discrimination and, therefore, less reason for people to have recourse to tribunals or to the courts. That is what we are working on from one end of Government.

**Lord Harrison:** I will stop you there. Are you saying that 50%, which is the measure of the drop, are from bogus claimants? That was the implication of what you were saying.

**Nicky Morgan:** I do not understand how you could possibly get that implication whatsoever from my remarks.

**Lord Harrison:** You are using “sticks” and “carrots”.

**Nicky Morgan:** I did not use any statistics at all.

**Lord Harrison:** You had the stick of increased fees in March and then you had the drop-off.

**Nicky Morgan:** No, the stick that Baroness Campbell was talking about—

**Lord Harrison:** No, I am talking about the stick of the increased fees in order to make an appeal.

**Nicky Morgan:** Forgive me, Lord Harrison. I was not talking about the stick of increased fees.

**Lord Harrison:** No, but I am.

**Nicky Morgan:** Let me answer the question and then we can have a debate. This is beginning to sound like an EU Select Committee. I have happy memories of that from my days in the Treasury. What Baroness Campbell was talking about was the stick of things like the Equality Act and other previous legislation such as the Disability Discrimination Act—passed, I should say, by the Conservative Government in 1995. We would like to see that people do not have to go to court because they are not suffering discrimination in the first place. Until we get to that happy stage, of course there will be times when people will need to enforce their rights. Tribunal fees are a matter for the Ministry of Justice. I would reiterate what I said about the Home Office. All government departments will look at the report prepared by this Committee, but let me give you the view we have from them. On 11 June, we announced the start of the post-implementation review of the introduction of fees in the employment tribunal. The review will, as far as possible, consider the impact fees have had on those with protected characteristics and the type of cases they bring. Lord Harrison, we are going to come on and talk about other forms of people getting redress and one of those, clearly, is

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<sup>280</sup> See however the subsequent correspondence from Justin Tomlinson MP (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/26706.html>)

mediation and the use of services such as ACAS, which must be preferable to people going to court.

**Lord Harrison:** Given the serious position that has been outlined in evidence from Sir Brian, would you consider abolishing tribunal fees for discrimination claims that the disabled feel, despite the off-putting £1,200 outlay, they still would need to pursue?

**Nicky Morgan:** The Government should not consider abolishing anything before we have had the review and seen its conclusions, which we will do.

**Lord Harrison:** You have to implement and introduce things before actually seeing the effects of them. Did you expect that 50% fall-off?

**Nicky Morgan:** I was not a Minister at the time. I will have to go back and look at the documentation produced to see what the anticipated effect was, but part of this that we are going to come on to talk about is the other forms of redress that people are using instead. It must be preferable for people to use mediation or ACAS than to go to a stressful tribunal. I say that as a former solicitor.

The other point I would like to pick up from your question is that legal aid continues to be available to provide access, subject to means and merits. It is available particularly for those with disputes about local authorities and community care services for disabled people, and, of course, for discrimination claims relating to contravention of the 2010 Act.

**The Chairman:** What about qualified one-way costs?

**Nicky Morgan:** I am sorry. Did you ask that question, Lord Harrison?

**Lord Harrison:** I did not, but would you like to go on to it?

**Nicky Morgan:** Absolutely, yes. The Government will consider the possible extension of qualified one-way cost-shifting to other categories of law, including claims made under the Equality Act, in due course. We want to see how that works, first of all, in personal injury claims, but it is something the Government will consider.

**The Chairman:** You mentioned a review. When will it be complete?

**Nicky Morgan:** I do not have an exact timeline, but it was launched on 11 June. One would hope it would be complete pretty early on in 2016, but I cannot give you a date. We can certainly ask the Ministry of Justice to update the Committee.

**The Chairman:** Is there something specific in it about disability?

**Nicky Morgan:** Again, I would have to take advice. We are looking at the impact of all fees on claims. It would include disability as well as things like maternity discrimination, which is another part of my portfolio.

**The Chairman:** It would be important for us to be able to pick out from that the picture concerning disability.

**Nicky Morgan:** Yes, absolutely.

**Q190 Baroness Jenkin of Kennington:** I have no relevant interests to declare. My question is about the alternatives. Do you have any ideas about how you might extend the mediation? Although we have had mixed views about the creation and funding of a disability ombudsman, I wonder whether you have any thoughts on that.

**Nicky Morgan:** We welcome mediation as an alternative to legal action. The system of mandatory referral of any discrimination claims to ACAS was introduced by the previous Government. It is enabling many disputes at work to be mediated without recourse to the law. Interestingly, 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.

On the issue of the ombudsman, I note that a number of expert witnesses—including Mr Martin, the deputy Parliamentary and Health Service Ombudsman—did not think that creating a new ombudsman was a good idea. We have, as a Government, been consulting on proposals to create a single public sector ombudsman, of which I personally am supportive. I called for it as a Back-Bench Member of Parliament and I am delighted to see that is something we are seriously considering.

The issue is not a lack of provision of ombudsman services at the moment. There is a debate about how proactive ombudsmen should be. The more proactive they are, the more claims they attract and, therefore, they are not dealing with the most serious claims in a responsive way all the time. I would like to see how the single ombudsman idea develops and make sure that people are aware of the ombudsman. That is part of it: that people are not aware of the new ombudsman services. That is when they come to local Members of Parliament and we get involved in helping people access ombudsman services.

**The Chairman:** Do you agree that there is a need to help the disabled get their rights in a way that is out of court and cheap?

**Nicky Morgan:** Of course, yes. It is better to keep people out of the court system, which is stressful, time-consuming and can be expensive for all parties. There must be better ways, and mediation is certainly one of those ways, of helping people to achieve their rights.

**The Chairman:** What about a specific disability mediation service?

**Nicky Morgan:** It is a very interesting idea. I would like to see the evidence that ACAS is not doing the job properly. The more different services you set up, the more bureaucracies you create and the more you are taking away proper help from the front line.

**The Chairman:** ACAS is of course only about employment, is it not?

**Nicky Morgan:** It is, yes. That is right. Of course, that is what we are talking about a lot of the time in terms of discrimination claims.

**The Chairman:** Yes, but I was thinking about people who are turned away by taxis and restaurants and so on, who need a champion. There is a gap there.

**Nicky Morgan:** I very much look forward to reading your report's conclusions.

**Q191 Baroness Thomas of Winchester:** This question follows on from that very much. It is about the Equality Advisory and Support Service helpline. There was a decision by the EHRC to outsource advice on equality and human rights. We wonder why it was thought that removing this function from the Equality and Human Rights Commission would provide a better service. The existing Equality Advisory and Support Service helpline has quite clearly been a failure. Would you ask the EHRC to bring the service back in-house, as it was when the DRC were running it? That was a very good and helpful service, and it really made them understand which cases to focus on and champion. The helpline was an intrinsic part of knowing what was going on. There seems to be a terrible disconnect between EHRC and the Equality Advisory and Support Service. I wonder what your views are.

**Nicky Morgan:** First, in all my dealings with the EHRC, I would not say they are in any way unaware of what people are concerned about or in which cases to intervene. They seem to be very on top of things to me. I know you have heard evidence about the EASS. I would dispute the contention of people who have called it a failure. I would not agree.

**Baroness Thomas of Winchester:** That is the evidence. We are going on the evidence.

**Nicky Morgan:** Of course, yes. The EHRC's helpline was criticised. The Disability Alliance described its performance in 2010 as "hugely disappointing". When we reviewed it in 2011, under the coalition Government, it was costing £281 a call,<sup>281</sup> which was more than double the cost of any benchmarked comparator. Again, if we are going to spend lots of money on that, we are not spending money on front-line support for people. It also was not integrated into some of the EHRC's key regulatory functions and it had no systematic data on customer satisfaction.

One of the issues was about the sharing of information. The EASS is now providing the EHRC with a substantial volume of information every month. There were 351 referrals between October 2014 and September this year, up from 79 in the previous 12 months. It is inevitable that a new service is going to take time to build those links and get up and running, but it is now doing that. It is doing it well and efficiently, and sharing that information. I would be reluctant to change things immediately, but, of course, we will look at the evidence. It is not something that fills my inbox or my postbag, I have to say.

**The Chairman:** Do you know how much it is per call under the new service, if it was £281 under the old one?

**Nicky Morgan:** I do not think I have figures. Unless someone sitting behind me has a number, I am very happy to update the Committee with that information.

**The Chairman:** If it was cheaper, that would be important, but, if it was not, that would also be important.

**Nicky Morgan:** Let me ask for that information so the Committee has it for the final report.

**The Chairman:** I should say that the evidence we have had has been overwhelmingly against the efficiency of that new service.

**Nicky Morgan:** We have a lot of positive comments, and we can all trade those, but let me find that information about the cost of the call.

**Q192 The Chairman:** One of our disabled witnesses said to us recently that, over the last 50 years, it has become unacceptable in society to discriminate against women, ethnic minorities and so on, but discrimination against the disabled has remained, perhaps weaker than before, but it has remained as the last area where discrimination is common. Is that true? If so, what more can you do about it?

**Nicky Morgan:** The Minister may have views. Sadly, discrimination still remains in many different forms. While I agree that discrimination on the grounds of race has absolutely changed in society and phrases we might have heard even 20 or 30 years ago are now deemed absolutely unacceptable, there is still discrimination against women; there is, sadly, discrimination against those with disabilities—both physical and mental disabilities. Mental health is an area that I have particularly worked on. People are still very nervous about admitting to employers or anyone else that they have mental health issues, which is something we need to confront.

Of course, as Equalities Minister, I am also responsible for our policy on the lesbian, gay, bisexual and trans community. I am sad to say that discrimination against them still exists, too. While I absolutely respect the views of those who have given evidence to this Committee to say they are still suffering discrimination, sadly, we see discrimination, so

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<sup>281</sup> See the subsequent correspondence from the Rt Hon Nicky Morgan MP (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/27020.html>)

there is very much still a need for Equalities Ministers. As Justin said at the beginning, we want equalities to be mainstream throughout all government departments. I am very proud of the fact that, when we answer women and equalities questions in the House of Commons—it is this Government that set up a Women and Equalities Select Committee—it is Ministers from across government departments who answer the questions. It is not something that is left to only me and my fellow Minister for Women and Equalities.

**Baroness Thomas of Winchester:** Why do you think disability hate crime has gone up?

**Justin Tomlinson:** I have had representations on that. Partly, the good side of that is that there is greater confidence from individuals to report it. A number of stakeholders have raised this with me and—again, through my cross-government work—I took this to the Solicitor General, who was determined that this was an issue we should investigate. A number of round tables have taken place. We have had representatives from the Ministry of Justice and all the areas connected to this, along with individuals such as Stephen Brookes from Blackpool, who has done a huge amount of work in that area, with additional training of the police forces and the court system, going out to the stakeholder representative groups on behalf of their members to say, “Look, we can have the confidence to report things and these will be taken seriously”. It is an incredibly important issue and it is one I feel we are making progress on.

Going back to the broader point, a huge amount of progress has been made, but there is still a long way to go. Part of that is about making sure there are stigmas removed. The point was raised about mental health in work. We lost 300,000 people last year with mental health conditions from work. A lot of those will have never mentioned anything, because they will have felt it would have impacted on their work. In the work of halving the disability employment gap, people are relatively confident to declare a disability in the benefits system, but once they go into work those figures fall away as they often feel it will impact on their ability to progress career-wise. We have to remove that stigma. We have to give people confidence. It is good for businesses to recognise the individual challenges that people have. If they make small changes, they could utilise their strengths, and there is a huge amount of support there.

A lot of this is making sure more and more people see this. The word “mainstream” is really crucial. I will give one example of this. This week, I met with representatives from the National Citizen Service. This is a scheme that was brought in by the last Government for young adults. As they are in their final throes of school, before becoming adults, they go on an intensive summer programme doing community engagement, team-building and confidence work, making them eminently more employable. It is making sure that those with disabilities have the same opportunities, that they are part of that community engagement, so that the next generation of people, who can either do good or do bad, have an opportunity to see the real talent that is out there. That is one very small example of how, as a society, we are changing attitudes. We continue to do this. It will get better, but there is still a long way to go.

**Andrew Jones:** I entirely agree with that point. Our society has changed fundamentally over the past few decades, and it is much, much the better for it. I went to school in Bradford in the 1970s, when the population of Bradford was changing widely. The sorts of comments you might hear on race in those days would be inconceivable to hear now. But to think that discrimination exists only in the world of disability, I am afraid, is simply not true. There is far too much discrimination and prejudice within our community. You only have to look at the



correspondence every Member of Parliament will have received regarding the Marriage (Same Sex Couples) Bill. Much of that was nothing to do with marriage; it was all to do with prejudice. It exists all over the place.

We see events that capture people's imaginations and change attitudes, such as the magnificent Paralympics in 2012. The way the population of the country responded in supporting our athletes and athletes from across the world was absolutely magnificent; it was almost more exciting than the Games themselves. I am very positive about this. Where we do see prejudice, we should challenge it, and we should not be in any way bashful about getting out there and saying so. We should be positive about the progress we have made, but not complacent, and we should not think it does not exist, really quite widely.

**The Chairman:** Thank you all very much for giving us such full and detailed evidence. We are pleased to see your commitment. Even if we do not always see eye to eye about how we are going to go forward, we have faith and confidence in your commitment to improving life for the disabled. We hope you will fight on and achieve that for them. Thank you very much indeed.

*15 December 2015*

## **Anna Kennedy – Written Evidence (EQD0023)**

### **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?

**Our experience as a charity is that the enforcement of the Equality Act 2010 (the Act) has not made any material positive difference to eradicating the difficulties that disabled people who have an autism spectrum disorder experience. That said, we do believe that the creating of a unifying statute was a very positive step. Our experience is unfortunate because accompanying the Equality Act 2010 there has been some excellent guidance i.e. codes of practices etc. which explain the scope and implementation of the Act.**

2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation

**There are three areas we would like to draw the Committee's attention to in relation to areas of the Act etc. which could be strengthened. These are:**

- a) **The definition of disability could be developed to ensure that people who do comply with the definition given in s6 of The Act do not fail to persuade to provide the relevant body, be it an organisation or a court, that they should be afforded the protection of the statute. To illustrate, one of our members was advised by another barrister that the best way to attack a person's claim of disability discrimination is to challenge their assertion that that they have a statutory disability. Given that the burden of proof is on the disabled person (who are often forced to act alone) this tactic can prove "fruitful". On a more positive point, the courts have provided some assistance to a person who claims they have a statutory disability, see the following form Langstaff J in *Aderemi v London and South Eastern Railway Ltd* (Disability Discrimination [2012] illustrates current thinking:**

***"if any question of the scope of interpretation were to arise, we should give to this statute an interpretation which is in line with the intent behind it. The purpose of the Equality Act is to remedy perceived discrimination where it exists and to remove the scourge and evil of discrimination because of a protected characteristic so far as may be done. Where a broad definition such as that of disability is adopted, that requires that a broad approach should be taken to what lies within it"***

- b) **It is unfortunate that that more emphasis is not placed on the duty to make reasonable adjustments being a pre-emptive duty. It could be argued that, in relation to public bodies, this emphasis is provided by the Public Sector Equality Duty (PSED), albeit in our experience this is not always complied with. Whilst**

**we accept that making the duty a pre-emptive duty has its challenges, it is an objective that should be reasonably pursued.**

- c) In relation to the Act, schools do not have their own Code of Practice. A draft Code was issued but the progress of this work was truncated. Given our extensive experience in this area in our opinion this was a mistake.**

### ***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 sportsgrounds?

**In our experience the duty to make all reasonable adjustments to remove any substantial disadvantage that arise due the effects of a person's disability is not well understood. To give this a sense of perspective, if one were to score the level of understanding out of 10 (with 10 being a very good operational understanding), a score of 5 would be being generous. To further develop this, in many organisations there is often some people (perhaps in the Human Resources Department) who understand the duty, but at the operational level at which many people come in contact with, the duty is not well understood. This leads to the foreseeable difficulties we address on a day-to-day basis as a charity.**

4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

**In our opinion the Act is very clear about what constitutes a reasonable adjustment and the guidance etc from the Equality and Human Rights Commission is very good. The difficulties which people with an autism spectrum disorder experience relate to relevant individuals having the wrong value set and also poor training.**

### ***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?

**One area in which we are very active is education. In summary, our experience is that the PSED has not been effective particularly in relation to schools (including academies), which is unfortunate. Our experience is replicated in the area of employment. It is regrettable, but complying with the PSED seems to be little more than a box ticking exercise by public bodies.**

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?

**We would refer you to our answer in 5. We just don't have a significant corpus of evidence which confirms that the PSED has had the significant beneficial effects parliament envisaged. Indeed, it seems that public bodies often put more effort into proving what the duty doesn't require them to do rather than embracing the spirit of the underlying legislation.**

### ***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?

**In our experience this is not effective. Our experience of raising matters with government ministers has had no effect, indeed requests can be ignored. We accept that the experiences of other may be different.**

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?

**As stated previously, the EHRC produces some excellent disability related publications. That said, in our experience the requests for intervention by the EHRC have not been successful. This is disappointing.**

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?

**Of course such bodies could play a more significant part, but we are unclear as to how beneficial this would be. Moreover, even if such bodies were involved, we would ask the question "how would this promote the values of commitment towards disability equality"?**

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?

**We have significant experience in this area. As space to answer is limited we will provide a bullet point response:**

- **Costs are a disincentive in the pursuance of this option. Costs are made up of legal representation and, in the case of employment and county court etc, fees. Notwithstanding, there is some help available via legal help etc., the help is limited and constrained.**

- **There is often an asymmetry between the parties. A good example would be public bodies who effectively have unlimited resources (provided by the taxpayer) and the disabled person who often has few if any resources. Indeed, as far as public bodies are concerned, we would submit this is a form of moral hazard, meaning the relevant body to not face the consequences of their actions since the resultant costs are paid for by the public.**
- **Litigation is frequently a highly unpleasant experience, particularly for the litigant in person. In our experience the courts do little if anything to mitigate this unpleasantness, albeit it could be argued that prescribed procedures allow for few adjustments to be made.**
- **In some jurisdictions, it is worth asking the question whether or not the relevant members of the judiciary are sufficiently competent in terms of their understanding of the legislative framework.**

**In summary we would submit that generally, litigation is not accessible to people with disabilities.**

11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

**We have addressed this in our previous answers, but if we were to summarise:**

- a) The duty to make reasonable adjustments should be more of a pre-emptive duty**
- b) To improve society's commitment to disability equality, albeit we accept this is an objective with a very wide scope.**
- c) To develop an alternative to litigation, which often can only just result in the award of damages if successful. People with autism often just want to be included and when problems arise the defined intervention of a third party with a clear role could be beneficial. We understand that the Equality and Human Rights Commission has a role here but we submit that this could be significantly enhanced with the result that a less destructive and less costly solutions can be found to areas of potential discrimination.**

*17 August 2015*

## **Kidz Aware – Written Evidence (EQD0049)**

### **Please let me introduce Kidz Aware and the barriers we are facing**

Our ambitions are simple. We want families with disabled children and disabled adults to have a voice, and to be part of a wider solution that supports disability at every level of society. We are at the forefront of creativity and innovation in services to help raise awareness about the issues affecting children and adults with disabilities, their families and carers.

Kidz Aware was founded in 2006 and we have developed a range of solutions since we first started our work. Based in Wakefield, we now work across other Yorkshire Local Authorities areas with a mission “to ensure that all children and adults with a disability, and their carers have the opportunities to achieve their aspirations in life.”

We self fund our services as Wakefield council once funded our educational programmes for two year back in 2009 with excellent results but with cut backs they stopped the funding , which left the charity struggling thou the council are very much aware of our service sand the good work we do , they still refuse to fund any of our services and in the past have stopped us receiving funding from Children in need and Comic relief, the real reason is our organisation stands up for the rights of individual with disabilities we provide much needed services and help many hundreds of families who fall through the gaps in services .

Thou the council are aware of the issues these families affect they are reluctant to help us in any way, so we fund raise every weekend and with the support of volunteers and small grants received we have been able to keep our doors open, however as you may see with just a few of the case issue we are dealing with you may ask the question why not support a organisation that is helping so many families not short term but for as long as they need our support, our positive outcomes and the way we deliver the services have proven to be successful yet the council are still reluctant to work in partnership with us, but the question is why are they not supporting these families , why are they letting so many disabled individuals suffer, not receive any support this leads to depression suicide separation of families or as Tracy’s situation been put into a care home at 36 year of age all because of the neglect of the council partnership with services .

Over the last the last eight years we have supported over 600 families of disabled children and disabled adults, every day families with disabled children and disabled adults face a range of difficulties that most other families don’t need to think about. As well as the practical challenges of managing a physical or mental disability, these families regularly support their children to overcome the emotional distress caused by bullying and discrimination. Whilst society has made significant strides in recent years, discrimination, racism and bullying still occurs all too frequently, both across our education system and at a community level. For disabled children and adults and their families. This can cause as much distress as the impact of the disability itself.

At this moment in time we are working with over a hundred parents of children with a hidden impairment they are all having the same difficulty accessing a diagnosis accessing mental health support help in learning what to do when the young person becomes violent

to them , how to ensure the young person needs are being addressed many families who ask for our help haven't even been told what the condition is or what to expect instated they have to wait up to two years to get an assessment and then longer to be seen by CAHMS to help them support the young person , thou we have attended so many meeting and have fed into so many policies shared good practice with services providers we are still seen as the enemy , instead of enabling us to share good practise use our many years if skills and knowledge and the trust of so many vulnerable families I ask you what can be done

Our work is delivered fewer than three strands:

We deliver direct support for parents and carers, and targeted interventions with key partners.

We provide educational programmes addressing Bullying Racism and Discrimination in young people's settings.

We provide practical support and guidance to disabled children and disabled adults and carers, whilst supporting the organisations that support the individual's development

A significant proportion of our work is targeted at working with schools and partner organisations to raise awareness of bullying racism and disability. We deliver practical support that helps organisations provide a safe and supportive environment for children and adults with disabilities. We routinely support primary and secondary schools to implement practical steps that address peer to peer bullying? For Kidz Aware, education is the key to addressing the challenges that disabled young people and their families face. We run a number of programmes for schools that allow children and young people to explore the realities of disability, bullying and racism.

Our programmes are founded on the Award Winning Pacer Centre in Minnesota, America. They support schools to meet statutory legislation requirements, demonstrating the school's commitment to delivering an outstanding approach to the behaviour and safety of pupils at the school, as set out in Ofsted's School Inspection Handbook.

The "Count Me In" programme is aimed at educating children from the age of 2-18 about issues affecting children with disabilities. Delivered differently to Key Stage 1-4, this overarching programme helps schools and pupils ensure that disabled children are not excluded from life experiences. Count Me In helps pupils of all ages explore our human nature responses to disability, including discomfort, embarrassment and lack of understanding about disabilities and health conditions.

Our "Lets Prevent Bullying" puppet programme is aimed at educating primary children about the issues affecting children with or without disabilities. Delivered in a large scale puppet medium, this workshop programme is tailored to younger children at Key Stage 1 and/or Key Stage 2.

Our "Accepting Difference" Programme is targeted at educating older children aged 10-18 and provides the opportunity for young people to explore a more complex range of issues related to disability, discrimination and racism.

Thou these programmes have been a great success we have helped educate over 34,000 young people many schools cannot afford the small charge or have decided they do not want to acknowledge that many disabled young people are being bullied are isolated in schools settings or that teachers are struggling to cope with the young person disability

### **Our Values**

All people are different, and we recognise the powerful potential that differing views, thoughts and ideas can have in helping us achieve our goals. We will be **EMBRACING** of all people and communities who share a common desire to support improvements in services and opportunities for people with disabilities and their carers.

**EQUALITY** is for all people to see people rather than their disability, recognising that people with disabilities aspire to achieve the same things in life as everyone else. We will always work with all people – as service users, partners, suppliers and staff – in a way that recognises their right to equal treatment.

We aim to be an **INSPIRING** organisation, encouraging people to engage in our services, becoming new partners and working with us to bring out about change.

Every day we are inspired by disabled people and their families. Their determination and spirit encourages us to continue with our work, striving to deliver an outstanding quality of service.

### **The Facts**

It is estimated that 1% of the child population in the UK has a very marked physical or learning disability and about 15% of the child population will have, at any time, a long-term medical condition. In Wakefield alone, where we are based, there is the highest rate of disabled children in the country.

1 in 10 children and young people aged 5 – 16 suffer from a diagnosable mental health disorder - that is around three children in every class.

Between 1 in every 12 and 1 in 15 children and young people deliberately self-harm  
There has been a big increase in the number of young people being admitted to hospital because of self harm. Over the last ten years this figure has increased by 68%  
More than half of all adults with mental health problems were diagnosed in childhood. Less than half were treated appropriately at the time.

Nearly 80,000 children and young people suffer from severe depression  
Over 8,000 children aged under 10 years old suffer from severe depression  
72% of children in care have behavioral or emotional problems - these are some of the most vulnerable people in our society  
5% of imprisoned young offenders have a mental health disorder. Many of them are struggling with more than one disorder<sup>1</sup>.



Nevertheless, there is a lot of good news and there are numerous government agencies, charities and key partners who consistently strive to support disabled children, adults and their families. Successive governments continue to demonstrate their commitment to developing an inclusive society, developing new legislation, policies and programmes. The Prime Minister’s Strategy Unit’s report entitled ‘Improving the Life Chances of Disabled People’ states:

**“Disabled young people hope for the same things as other young people: to travel, get a job, start a family and live independently. They want a voice, a leisure and social life and to be involved as active, valued citizens.”**

We are committed to achieving this aim. There is a significant amount of work to do on a local basis and Kidz Aware is seeking to bring new, creative and innovative ways of breaking down barriers for children with disabilities, carers thus ensuring that they can truly live a fulfilling life.

We know that this is a massive challenge but we know that we’re not alone in trying to create opportunities for children with disabilities, carers. Families, schools, local authorities, government, charitable organisations and most importantly – the children themselves – are all trying to play their part too.

## **OUR SERVICES**

Our services are the core of what we do. We routinely provide the following services to disabled individuals, parents and carers, schools and service professionals:

### **For disabled people and their families**

- Disability, Equality, Racism and Bullying awareness programmes in all educational settings
- Parties and community activities that foster a sense of community and belonging for local families. Christmas parties, summer fetes and activity days are all examples of events we have organised.
- Disabled young people forum
- Debt Advice
- Benefits advice form filling
- Attendance to appeals
- Information, Advice and Guidance across a range of disability related areas
- Advocacy services for parents and carers of a disabled child. Our Advocacy Service ensures parents and carers can address issues and concerns they may have, meeting the requirements of the childrens and families ac and other legislation :
- Support parents and carers in accessing services for the disabled person they care for and, importantly, themselves
- Support in addressing mental health issues .

If all of these eservices can be provide with just there part time staff imagine what service could be delivered with the right among of staff

### **For volunteers, schools, teachers and service professionals**

- Our award winning “Count Me In”, “Let’s Prevent Bullying” Disability awareness and “Accepting Difference” programmes.
- Operating across West Yorkshire with centres in Wakefield and Kirklees, these interactive sessions are available across a range of flexible delivery solutions including small groups, classes or large groups up to a max of 60 children. Key Stage 3 and 4 programmes operate at a maximum of 30 young people can be delivered in classrooms.
- Training for carers, volunteers, disabled persons and service provider professionals to develop skills and knowledge on the barriers faced by carers and the disabled
- Awareness sessions within our communities including Fun Days, Galas and Children’s Parties Whilst offering extensive support and lots of fun, these community events raise important issues at a community level about disability, bullying and racism

### **Our Future**

At Kidz Aware, we have set ourselves some key objectives that we will strive to achieve in the next 3 years. These objectives will support us in widening our offer and supporting more individuals, carers, teachers and service professionals.

They include:

- Developing information manuals, empowering children to take ownership of their disability, and using the passport to help others understand their needs.
- Working with key partners to develop a “Charter of Rights” for disabled children and disabled adults that will enable children and adults to state what changes needs to be made to enable them to address their own right.
- Empowering individuals with mental health to have a voice and bring about positive changes.
- Developing information manuals for adults with disabilities with information on services that are available to disabled persons locally and nationally for carer’s disabled people and services.
- Create educational tools such as films around all aspects of disabilities pod casting blogs using the internet to educate and change people attitudes and bring about a count me in society.
- Harnessing our partnerships with community and service providers to lobby and campaign for the constant improvement of disability related services.
- Striving to improve equality of opportunity and treatment for carers and the disabled person

### **GET IN TOUCH**

We are constantly ready to start talking to children, parents, carers, teachers, professionals and other agencies and organisations that support our objectives. Based in Wakefield we can be reached either via our website [www.kidzaware.co.uk](http://www.kidzaware.co.uk), e-mail [infoa@kidzaware.co.uk](mailto:infoa@kidzaware.co.uk) or on 01924 376 882. Our team are very busy supporting all of our service users, but we want to talk to you and promise to get back to you within 48 hours if not sooner!

*2 September 2015*

## **Kidz Aware – Written Evidence (EQD0050)**

[NAMES REDACTED THROUGHOUT]

### **KIDZ AWARE CASE STUDIES**

[NAME REDACTED] T is a single and has severe disabilities , she has had a terrible upbringing by parents , she as a son aged 15 who as Autism and ADHD and also has a daughter aged 6 with several disabilities and is also blind and as had to deal with many barriers in her life, she has always had to fight for her sons rights and came to us about ten years ago after she realised that no one was willing to help her , she was having difficulties dealing with her sons behaviour he had become violent and was hurting her , she then found out she was pregnant with her daughter who as severe disabilities and is not able to see.

Social services decided to take the children into care after this T became disabled the way that they dealt with this was very wrong they arrived at her home with the police without notice and after a long discussion with myself and the police I was informed that it was in the best interest of the children until this T got better.

However within an hour of the children being taken away this T was admitted to hospital this lady ended up in a coma for quite some time and is now wheelchair bound and was on a breathing machine, the T was prescribed several different medications by Gps which lead to the coma happening and was medical negligence, after almost four months of treatment this Tracy was allowed home with support of 3 carers who provided wrap around care.

However her home is not adapted for her as she now uses a wheelchair , she as no toilet downstairs and has her hospital bed downstairs, at first her partner helped her with her needs but as walked out on her leaving her to cope alone.

Over three last few years he has had to fight to see her children she as access to her son but her daughter was adopted out and she only sees her once a year  
Last week I received a call from this T she had been put I to a care home she is only 36 years old the person providing her care needs and been abusive and had left her alone for many hours it was only after this lady tried to kill herself , that her needs were addressed.

She is now in a care home I visited her yesterday with her social worker she has been told he will be in the care home until last least next spring , this is a young person and she wants to be independent and not stuck in a care home, the social worker will try and get her an adapted home in the future but is unsure of any support to get her independence back will be available hence no physio no social outings swimming, no rehabilitation , thou we have suggested many helpful suggestions that would improve this T's life , nothing as yet as been offered.

The lady taking care of this T is still living in the T's home free of charge and the other day put this T's clothes outside f other social worker to collect this lady has made no attempt to see the T.

We are very worried about what might happen to T we have been involved for so many years having to get over hurdles made by social services there has got to be better outcomes for T.

[NAME REDACTED] Y

This is Y she contacted us a few months ago she as diabetes and it went untreated for many years she was admitted to hospital to have a tow removed due to the diabetics and woke to find her leg had been amputated only for the other leg to amputated not long after, however the surgeon cut the leg to far up so Y cannot have false legs of any type,. She has spent the last three years a prisoner in her own home at no time was she offered council ling or physio or given information on what support is available, she admits he will never be the person before then incident her relationship with the partner as detirated , she is angry and upset that the system let her down that no one was willing to help her, she as lost her case for negligence due to the time lap, he is now left in a wheelchair she cannot not push herself around is relying on support of her family and her future daughter in law is the main care giver even though she is highly pregnant Y was given our details by a patent we support in the last few months we have managed to get an assessment of her needs done for personalised budget, we have been able to help her get back into work part time we are arranging support from Motability and access to work we have given her a reason to continue living.

[NAME REDACTED] C

C is 21 and she has ADHD , she has gone through so much in her short life , her grandmother bought her up and as been her main carer as C's mum as CHROANS disease C's grandmother can receive up to 40 calls a day from C and this as affected her grandmothers health

It was grandmother who contacted us , as C was raped coming home from college and nothing was done as her this young girl is not aware of how this happened to her or who the person was , This carer has been caring for her granddaughter for over twelve years as her daughter could not cope as she as CHROANS disease, C had a miscarriage , even after this horrible thing happening C decided she wanted to live on the streets and got mixed in with people who take drugs and used her for her money after many interventions C agreed to meet us and we have been supporting C for many years, attending menatl health meetings as the specialist felt C may have Schizophrenic , yes no support was given and C would not attend any appointments after this she as lost trust in any other service but pours , C was refused any support from social services and even refused direct payments as whilst her grandmother was taking care of all C needs , social, services did not feel C fitted any criteria .

However over the years C as got stronger and she met a gentleman who also as ADHD they recently got married and are looking to move out of the area, she still requires lots of support from her grandmother especially financial help, and is still waiting to receive treatment for her mental health.

[NAME REDACTED] B

B is a single mum who has a son aged 10 he as ADHD and is awaiting a full diagnosis, this young child has several behaviour issues and mum as been dealing with these on a daily basis, however the main issues for this family is the schools the all his friends at lunchtime (eating separately from others) and break times.

This young man has escaped four or five times out of school ending up on Broadway, which is a busy main road. He and members of staff have been put in danger as several cars have nearly hit them. I have been called into school so many times that I have lost count, to pick up the child as the school are unable to control him.

The school put him into a group instead of normal lessons called “Natlour Neons” because He was getting very aggressive every morning as he needs to go to the group. This went on for several weeks; he complained several times and was getting nowhere. In the end, Mum called the head teacher, saying that if her son continues getting upset and having to take punches, kicks, hits, etc every day,

Mum has been fighting the education dept for many years we have attended several meeting with education and also CALMS support for children with behaviour difficulties, at first they thought Kenzie may have split personalities but they cannot decide on the exact terminology.

Mum was diagnosed with Chroans disease a couple of months ago he is on morphine thou the hospital were aware of her situation they still sent her home without any support she has been struggling on her own, her long term partner as left her also with her son and herself she is in constant pain.

The education department have now decided they have found a school that is suitable for [NAME REDACTED] and he will start schools in a few weeks time he will, be going for one hour per day to start with, however mum now as to get him to and from school on her own, whilst in dreadful pain and on morphine, thou social services have been involved some what they have not made any arrangements to support this mum and her son.

[NAME REDACTED] S

S has six children and a husband the eldest son as ADHD and does not receive any support, and does not receive any benefits as he as real difficulties in going to meeting and thou the job centre has been informed of his condition they are reluctant to provide whim with nay benefit so he relies on his mum to keep, him, however he likes to drink alcohol and can become violent towards his family.

S contacted us when her youngest son was diagnosed with autism and aspensers the same week her husband was told he may have Parkinson disease, her small son aged six is starting to have tremors, this family did not know where to turn to they had not receive any support from other organisations, they also had debt problems and needed help with filling in the DLA form.

Their small son is having difficulties in school , with his behaviour and mum feels the schools are not helping , though she has spoken to them on several occasions nothing has been

done, she also received to fines for the children not being in school when the family took a emergency break as she forgot to tell the school .

This mum took on five children when she married her partner and is struggling with her own mental health issues, she has tried so many time to access help form other service sot be denied them, over the year we have been able to access funds for a holiday helped with filling in forms, accessing food banks supporting the whole family unit, every day this family struggle and recently the eldest son with ADHD as also started having the tremours

[NAME REDACTED] J

J is a single mum with three children two of her sons have ADHD, she has a small baby and lives alone, though she had a partner he as left as he could not deal with the boys behaviour r.

Mum as learning difficulties and contacted us as she was having real difficulties with her son's school, one son was receiving support the other not, and she was being called to the school most of the day to control one of her son's behaviour. On one occasion the schools called the mum in to deal with her son , and thou she explained she was having false labour pains ,the school was demanding she came to the school straight away even though she explained what was happening , she telephoned us in tears and we had to approach the schools in connection with this, thou parent partnership was involved in the children education they seemed to be more on the schools side than the childrens ,this parent as decide to move to another area so she can access better schooling for her children , however without the right support this family would struggle very much , the SEND team in this area are dealing with the education of the boys but as yet mum does not feel they are helping her in any way .

We have been involved with this parent for nearly two years and have managed to ge6t funding for several things and a holiday break, this mum is vulnerable and if she is made to move away from this are there is no assurance that Leeds education department would be able to help , as with many situations when there is a child with a hidden Disabilty it is very hard to get the school or the education authorities to address their individual needs, this is something we have come across on many occasions .

She felt the schools was not supporting her , over the following months this parent contacted us several times in connection with the problem that she felt her son was being bullied by the teachers , and on one occasion she telephone us in tears ,

[NAME REDACTED] C

This family is made up of mum who has battled cancer twice and is receiving ongoing treatment she had a son aged 16 with Autism who passed away suddenly after C had been fighting to get him support for his mental health issues she has two daughters one of her daughters aged 14 as also got Autism/ADHD and her other daughter as no disabilities, she lives with her partner who does not help at all, this parent as had a traumatic upbringing and was trying very hard to be there for her children,.

C had contacted Social Care Direct and been advised to speak to Barnardos about their scheme for young disabled children, she contact Social care direct on several occasions asking for help , but had no outcome .

She made contact once again a few weeks ago as she is very unwell and needed held with the children through the school, holidays and is waiting for more surgery , I asked her why she had not been in contact with us and she replied she did not want to bother us , as she knows we are very busy helping other families , and that we have provided help to her in the past , however she has agreed to come into the office when the children go back to school so we can arrange support for this family and request a response from family services Social care direct why this family have not been provided with the services they need .

This family did not receive any support from social services, with our help we set about putting together an action plan for these families and accessed support within her family; she decided not to ask for any support from social services as she feels she and her family have been let down when her son died.

We applied for funding for a holiday for this family and her siblings who are also parents to disabled children and they have all been to Bullins and enjoyed themselves very much.

However C started complain about pain on her legs they had become swollen she attended her gp many times and told not to worry, she also went to accidents and emergencies department at our local hospital to be only discharged, the next day she was taking her two daughters to school, as they went into schools she became very well and died there on the street, the autopsy verdict was she had large clots in her legs and had she been diagnosed properly this would not have happened.

The father of the two girls is now their full time care he found it real difficult at the start as he had not really been involved in the daughter health and really did not recognise there condition with support from his family this family are now getting through day by day , the girls were absolutely heartbroken and miss their mum very much , they share a special bond with each other and C was everything to them, these young girls will now have to grow up without their mum and the question is why did this have to happen

[NAME REDACTED] S

S is the mum to two children, her daughter [NAME REDACTED] B 19 as Autism and other disabilities, B wants to be a builder, and is currently attending a builders course, B is a very tall and strong person.

S has breast cancer and had surgery last year however due to some misunderstanding B also was admitted for foot surgery which she had been waiting for the same week...

This meant that both S and B were discharged out of the hospital at the same time, but no support and been put in place, such as S was the main carer and though B had foot surgery she would not be able to walk Bethany is very tall and heavy, and could not get up the stairs and S could not do any lifting.

This family were left without any support after receiving a call from them as we have known this family for many years, we contacted social services and requested support be put in place though some support was given for a few days, the father had to take quite some time



of work to be the main care and after some time his employer refused to let him have any more time off work, he as now reduced his working hours to be there for his family,. S is having chemotherapy and is doing well, b the future looks unclear for B as he is now a young adult and will require lots of support and S as yet to get the all clear form her cancer, at no time as this family received an assessment of their need even though I have made referrals to Social care direct, this family are dealing with the situation on a day to day basis

[NAME REDACTED] S

S as Aspersers she also has a small son aged two who is awaiting diagnosis of Aspersers her partner also as ADHD.

S contacted us to ask if there was anything we could to help her she was unaware of any services available and was struggling with the own disability and her partner, but was very upset that her son may have a disability also , social services were saying she was unfit mother due to her disabilities and her husband's disabilities, we attended several Meetings around the needs of the child and family, and soon support was put into place, S was a also given personalised budget , unfortunately the people employed to support her made fun of her and bullied her, which had a real affect on her .S requires routine and needs to be reassured of what she is doing is rights for quite some time we were helping her on a day to day basis,.

Her partner refused to go to work and left everything for her to do, however the child is now in nursery S is doing really well she as set up a support group for parents of autistic children she is still with her partner he is now accessing support from the disabilities tea, and S's mum is also supporting her, even though her mum is also supporting six other members of her own family who also have Aspersers, and he husband also ahs menatl health issues.

*2 September 2015*

## **Peter Lainson – Written Evidence (EQD0071)**

Dear Sirs - thank you for the invitation to contribute in the House of Lords Select Committee's review of the Equality Act 2010.

As a paraplegic wheelchair user I have actively participated for much of the past 45 years in the work of various membership organisations at a local, regional and national level, in seeking to safeguard the best interests of disabled people, predominantly through the promotion of inclusive design.

My involvement continues to focus on the actual experiences of people who in their everyday lives are disabled by the built environment and, despite their own best endeavours, still find themselves marginalised or excluded from participation in community life.

I will seek to respond to the 11 specific questions posed by the Select Committee:

Q1. 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 strengthening and harmonising of disability discrimination law has been effective where the form of discrimination concerned is shared with other protected characteristics; the Equalities Act has failed, however, to retain an adequate focus on the discrimination and exclusion imposed on people with significant physical, sensory, intellectual and cognitive impairments as a consequence of inaccessible environments. This shortcoming in the Equalities Act is seen generally as a result of 'access' being of little, if any, consequence to other protected characteristics.

2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?

In circumstances where a particular form of discrimination affects a specific protected characteristic, as in Q1 above, the generic nature of the Equalities Act creates difficulties in addressing some specific issues, e.g. Access to the Built Environment/Inclusive Design...

### *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?

The concept of 'reasonable adjustment' does appear to be generally understood but its associated codes of practice, particularly in terms of access to Goods & Services, are now dated and largely deemed irrelevant. The subjective nature of this matter leaves any

negotiation between disabled customers and service-providers as increasingly difficult to resolve.

The level of ‘reasonable adjustment’ achieved within the public transport sector varies considerably: the bus and coach industry appears to be on schedule to successfully make ‘reasonable adjustments’ for its disabled passengers; the carriage trade does not offer such an encouraging picture, however, with services frequently being unreliable and inconsistent as a consequence of extremely ‘fudged’ guidance provided by DfT. Sadly the rail industry’s interpretation of what constitutes ‘reasonable adjustment’ is particularly unacceptable to passengers who are wheelchair users, the Equalities Act fails lamentably to offer any opportunity to redress this ever-deteriorating situation within the U.K’s rail network.

4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

It is widely accepted that ‘reasonable adjustment’ has to take account of prevailing circumstances in each instance; however, it would be of significant value if the associated codes of practice (originally drafted by the Disability Rights Commission) were to be brought up to date and reinvigorated such that current interpretation is of greater relevance.

#### *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?

The intention that the Public Sector Equality Duty should have led to exemplar provision of services and thereby have offered examples of good practice to the wider commercial sector; this objective has largely failed and, in many instances, attempts to achieve the desired outcomes without adequate investment or strategic guidance has caused considerable damage to longstanding relationships between public sectors bodies and independent organisations of disabled people.

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?

(unable to comment on this matter)

#### *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?

Yes - this is particularly obvious in terms of rail services

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?

The EHRC is not viewed as being effective due to its failure to address the specific forms of discrimination imposed on the lives of people who are disabled by the built environment (see answers 1 & 2 above)

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?

Other regulatory bodies such as: L.A. Building Control, Licensing, and Trading Standards could influence the implementation of the Equalities Act, but only following adequate investment in the capacity of such professional bodies to engage fully in the objectives of the Act.

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?

The enforcement mechanisms available for individuals to pursue grievances in terms of access to 'Goods & Services' are both impractical and fragile; aggrieved individuals find the required processes to be unreasonably demanding and cumbersome; with reliable guidance often too expensive or difficult to find. On the other hand: Service Providers appear increasingly aware that to effectively derail any grievance they need only to make the shallowest of offers to address the short-coming concerned for the complainant to have no further option than to withdraw their grievance, i.e. there would then be no grounds to further cite the particular grievance before the County Court...

11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

Implementation of the Equalities Act would improve if action against discrimination in providing access to 'Goods & Services' was not restricted solely to aggrieved individuals, i.e. allowing organisations of disabled people to pursue grievances in the general interests of their members.

(EHRC has indicated clearly that it has no interest in exercising its powers in this regard; consequently such powers should be reallocated to other bodies that are in touch with the significant and actual discrimination experienced routinely by disabled people)

I trust that the above comments will be of assistance to the Select Committee.

Yours Sincerely,

Peter Lainson

Solely for reference purposes:

Peter Lainson

Peter Lainson is a retired Community Liaison Officer who started life as a technician in the REME and, following premature discharge from the army on disability grounds, worked for many years in NHS estate management, finance, and Joint Planning before combining his interest in the voluntary sector with a role in Community Development.

He has been actively involved as a volunteer in the disability movement for much of the past 45 years and has taken a particular interest in access and inclusion issues since the early 1980s.

He formerly chaired the Access Committee for England, and RADAR's Access Advisory Committee, he continues has an active role with various local and regional Access Forums. He chairs the LLDC's independent Built Environment Access Panel, having previously chair the Stratford City Consultative Access Group; he served as vice-chair of the Centre for Accessible Environments, is a trustee of the Fieldfare Trust, a member of the Stansted Airport Consultative Committee, and Network Rail's Built Environment Access Panel; he also serves on his area's Crown Prosecution Service Hate Crime Scrutiny Panel.

*3 September 2015*

## Law Centres Network – Written Evidence (EQD0135)

### Summary

The Equality Act 2010 has generally helped public understanding of anti-discrimination legislation by harmonising different provisions and removing some exceptions.

- Remaining problem areas include volunteers, reasonable adjustments in common parts of premises, air travel, codes of practice, questionnaires and tribunal recommendations
- Enforcement of the Act is key to its effectiveness.
- Compliance with the Act will be achieved when responsible claims for discrimination can be enforced in the same way - and to the same extent - as personal injury claims. That is not to encourage a culture of litigation but instead one where compliance with equality law is the norm rather than the exception.
- The current means of enforcement, however, is a long way off that point. To reach it requires not just legal enforcement but also legal education based on real examples of cases in the courts.
- The reduction in assistance through cuts in legal aid, abolition of advice through the EHRC's helpline, cuts to the EHRC's grant-making programme, abolition of mediation schemes, court closures, increases in court and tribunal fees and reductions in the Access to Work scheme have all had an adverse impact on enforcement.
- Enforcement could be improved by addressing any of the areas we describe in this submission but in particular through (a) funding of education and advice on the tested model we describe, and (b) amending the Civil Procedure Rules to rebalance costs risks.

### Evidence in detail

1. The Law Centres Network is the membership body for Law Centres in England, Wales and Northern Ireland, each of which is a separate, not-for-profit legal practice providing legal services in civil law, with a particular focus on social welfare law. There are 43 Law Centres across the UK represented in the Network. Law Centres have practiced in these areas of law since their inception in 1970, and the Law Centres Network (trading name of the Law Centres Federation) has coordinated and represented them since 1978. Law Centres offer legal advice, casework and representation to individuals and groups. They highlight local trends and issues in the course of their work to bring about necessary policy changes and to prevent future problems. They also help build capacity within local communities by training and supporting local groups and educating people about the law and their rights.

**Q1. 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. We find that the simplifying of discrimination law by harmonising the approach across various strands is good for individuals as well as for employers and service providers, who can more easily understand their obligations. A significant change was the removal of a number of exceptions (even though many remain). The greatest impact of

the Equality Act was to restore the damaging position from the case of *Malcolm v Lewisham* to what most parties understood it to be.<sup>282</sup> The current position on discrimination arising from disability in section 15 of the Act is workable. In our experience, disability accounts for by far the greatest number of individual cases brought to enforcement, largely because of the reasonable adjustment duty, which does not apply to other strands.

**Q2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

*Volunteers*

3. Volunteers are almost completely excluded from protection against discrimination.<sup>283</sup> The policy aim of exempting volunteering from the protection of law may be ready for reconsideration, although there will no doubt be considerable practical issues to iron out. Volunteers are not exempt of course from the protection of the law on health and safety or data protection.

*Air travel*

4. For an area that gives rise to regular complaints of disability discrimination, there is considerable confusion in the area of travel by air and series in and around airports. At present, a disabled person who brings a successful claim for unlawful discrimination on board an aeroplane may receive no compensation. In *Stott v Thomas Cook*, the Supreme Court held this was the state of the law despite finding that “Mr and Mrs Stott have both been treated disgracefully by Thomas Cook and it is hardly less disgraceful that ... the law gives them no redress against the airline.”<sup>284</sup> However, other holiday-makers on package holidays may recover damages – for instance, see the cases of *Campbell v Thomas Cook*.<sup>285</sup>
5. The EHRC used to be the designated body for handling complaints about air travel until this power was removed to the Civil Aviation Authority. We have no experience of any reported outcomes of complaints put to the Civil Aviation Authority. Although the EHRC has produced useful guidance for travellers (*Your Rights to Fly*), this is an area where more detailed legal guidance – or inclusion in an up-to-date Code of Practice - is needed.

*Reasonable adjustments in common parts of shared housing*

6. This remains an area of difficulty since the reasonable adjustment provisions<sup>286</sup> have still not been brought into force, despite an original intention from Government to do so in April 2011.

*Questionnaires*

7. Questionnaires were a very useful method, in the appropriate case, to establish the facts of a case before starting court or tribunal proceedings. The Government

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<sup>282</sup> *London Borough of Lewisham v Malcolm* [2008] UKHL 43.

<sup>283</sup> In *X v Mid Sussex Citizens Advice Bureau & Anor* [2012] UKSC 59, the Supreme Court held that the DDA could not be read as extending protection to volunteers.

<sup>284</sup> *Stott v Thomas Cook Tour Operators Ltd* [2014] UKSC 15.

<sup>285</sup> Evidence from Sheffield Law Centre; *Campbell v Thomas Cook Tour Operations Ltd* [2014] EWCA Civ 1668.

<sup>286</sup> Equality Act 2010 s.36(1)(d)

abolished their statutory backing and this has led to confusion over the status of the voluntary alternative questionnaires.<sup>287</sup> In addition, it tends to push the contested issues of disclosure into a setting where court or tribunal proceedings have already commenced, this increasing litigation costs for both parties.

*Recommendations by employment tribunals*

8. It is not clear there is any benefit to the abolition of this power for employment tribunals to promote good practice. This is precisely the sort of provision that can lead to long-term practical improvements that reduce discrimination for a wide range of disabled people.

**Reasonable adjustments**

**Q3. 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?**

9. 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. This is particularly the case with the anticipatory duty in goods and services. Generally speaking, larger organisations, whether private or public, are more likely to have formulated policies or actions to address ‘reasonable adjustments’ specifically, but this does not always translate into effective adjustments being made in practice. In our experience, smaller organisations sometimes approach the reasonable adjustment duty more effectively simply because there is often better person-to-person engagement. For instance, a shopkeeper at premises with a small step may well provide a reasonable means of avoiding the physical feature and may have been doing so, unwittingly, for years because it makes good business sense and is good customer service.
10. One area of recurring difficulty is the willingness of service providers to provide information that is accessible to profoundly deaf users of British Sign Language (BSL), who are often the most excluded of all disability groups. BSL is a language in its own right which is regularly used by a significant number of people. It is a visual-gestural language with its own vocabulary, grammar and syntax.<sup>288</sup> Many older profoundly deaf people are almost completely illiterate in English, given the systemic exclusion from education. Section 20(6) of the Act provides that it is always reasonable to ensure that information is provided in an accessible format. However, where this amounts to a need to engage a BSL interpreter, service providers will often argue that the cost makes such an adjustment unreasonable. There have of course been few court cases on this topic, no doubt largely because of the extreme barriers facing profoundly deaf people who want to enforce their rights.

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<sup>287</sup> Equality Act 2010, s.138 was repealed by the Enterprise and Regulatory Reform Act 2013, s 66(1)

<sup>288</sup> As recognised by the court in *Finnigan v Chief Constable of Northumbria Police* [2013] EWCA Civ 1191, para 2.



**Q4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

11. The majority of cases brought by Law Centres involve the reasonable adjustment duty. The primary difficulty with the concept of reasonable adjustments is that it requires employers and service providers to do things differently for disabled people. In the minds of many people, this runs counter to established anti-discrimination practice, based on cases of race and sex discrimination, where the focus was far more on rigid systems to treat everyone the same, without exception. Actual cases in the tribunals and courts should be seen as ‘worked examples’ and, when done properly, can lead to a better understanding of what needs to be done in practice.

*Codes of Practice*

12. One of the difficulties facing service providers is that so few cases are publicised that there is little media awareness of the extent of the duty or the need for it. Guidance is available from EHRC but, while a diligent, progressive service provider can search it out, it is no longer well promoted. Moreover, statutory guidance and resources available from EHRC have been significantly watered down from the codes published by the Disability Rights Commission (DRC). In addition, the Codes need to be updated from time to time.
13. The statutory Codes of Practice are of great assistance to both parties in a dispute because their status is clearly identified as something a court or tribunal is required to take into account and because, in our experience, they are seen as authoritative and correct.<sup>289</sup> The practical and useful guidance in these codes sets out a helpful approach to inform service providers and employers as to what they have to do. The guidance helps narrow the focus of issues in any dispute, to the benefit of both parties. EHRC had originally planned to produce statutory codes of practice on the Public Sector Equality Duty (PSED) and for Schools and the Further and Higher Education (FEHE) sector. However, the Government decided not to lay the codes before Parliament, resulting in the Commission issuing the text as “technical guidance.” This causes considerable uncertainty for claimants, service users, employers, courts and tribunals.
14. DRC had issued a Code of Practice on ‘Provision and use of transport vehicles’, which was particularly useful in an area where there are real difficulties, as evidenced by cases such as *Paulley v First Bus*. The experience of Law Centres is that complaints over transport, particularly bus transport, are still reasonably common. Another area where guidance would be welcome is the vexed issue of mobility scooters on buses, trams and trains. Transport providers generally accept the requirement to accommodate conventional wheelchairs, within varying degrees of success, within the definition of the ‘reference wheelchair’.<sup>290</sup> However, this standard was devised before the proliferation of powered wheelchairs and scooters. This has led to transport providers having to address the issues individually, often in a laborious and inefficient way that still leads to unsatisfactory and unpredictable outcomes for disabled passengers. Still, the need remains for a statutory code: clarity would benefit the industry as well as disabled passengers.

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<sup>289</sup> Code of Practice on Services, Public Functions and Associations, Code of Practice on Employment and Code of Practice on Equal Pay, published by the EHRC, in force from April 2011

<sup>290</sup> The Public Service Vehicles Accessibility Regulations 2000, Schedule 1.

### Public Sector Equality Duty

#### **Q5. 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?**

15. Despite early suggestions that PSED was too vague to be of use, it has proved, on occasion, to be very effective. By public law standards, PSED is remarkably clear, and can be a significant tool to shape understanding of the impact of discrimination on all protected groups. Effective compliance with PSED assists authorities to avoid future challenge on matters under Part 3 of the Act. A significant and useful body of case law has now built up around the PSED and is still evolving. The courts hearing PSED cases have frequently had to summarise the existing state of the law to date.<sup>291</sup> This is a helpful and developing approach because it refines and clarifies the law at each stage and therefore makes it more easily usable. As noted above, it would be helpful to have this distillation placed into an authoritative and statutory Code of Practice.

#### **Q8. 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?**

##### *The Disability Rights Commission's legacy*

16. At its creation, EHRC inherited a range of funding arrangements from the legacy Commissions and sought to meld these into an all-encompassing and significant funding of the voluntary sector. Previous funding had included the DRC funding of Law Centres for awareness-raising and casework in goods, facilities and services (GFS) cases. We believe the DRC model of funding was an effective use of resources. DRC was 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 under Part 3 of the DDA.
17. Only 53 known services cases had been issued by 2001, compared with 8,908 employment cases and few more were brought in the following years.<sup>292</sup> This highlights the failure by the Courts Service to record and monitor numbers of different categories of cases, unlike the Employment Tribunal statistics which are published regularly. However, it was also clear that discrimination was not being addressed through the means of individual complaints provided by Parliament. Two major reasons were identified and addressed by the scheme. Firstly, there was still little awareness of the rights of disabled people or even the numbers of people who were protected. Secondly, those who became aware of their rights found it very difficult to bring cases because of the cost, formality and unfamiliarity of the court system, coupled with the almost complete lack of available legal advice. To address this, DRC's innovative scheme funded LCN 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.

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<sup>291</sup> E.g. *Bracking & Ors v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at para 26; *JM & NT, R (on the application of) v Isle of Wight Council* [2011] EWHC 2911 at para 95.

<sup>292</sup> *Monitoring the Disability Discrimination Act 1995 (Phase 2)*, Disability Rights Commission, 2002.

*Law Centre strategy*

18. The service provided by Law Centres did not seek to bring test cases, just run-of-the-mill instances of discrimination intended to achieve practical results. Unlike with legal aid funding, work on positive publicity was part of the scheme. Out of this ‘strategic litigation’ approach, greater benefits arose: service providers began to realise they could be subject to enforcement action; publicity of such cases increased awareness and enhanced the status of the DDA; and a few cases did make it to the higher courts to establish case law.<sup>293</sup> Law Centres also contributed evidence and intelligence to EHRC’s formal investigations and inquiries, leading to improvements in practice and policy. It is regrettable that more outcomes of investigations were not published. Whilst it was no secret that Law Centres were frustrated at the administrative burdens entailed in the EHRC funding scheme, we must acknowledge how important it is to have such a body in place to take a lead on the monitoring and enforcement of the Act.
  19. Law Centres frequently have to advise clients there is no ‘discrimination policeman’ and that the burden of enforcement falls on the aggrieved individual. We recognise that EHRC’s enforcement powers are limited by resources although many Law Centre advisers feel EHRC takes an over-rigid approach to its decision-making on case funding. In particular, whilst we understand EHRC’s preference to fund cases at appeal, which will result in binding case law, we believe the right cases need to be properly prepared (and therefore funded) at first instance too, in order to provide a sound basis for any appeal on a point of law.
  20. Government ended EHRC’s power to fund its grants scheme from 2012. This, coupled with the removal of legal aid for discrimination cases from Law Centres, has led to a significant reduction in the ability to enforce the Equality Act. At the same time, EHRC also lost so much of its own resources and powers to promote the Act. Despite the positive outcomes from the DRC/LCN project and the significant raising of the profile and effectiveness of the DDA and EA, there is still much to be done. We would recommend this model as an effective way to invest resources available for promoting the Equality Act. It is important that any strategic litigation has resources for publicity to bring the message out to the public, in contrast to the limited funding from legal aid.
- Q9. 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?**
21. Given that we highlight the difficulties of enforcing unlawful discrimination in the courts, it would appear at first sight to be a positive step to ask Ombudsmen and regulators to play a role in enforcement. However attractive that appears, we believe there are fundamental drawbacks. There is also a difference in the roles between Ombudsmen handling individual complaints and regulators setting out compliance frameworks. In our experience, Ombudsmen have always fallen short of providing a satisfactory remedy in cases of disability discrimination. This is of course legally correct: section 114 of the EA gives exclusive jurisdiction to the county court. The

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<sup>293</sup> E.g. *Royal Bank of Scotland Group Plc v Allen* [2009] EWCA Civ 1213.

higher courts have recognised that findings of discrimination can only be made by a court.<sup>294</sup> More fundamentally, 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. Law Centre advisers often find defendants arguing that a particular incident is merely a regrettable failure of customer service. We have to assert that discrimination is prohibited by law and should lead to a non-trivial award of damages or other remedy in court.

22. We believe regulators, however, could take a more robust approach to setting compliance frameworks. This would demonstrate the regulators' own compliance with PSED. One example of concern to note is the Independent Police Complaints Commission (IPCC) publication on 3<sup>rd</sup> September 2015 of a 100-page document "IPCC guidelines for handling allegations of discrimination."<sup>295</sup> Whilst it is a positive step to set a common framework for police forces, it is of concern that the document appears to contain a lengthy commentary on the workings of the Equality Act but only refers to the statutory Code of Practice on Part 3 - which is fundamental to the delivery of police services in a non-discriminatory way - in a footnote. We are concerned that complaints may be investigated against the framework of IPCC's guidance yet may not meet the requirements of the Equality Act. A Twitter debate on whether IPCC would accept the burden of proof provisions issue resulted in IPCC confirming that "This type of determination cannot be made under the police complaints system."<sup>296</sup>

**Q10. 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?**

23. The DRC/LCN project above was set up because very few GFS cases reached court. However, individuals who want to bring employment cases now face substantial hurdles with the cuts to legal aid, abolition of advice through EHRC's helpline, cuts to the EHRC's grant-making programme, abolition of mediation schemes, court closures, increases in court and tribunal fees and reductions in the Access to Work scheme.

*Barriers to enforcement*

24. The most significant barriers are
- Awareness of what is unlawful and why;
  - Access to free advice;
  - In services cases in particular, access to competent advice even where paid for;
  - Court and tribunal fees;
  - In services cases in particular, lack of awareness or experience amongst the judiciary on equality cases;
  - In county court cases (and to some extent in employment tribunals), the threat by defendants of enormous costs bills against low-income claimants.

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<sup>294</sup> *Maxwell, R (on the application of) v The Office of the Independent Adjudicator for Higher Education* [2011] EWCA Civ 1236.

<sup>295</sup> At <http://www.stop-watch.org/news-comment/story/ipcc-releases-new-guidelines-for-handling-discrimination-complaints>.

<sup>296</sup> [www.twitter.com/IPCCNews/status/639053624325312512](http://www.twitter.com/IPCCNews/status/639053624325312512).

*Awareness*

25. As noted above, the difficulty is not so much awareness of the existence of anti-discrimination legislation but of what service providers and employers must do to avoid it. There is also a lack of awareness amongst individuals about what they can do if they feel they have suffered discrimination, even though this is increasing. One difficulty is that increasing awareness leads to more instances in which individuals wrongly think they are protected. Law Centre advisers often have to advise clients that a complaint does not amount to unlawful discrimination. This advice can be particularly valuable to help future awareness as well as to head off long running and stressful challenges in a court or tribunal. One Law Centre recently advised a volunteer in a large, well-known and respectable national charity that she could not tackle discrimination by her managers under the Equality Act because volunteers remain unprotected. Whilst she was shocked to hear this, it helped her understanding of what the law could and could not do.

*Access to advice*

26. Apart from awareness-raising, access to good quality, early advice is the most significant barrier. We emphasise that it is advice and not just information that is needed. Lack of adequate advice affects cases down the line: employment advisers in Law Centres report an increase in inappropriate or badly-pleaded claims which consequently take up much of the tribunal's time.

*Legal aid*

27. Whilst legal aid is in theory still available for discrimination matters, it is only available through a mandatory telephone gateway: a call centre, where eligibility for legal aid is assessed. This channel in itself creates many additional barriers for disabled people. Once through the Gateway, the eligibility assessment is conducted again by the advice provider and, if passed, the service is still only available by telephone. The Gateway therefore excludes those who cannot communicate, effectively or at all, by telephone. There are only very limited exceptions permitting face-to-face advice.
28. The proof that the mandatory telephone gateway is not providing an adequate service advice is shown in the examination of MoJ statistics by the Legal Action Group.<sup>297</sup> LAG's research showed that, for cases still covered by legal aid, there had been a large fall in the take-up of legal aid by the public. This was worst for the discrimination category, where the shortfall in advice provision in the first 12 months of operation was 77% lower even than the low target anticipated by the Ministry of Justice. LAG indicated this was caused by a combination of factors, including the reduction in the number of solicitors firms and charities offering legal aid; a perception amongst the public they can no longer get help with any civil law problems; and government failure to adequately advertise the availability of services. LAG also suggested that legal aid providers were becoming increasingly risk-averse in committing to provide legal aid services due to the bureaucracy involved in making applications. As a result, legal aid is of negligible effect on the number of discrimination cases run in the courts. A case that merits legal representation would normally be run with the benefit of a legal aid

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<sup>297</sup> See Legal Action Group's analysis at <http://www.lag.org.uk/policy-campaigns/legal-aid-secret-service.aspx>, accessed 30 August 2015.

certificate but in 2013-14, after cuts to civil legal aid, only four legal aid certificates were granted for discrimination cases in the whole country in a year.<sup>298</sup>

29. Law Centres and the not-for-profit advice sector generally were disproportionately hit by the civil legal aid reforms with 77% of not-for-profit providers' legal aid funding being lost.<sup>299</sup> We would support EHRC's recommendation that "the government commissions, at the earliest opportunity, a comprehensive and independent evaluation of the impact of the LASPO Act exclusions, including the potential impact on long term value for money and any evidence of costs-shifting to other areas of public expenditure."<sup>300</sup> In any case, even before LASPO, legal aid was often not available for discrimination cases, especially in employment. The time when many disabled people needed effective and prompt advice on a discrimination matter was when they were still in employment. Legal aid had a perverse incentive to provide advice to employees only once they had lost a job. It often did not provide advice that would sustain suitable employment. Even where a successful outcome is achieved, legal aid does not cover any of the work that would bring out the resulting added value, such as publicity or promotion of good practice and lessons learned.

*Other potential sources of information: EHRC, EASS, ACAS*

30. EHRC's power to provide advice, through an advice line, was removed by the Government at the same time it removed the EHRC's power to fund voluntary sector organisations and a mediation service. The replacement Equality Advisory and Support Service (EASS) line is limited to an information service: it cannot and does not offer 'legal' advice, or advice on the merits or value of an individual's case.<sup>301</sup> It has answered 94,459 enquiries in its 3-year history but does not replace or effectively strengthen enforcement.<sup>302</sup> It will sometimes contact a service provider but its action is limited to relying on that service provider's good will. Where a service provider refuses to engage or change a discriminatory action, there is nothing further EASS can do. This may have the effect of achieving compliance only by those service providers who are willing to do so but allowing worse service providers to continue discriminating.
31. The Advisory, Conciliation and Arbitration Service (ACAS) has a wide range of legal and practical information, and runs its conciliation services, for those who can use it but its refusal to give actual advice is a common complaint heard by Law Centre advisers. ACAS offers 'early conciliation' in employment cases, which is mandatory before a claimant is permitted to proceed to a tribunal. However, Law Centre advisers note that employers increasingly refuse to engage in conciliation where they think the claimant will not or cannot be able to pay the fees needed to start a tribunal claim. EHRC previously funded a specialist mediation service which helped achieve appropriate settlement and education in a number of cases which did not consequently have to go to court; but this power, too, has been removed from the Commission. There remains

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<sup>298</sup> Ministry of Justice, *Legal Aid Statistics in England and Wales for 2013-2014*, published 24 June 2014.

<sup>299</sup> Addendum to the Cumulative Equalities Impact Assessment on the impact of legal aid reform, Table N, <http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/legal-aid-reform.htm#equality>, accessed on 3 September 2015.

<sup>300</sup> Response of Equality and Human Rights Commission to the National Audit Office Consultation, 21 July 2014.

<sup>301</sup> [http://www.equalityadvisoryservice.com/app/legal\\_advice](http://www.equalityadvisoryservice.com/app/legal_advice).

<sup>302</sup> Actual enquiries dealt with by EASS – From the 1<sup>st</sup> October 2012 to the 31<sup>st</sup> August 2015 – 94,459.

a limited mediation service available by telephone through the county court in small claims matters. However, advisers report that mediators rarely have any understanding of discrimination issues, usually resulting in unsuccessful mediation. Bad mediation may well be a negative experience for disabled claimants and for service providers.

*Court and tribunal fees*

32. Employment tribunal fees have had an obvious impact on the ability to bring discrimination claims: the introduction of fees correlated with a 79% drop in claims to the ET.<sup>303</sup> For discrimination claims, the higher fee is charged: £250 to issue a claim and a further £950 if the case proceeds to hearing. Even where claimants may qualify for fee remission, our experience is that both courts and tribunals apply an unduly rigid and overbearing requirement for large amounts of documentation and many decisions are simply wrong. There is good reason to consider the abolition of employment tribunal fees, as is now proposed for Scotland: they do not prevent misconceived tribunal claims, just claims from lower income workers.<sup>304</sup>
33. The drive in the Court Service towards big increases in county court fees, especially fees for applications, has a disproportionate impact on individuals as opposed to large organisations, again making it harder for disabled people to enforce their rights. These are not just fees to issue claims but also to manage interim applications. For instance, an application to request 14 days extra time would have cost £80 before April 2013, is now £155 and government is proposing to increase the fee again to £255.<sup>305</sup> This is a fixed fee, whether for a low-paid individual in a small claim case or a corporation in a multi-million pound commercial dispute. Still, despite the significant deterrent caused by the introduction of employment tribunal fees, we believe the lack of timely and accurate advice is the greater barrier, particularly for those employees whose disability leads to further barriers in bringing a claim.

*Lack of judicial awareness or experience on equality cases*

34. As with all types of case, attitudes in the judiciary vary towards equality issues. Judges, especially district judges in the county court, have to deal with a wide variety of work in limited timescales. Exposure to well-presented Equality Act cases is an important way to increase the knowledge and skill of the judiciary in handling this type of case. This is particularly so because of the equality issues that occur in other types of proceedings, such as housing possession cases that district judges hear in large volumes.

*Adverse costs risks*

35. A significant barrier facing individual claimants is the risk of adverse costs if they lose. Law Centres face the difficulty of advising clients, as they are professionally required to do, of the risk of adverse costs if they bring cases in the court against a discriminator. In these cases the claimant is always an individual and the defendant is usually a large

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<sup>303</sup> MoJ Tribunals Statistics Quarterly October to December 2013, published 13 March 2014.

<sup>304</sup> A Stronger Scotland, the Scottish Government's programme for Scotland 2015-16, available at <http://www.gov.scot/Resource/0048/00484439.pdf>.

<sup>305</sup> MoJ document "The Government Response to Part 2 of the Consultation on Reform of Court Fees and Further Proposals for Consultation" Cm 8971, published January 2015



organisation or one backed with insurance. There is a great imbalance in resources in that service providers can usually choose whether or not to engage solicitors.

36. There is further imbalance in that many individual litigants report bullying and intimidating behaviour by Defendants' solicitors, with threats of legal costs and the ability to repossess an individual's home if a claim is proceeded with. Where litigants are in person, the threat of costs is unbalanced because a legally represented defendant is at no risk of adverse costs against an unrepresented individual, no matter how unreasonable their conduct in litigation. Some Defendants' solicitors will often use tactical advantages of costs to intimidate clients. The issue of costs is not just the eventual cost of the case after a final trial but the costs of interim applications, where legal costs may amount to as much as a claimant could hope to recover in compensation.
37. Serious costs risks arise if the case is not allocated to the small claims track. In our experience, the practice of courts in allocating cases to the small claims, fast track or multi track is variable and inconsistent. This is an added difficulty for any Law Centre adviser who needs to know at the outset which track a case is likely to be allocated too.

#### QOCS

38. Some advisers have raised the question of whether Qualified One-Way Costs Shifting (QOCS) applies to discrimination claims.<sup>306</sup> At present, there is considerable uncertainty in what is a potentially significant area. Since the Jackson reforms were introduced in April 2013 to reduce the overall cost of personal injury litigation, it has not been possible in effect for personal injury claimants to take out 'after the event' (ATE) insurance premiums. In turn, they are protected from the costs risks described above by the QOCS provisions in the Civil Procedure Rules. In short, even if a personal injury claimant loses, he or she cannot be ordered to pay a net amount in costs.<sup>307</sup> This allows a claimant to bring a personal injury claim without having to risk their family home.
39. If this applies to discrimination cases, it is potentially very significant for aggrieved claimants, as there would finally be an incentive for more solicitors to bring discrimination claims. Notwithstanding the view of some advisers that QOCS already applies to discrimination claims, an amendment to the civil procedure rules would put this beyond doubt. These changes do not require Parliamentary approval as changes to the rules are made via delegated legislation by the Civil Procedure Rule Committee.<sup>308</sup> Compliance with the Act will be achieved when responsible claims for discrimination can be enforced in the same way - and to the same extent - as personal injury claims. That is not to encourage a culture of litigation but rather one where compliance with equality law is the norm rather than the exception.

4 September 2015

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<sup>306</sup> See Douglas Johnson and Louise Whitfield, "No access to legal advice means no access to goods and services," *Legal Action*, March 2015.

<sup>307</sup> There are appropriate protections for defendants against unreasonable or dishonest claimants.

<sup>308</sup> <https://www.gov.uk/government/organisations/civil-procedure-rules-committee>.





Law Centres Network, Law Society, Bar Council, Discrimination Law Association – Oral Evidence (QQ 43-51)

**Law Centres Network, Law Society, Bar Council, Discrimination Law Association – Oral Evidence (QQ 43-51)**

[Transcript to be found under Bar Council](#)

## Law Centres Network – Supplementary Written Evidence (EQD0166)

### Supplementary statistical evidence from the Law Centres Network

#### Evidence in detail

1. The statistics in our possession are as follows:

#### Calls to the Equality Advisory Support Service (EASS) helpline

2. Actual enquiries dealt with by EASS – From the 1st October 2012 to the 31st August 2015 [i.e. 35 months] are 94,459 in total. We do not have a breakdown of these over time, although we note that EASS had 3365 contacts in one month in March 2015.
3. EASS may be able to supply more detail, as well as evidence of the number of referrals from its helpline to the EHRC.

#### County court cases notified to the EHRC

4. The Practice Direction on Proceedings under Enactments relating to Equality<sup>309</sup> requires claimants to give notice of the commencement of proceedings in the county court to the Equality and Human Rights Commission.
5. This is potentially an important tool to help the Commission monitor the number of claims and the identity of defendants, at least.
6. However, compliance with this practice direction is patchy. Although it is formally a requirement, it is unclear how well known it is amongst court users, court staff or the judiciary and there is normally no consequence of ignoring it. As a result, the information received by the Commission is only partial.
7. It has been known for the court to order claimants to file the relevant notice, although it is not known whether that it built into county court processes or whether - as appears more likely - it arises only from better-informed staff or judges.
8. Data from the EHRC on the breakdown of notices received per year is as follows:

Year	Notices Received
2011	70
2012	100
2013	79
2014	111
2015	55 so far

9. A breakdown of the range of courts where claims have been lodged is given below. This suggests an uneven spread of cases but this may be more to do with the lack of awareness discussed above.
10. It is unclear why the total figures differ from the table above. However, it does indicate that significant numbers are only reported from Central London county court and the

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<sup>309</sup> [http://www.justice.gov.uk/courts/procedure-rules/civil/rules/proceedings\\_under\\_enactments\\_equality](http://www.justice.gov.uk/courts/procedure-rules/civil/rules/proceedings_under_enactments_equality)

Mayor's and City of London County Court. We assume the figures for Northampton County Court relate to money claims issued online. These were formally issued through Northampton County Court but now through the County Court Money Claims Centre (CCMCC).

11. We have commented that the Court Service could do more to monitor the number of Equality Act claims issued and resolved but effective enforcement of the practice direction would also assist. It should be possible for the Court Service to include in its processes a requirement to inform claimants of the need to comply with this practice direction. It should also be possible to monitor the number of claims brought and to publish statistics on the number of claims brought and disposed of, at regular intervals. This would help the court service comply with the public sector equality duty.

*24 September 2015*

## **The Law Society – Written Evidence (EQD0162)**

### **Introduction**

1. The Law Society is the professional body for the solicitors' profession in England and Wales, representing over 160,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law.
2. This submission responds to questions 2, 4, 10 and 11 in the Committee's call for evidence, as they are about the way in which the law is framed and the enforcement of legal rights; and follows up on the Committee's questions during oral evidence on 8 September 2015.

### **Summary**

3. Lord Bingham said about the rule of law<sup>310</sup> that:

'First, the law must be accessible and so far as possible intelligible, clear and predictable. This seems obvious: if everyone is bound by the law they must be able without undue difficulty to find out what it is, even if that means taking advice (as it usually will), and the answer when given should be sufficiently clear that a course of action can be based on it.'

4. The Equality Act ('the Act) undoubtedly makes anti-discrimination law more intelligible, clearer and more predictable than the array of legislation which preceded it. However, there can no longer be any assumption that legal advice will usually be available for those who need it.
5. The focus of this submission is on the practical obstacles now presented by court and tribunal fees and cuts in legal aid to those seeking to enforce their rights under the Act. These barriers to the enforcement of rights are important not only for the individual: discrimination cases often have an impact beyond providing a remedy for the claimant. If a service provider or employer is forced to make reasonable adjustments for one person, there could well be a potential benefit for a wider group of service users or employees.

### **Q2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

6. Yes. The UK is a signatory to the UN Convention on the Rights of Persons with Disabilities (UNCRPD), but has not incorporated the Convention rights directly into UK law.

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<sup>310</sup> 2006 lecture ([http://www.cpl.law.cam.ac.uk/past\\_activities/the\\_rule\\_of\\_law\\_text\\_transcript.php](http://www.cpl.law.cam.ac.uk/past_activities/the_rule_of_law_text_transcript.php))

7. 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.
8. In terms of specific legislative gaps, the Law Society did not support the repeal of s138 of the Act by the Enterprise and Regulatory Reform Act 2013, as, in our view, pre-claim questionnaires served a useful function without being unduly burdensome upon employers or service providers. The Law Society would also support the reintroduction of the power under s124 of the Act for employment tribunals to make wider recommendations beyond the determination of a claim, as a means of providing guidance and promoting good practice.
9. There are some parts of the Act which have not yet been brought into force: the Law Society would highlight s14 on dual discrimination as a section that should be given priority.
10. There might be a specific gap in terms of the impact of regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010 on children and young people with disabilities. The regulations were recently considered in the case of *X v The Governing Body of a School (SEN) [2015] UKUT 0007 (AAC)* where the Upper Tribunal found that a school had not discriminated against a child with autism when excluding her because the child's level of violent conduct meant that she had a 'tendency to physically abuse'. Consideration ought to be given to whether regulation 4 requires amendment to ensure that where a child's behaviour and violent tendencies arise from their diagnosis that they are protected from disability discrimination under the Act.

**Q4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

11. No. The Law Society does not believe that the primary legislation requires amendment for this purpose. Domestic case law, particularly in the employment tribunal, is well developed while the European Court of Justice pronounced on the meaning of disability and the concept of reasonable adjustments) in the case of *Ring v Dansk*.
12. There is a clear need to improve awareness and understanding among employers, service providers and the public about what constitutes a reasonable adjustment and the anticipatory obligation to make such adjustments, but this does not require, and would not necessarily be helped by, legislative change.

**Q10. 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?**

**Employment Tribunal (ET) fees**

13. No.<sup>311</sup> Since July 2013 claimants have to pay a fee or apply for a fee remission when lodging a claim with the ET. The issue fee is £160 or £250 and the hearing fee is £230 or £950<sup>312</sup>. These fees are significant for anyone on an average income<sup>313</sup>, more so for disabled people: recent research has found that when compared to non-disabled men, disabled men have a pay gap of 11%, and disabled women of 22%.<sup>314</sup>
14. It is arguable that people with protected characteristics are being further discriminated against by the fact that the higher fees have to be paid to bring a discrimination claim.

#### The impact of ET fees on the number of claims

15. The government's stated aim when introducing ET fees was to recoup some of the cost of running the ET service. Fees may not have been intended as a deterrent, but the reality is that following their introduction there has been a dramatic decrease in the number of ET cases. The most recent statistics from the Ministry of Justice (MoJ) show that in 2014/2015 there were 16,456 single claims received by the ET, a decrease of over 60% on 2013/14<sup>315</sup>. In some areas there has been an even more dramatic drop in claims. There has been an 83% drop in sexual discrimination claims and a 77% drop in equal pay claims<sup>316</sup>.
16. 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. The scale of change of this kind, and any change in the number of disability discrimination cases, should be assessed as part of the government's review of the impact of ET fees. There is no data on the volume of applications that have been deterred and, while exact numbers would be very difficult if not impossible to compile,

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<sup>311</sup> The Law Society can only comment on the position in England and Wales. In Scotland, the government has announced its intention to abolish fees in the employment tribunal.

<sup>312</sup> <https://www.gov.uk/employment-tribunals/make-a-claim>

<sup>313</sup> The average take home salary is £1,792.27 per month. (Office of National Statistics, Annual Survey of Hours and Earnings, 2013 Provisional Results)

<sup>314</sup> More information from the EHRC can be found [here](#) and the EHRC report is [here](#).

<sup>315</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf)

<sup>316</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf)

research into this would help to inform the review's findings and inform the government's updated equality impact assessment.

#### ET Fees as a deterrent

17. Research by the Citizens Advice Bureau found that workers with legitimate grievances against their employers are being deterred from pursuing claims in the ET following the introduction of the fee system. The research found that four out of five prospective claimants are put off by the current level of fees. Just under half of those people with an employment issue would have to save for six months to afford fees of £1,200<sup>317</sup>. Acas has found that among the 63% who could not reach an agreement through the Acas early conciliation process and then decided not to pursue the claim, the most frequently reason cited was ET fees - 26%.<sup>318</sup>

#### The ET fee for discrimination cases is high relative to awards

18. In disability discrimination cases the average award is £7,536, with 18% of claimants receiving less than £3,000 and 29% less than £5,000<sup>319</sup>.

#### A successful claim does not necessarily mean that the award will be paid

19. A study by the Department of Business Innovation and Skills in 2013 found that only 49% of awards were paid in full, with a further paid in part, and 35% of claimants receiving no money at all<sup>320</sup>. The Law Society believes more must be done to enforce payment of successful claims.

#### The ET fee remission system is not helping as many people as the government expected

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<sup>317</sup> <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/four-in-five-deterred-by-employment-tribunal-fees/>

<sup>318</sup> Evaluation of Acas early Conciliation 2015. <http://www.acas.org.uk/media/pdf/5/4/Evaluation-of-Acas-Early-Conciliation-2015.pdf>

<sup>319</sup> Employment and EAT Tribunals Quarterly Statistics (March 2014).

<sup>320</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf)



20. CAB research found that only three in ten (30%) were aware of eligible financial support to help those on low incomes pay ET fees. A recent study found that half of those who thought that they were not eligible were in fact eligible<sup>321</sup>.
21. When ET fees were first proposed the MoJ estimated that between 11 - 13% of claimants would benefit from full remission and 53% of claimants would benefit from a variable discount on fee rates up to £950<sup>322</sup>. Only 4% of claimants have in fact benefited from any remission<sup>323</sup>.

### General impact

22. 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.
23. Our recently published discussion paper on the future of employment tribunals accompanies this submission.

### **Civil Court fees and costs**

24. Redress for unlawful discrimination can be pursued through a claim in the county court, but very few county court claims for unlawful discrimination have been brought. The Law Society does not have evidence about the extent to which disabled people are deterred by court fees (and the government is consulting on increasing fees: see [consultation](#)). The Committee might wish to ask the MoJ whether, in making an equality impact assessment, it is able to comment on the impact on disabled people.
25. Other deterrent factors include the risk of being asked to pay the other side’s costs if the claim fails, and simply being daunted by the court process, particularly if the claimant is unable to pay for legal advice.

### **Court closures**

26. The Committee will be aware that the MoJ is consulting on the closure of 91 courts and tribunals across England and Wales, and the integration or merger of 31 more.

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<sup>321</sup> <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/four-in-five-deterred-by-employment-tribunal-fees/>

<sup>322</sup> <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/et-fees-response-eia.pdf>

<sup>323</sup> Table C.3, Tribunal Statistics Annex C, tribunal Statistics Quarterly April - June 2014.

<sup>324</sup>The travel implications for court users are obviously important. The MoJ has said that 95% of people will be able to reach their required court within an hour by car (59% by public transport). The Committee might wish to ask the MoJ for details of its equality impact assessment of the process and how, generally and case by case, it has considered the potential impact upon disabled people who might well need to travel by public transport - particularly in rural locations.

**Q11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

27. Yes. Cuts in legal aid following the Legal Aid, Sentencing and Punishment of Offenders Act 2013 (LASPO) have undoubtedly had an impact on access to justice. The legal aid statistics for 2014-15 will not be published until September so the most recent full-year figures - which will not reflect the full impact of the LASPO changes - are for 2013-14, and they show

Discrimination legal help matter starts: 2,384

Discrimination civil representation certificates granted: 4

Employment legal help matter starts: 6

Employment civil rep certificates granted: 12

*(the only employment law remaining in scope is discrimination).*

(Legal Help covers initial or one off advice; if a case needs to go to court then a funding certificate needs to be granted – although few are).

28. It is difficult to make comparisons with the pre-LASPO position because there was no specific discrimination law category for legal aid contracts, and the employment category would have included other employment-related issues in addition to discrimination claims. Discrimination claims could also occur in other categories pre-LASPO, for example housing and consumer matters. With those qualifications, the position in 2012-3 was that there were 16,119 employment new matter starts, while 53 civil representation certificates were granted.
29. There are only three firms contracted to provide discrimination advice under legal aid. Anecdotally, the lack of public funding means that fewer firms have experience of providing discrimination advice, and this might be making it more difficult for potential claimants to access advice even on a privately-funded basis.

Legal aid and disability discrimination – the telephone gateway

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<sup>324</sup> The MoJ last reviewed the court estate in 2010 under the Court Estates Review Programme. That review led to the subsequent closure of 141 courts between April 2011 and September 2014.

30. Discrimination legal aid is only available through the Civil Legal Advice telephone gateway.<sup>325 326</sup>
31. Clients with mental health problems or other communication disabilities might find it difficult to use the telephone, although other organisations will be in a better position to comment on experience of those client groups. In the Law Society's view there ought to be multiple entry points, including e-mail, internet and face- to-face interviews, as well as telephone.
32. A recent report by the Public Law Project<sup>327</sup> provides a useful analysis of the gateway's impact:

*'1.12. Analysis of available data suggests that in some respects the Gateway may have constituted a barrier to access to justice. The number of Gateway matters started has been substantially lower than expected, notwithstanding that these areas of law were identified by Parliament as being the highest priority cases which should remain within the scope of legal aid.'*

*1.13. The number of Debt matters started under the Gateway has been about 90% less than the MoJ should have expected on the basis of its initial calculations on the impact of the Gateway (even after changes to the scope of legal aid were taken into account).<sup>2</sup> Similarly, the numbers of Special Educational Needs and Discrimination matters started have been at least 45% and 60% less, respectively, than figures provided in the Legal Services Commission tenders for Gateway services, which again took into account changes to the scope of legal aid.'*

*1.14. Furthermore, since the introduction of the Gateway two of the three Gateway areas of law have presented the biggest decreases in Legal Help matters started across all areas of civil legal aid law: Debt matters have fallen by 50% and Discrimination matters by 58%. This is notwithstanding a general increase of 2% over the same period of time in the number of Legal Help matters started across all areas of law via all channels of advice provision.'*

*1.15. Referrals rates for face-to-face advice have been substantially lower than that previously estimated by the Legal Aid Agency in respect of Discrimination and Special Educational Needs (namely 0.2% instead of 10% in respect of Discrimination; and 0% instead of 10% in respect of Special Educational Needs).<sup>4</sup> This may be as a result of Legal Aid Agency guidance setting out a face-to-face referral threshold which is only met in 'exceptional circumstances'.'*

33. In its report on the impact of LASPO in March 2015<sup>328</sup>, the Justice Select Committee said about the gateway:

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<sup>325</sup> The helpline is open from 9am to 8.00pm, Monday to Friday and from 9am to 12.30pm on a Saturday. Calls cost no more than 4p a minute from a BT landline. There is a minicom service for people who are deaf, hard-of-hearing or speech-impaired and a type-talk service for people with hearing difficulties.

<sup>326</sup> The Civil Legal Aid (Procedure) Regulations 2012 provide that under-18s are exempt from using the mandatory telephone gateway when seeking legal advice on debt, education or discrimination.

<sup>327</sup> *Keys to the Gateway: An Independent Review of the Mandatory Civil Legal Advice Gateway* March 2015

*‘...that failing to provide adequate public information on the Civil Legal Advice telephone gateway is one of the primary reasons why the gateway is underused. (paragraph 27)*

*‘We recommend that the Ministry of Justice undertake an immediate campaign of public information on accessing the gateway for debt advice, as well as for the other areas of law it covers. Again, we are surprised that a concerted campaign of public information was not undertaken when the legal aid reforms were brought in and the telephone gateway was introduced.’(paragraph 28)*

34. The Ministry of Justice in its response of July 2015<sup>329</sup> indicated that

*‘We will use data collected through the online service (and the telephone helpline) to build the evidence base to inform a more targeted approach to raising awareness, considering how best to direct messaging at those whose need is greatest.’*

35. The Committee might wish to ascertain from MoJ when this more targeted approach to awareness raising is timetabled to be in place.

15 September 2015

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<sup>328</sup> House of Commons Justice Committee Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Eighth Report of Session 2014–15

<sup>329</sup> Government Response to Justice Committee’s Eighth Report of Session 2014–15: Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Law Society, Bar Council, Discrimination Law Association, Law Centres Network – Oral Evidence (QQ 43-51)

**Law Society, Bar Council, Discrimination Law Association, Law Centres Network – Oral Evidence (QQ 43-51)**

[Transcript to be found under Bar Council](#)

## **Law Society of Scotland – Written Evidence (EQD0063)**

### **Introduction**

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes. To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Equalities Law Sub Committee of the Law Society of Scotland, welcomes the opportunity to consider the House of Lords Select Committee on the Equality Act 2010 and Disability call for written evidence on the Equality Act 2010. The committee has the following comments to put forward:

### **General comments**

We believe one of the continuing issues for disability discrimination is that the legislation continues to use a medical model of disability (that is, that someone is disabled because they have a medical condition) both in the definition of “disability” and the substantive tests for discrimination as opposed to employing the social model of disability (that is, 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).

A good example of this is the recent case of a wheelchair user sent to jail for a short period who had to be kept in a police cell over night with no adequate sleeping facilities or assistance for her to use the toilet. Under the social model, she is not disabled because she has a condition which requires the use of a wheelchair but rather she is disabled because the police cell and associated facilities were only designed for someone who was not disabled<sup>330</sup>.

The continuing use of the medical model in the definition of “disability”, we suggest, and in our experience, leads to employers and others often defending claims of disability discrimination by denying that the person is disabled, very often in the teeth of advice from the employer’s own medical experts that the person meets the statutory definition. This, we would further suggest, puts the claimant to the time and expense of an additional hearing before they can have their claim heard which may require them to obtain a costly medical report to back up their case. This makes it more difficult, time consuming and expensive for disabled people to enforce their rights.

Further, we believe the use of the medical model in the substantive tests for discrimination hinders the legislative purpose of the disability provisions of the Equality Act of integrating disabled people into the workplace and society. This, we further believe, is particularly true in the context of the duty to make reasonable adjustments. In our experience, many employers have little or no proper understanding of this duty and frequently respond to calls for adjustments by stating that this would mean having to change their practices or policies

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<sup>330</sup> Price v United Kingdom (application number 33394/96).

(change being axiomatic in the context of adjustments) or that they would have to treat the disabled person more favourably than others.

By requiring the disabled person to demonstrate that some effect of their medical condition disadvantages them in relation to their employer's practices, the law starts from the premise that the norms of society (which are geared to those who are not disabled) should apply unless some link between disability and disadvantage can be evidenced before a court.

If the social model was applied then the law would start from the premise that it is the norms of society that cause disadvantage.

The effectiveness of the law cannot be considered in a vacuum and the law is only as effective as the mechanisms available to enforce it.

We would suggest that there are a number of barriers to disabled persons in enforcing their rights:-

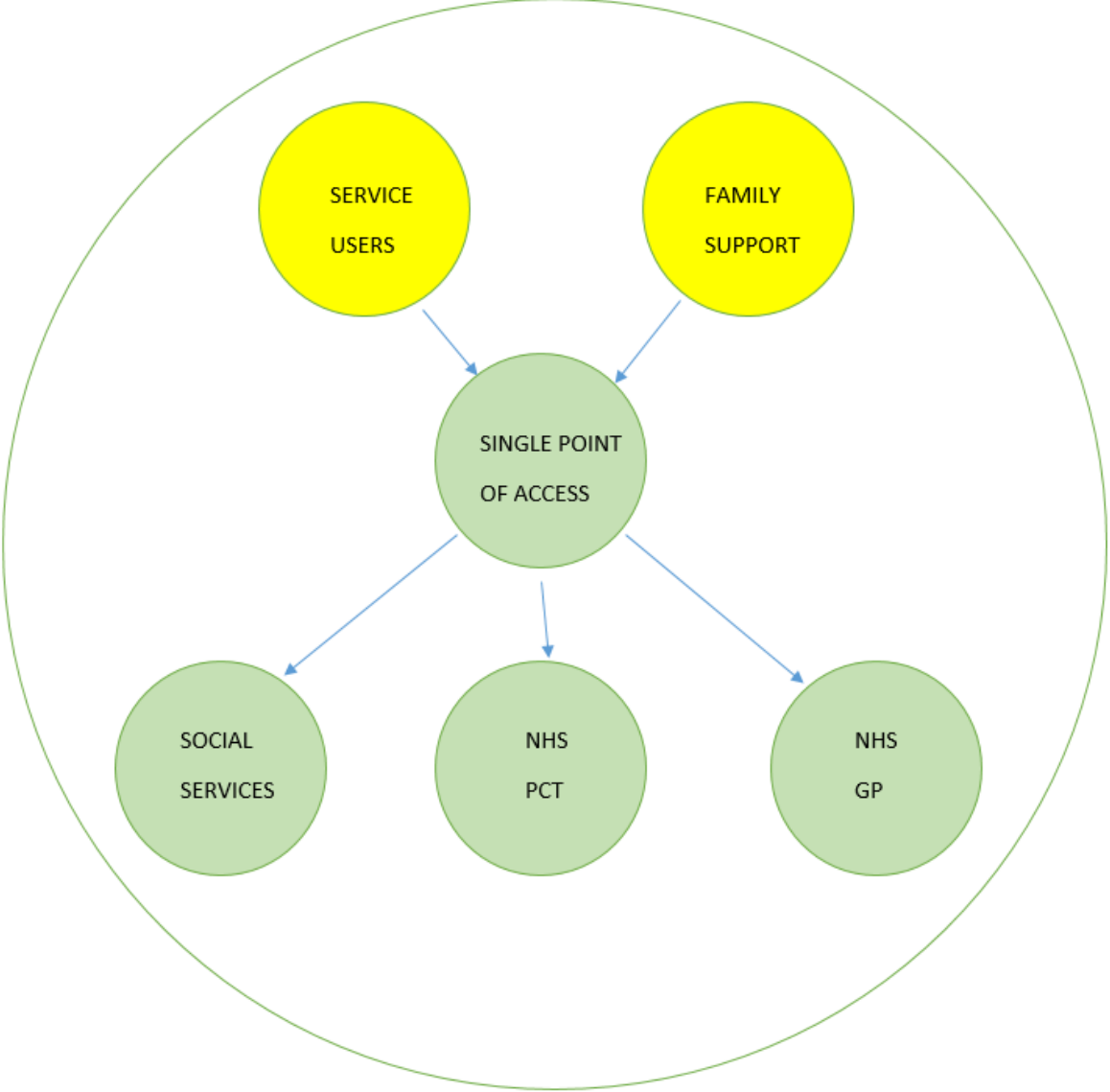
- Ongoing restrictions in available resource via the legal aid fund which is understood to increasingly focused as the provider of last resort and available to a limited number of citizens given the application of the funding criteria. There is a reduction in funding and/or need to divert existing resources for advice services such as law centres and Citizens Advice Bureau into areas such as welfare resulting in fewer sources of assistance for disabled persons. There are fewer and fewer organisations available to offer representation services which has a significant effect on the individual's ability to successfully enforce their rights. Absent the provision of a specialist Court such as an Employment & Equality Court providing for traditional Scottish concepts of equality of arms as between parties many individuals will be unable to advance their claim where legal aid is unavailable
- In addition the introduction of fees to the Employment Tribunal has significantly increased the cost of enforcement for individuals even if they consider that they are able to take such a complex matter forward without engaging a lawyer where the other side will almost inevitably instruct such representation.

The level of fees being charged, above that of fees charged in other courts in Scotland, has effectively priced many claimants out of access to justice

*3 September 2015*

**Christopher Lee – Written Evidence (EQD0111)**  
**UK SOCIAL CARE**

**SIMPLIFIED MODEL**

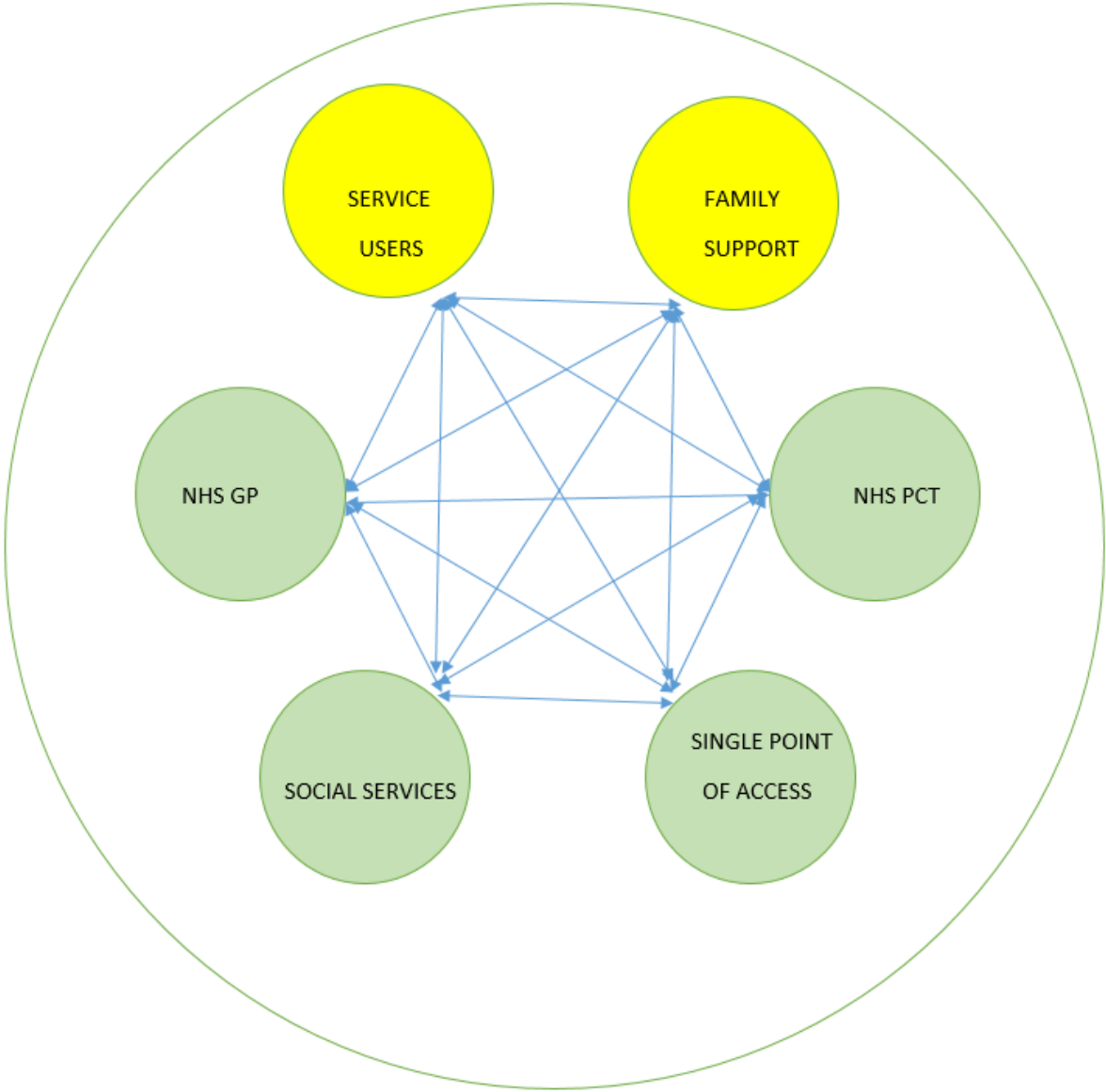


***‘too often there is no designated single point of access and no accountability or responsibility’***



**UK SOCIAL CARE**

**THE NATION AS A FAMILY SUPPORT FRAMEWORK**



***'we prefer a network of support with the single point of access responsible for the performance of the professionals'***

## UK SOCIAL CARE

### AREAS WHERE URGENT IMPROVEMENT IS NEEDED

1. **Simplicity of explanation of support and services available would be a major benefit.** The legislation is complex and support partners do not appear to be willing to provide independent clear cut advice. A simple document detailing the system, what is on offer, service user rights and how to access support as well as how to challenge decisions is essential. This could be structured to assist with the delivery of the requirement to implement a national threshold for eligibility to care including the support for carers.
2. **Single Point of access (contact) needs to be identified.** There is still no notified Single Point of contact in post in some areas and thus no proper co-ordination. In a recent local matter the NHS PCT appeared to be working against the best interests of service users and was at odds to both the family and to Social Services in terms of scoring the Decision Support Tool used for Continuing Healthcare, which appeared to be merely in order to avoid cost liability and to move financial responsibility away from the NHS to Social Services. This resulted in much wasted time and money establishing which 'Government pot' would pay.
3. **Transparency and honesty from service suppliers needs to be mandatory with serious penalties for failings.** Service users well-being (and that of their carers), and the outcomes which matter to them, should be at the heart of every decision that is made. In local cases the following have been issues for service users which have unfortunately involved a number of service suppliers, such that the issue of a lack of transparency appears to be endemic:
  - a. The local NHS Wheelchair Service refused a client a certain model of wheelchair stating that they did not even know of nor purchase or supply that model. They reversed the decision only after a Freedom of Information Act request had evidenced that in fact they did supply that model.
  - b. The local Social Services refused a client a certain model of bed stating that they did not purchase or supply that model. They reversed the decision only after the client had evidenced with information obtained from the suppliers of the bed that in fact they did purchase and supply that model.
  - c. The local NHS PCT advised a client that they would definitely not provide a certain level of care, trying to get the client to accept a sub-standard reduced level of care for their needs. They reversed the decision only after both the Family and Social Services argued the Decision Support Tool outcome.

4. **There needs to be a fast and effective correction procedure for both structural failings and for non-structural case specific failings.** A number of service users are near end of life and so issue resolution needs to be efficient and quick. Even those who are not could suffer needlessly due to a lack of system or personnel:
  - a. **Structural failings.** A Disabled Champion or Tsar at Governmental level hearing urgent matters of structure (such as the lack of a single point of access) with their contact being at Chief Executive level in the service provider organisations (such as County Council and NHS PCT) with serious penalties being charged for failings would seem to be a tool with which service providers could be focussed.
  - b. **Non-structural case specific failings.** The office of the Ombudsman could be tasked with a fast track route for all but the most complex of complaints.
  
5. **Process and financial liability.** The process of assessment, package and only then cost and financial accountability should be enforced rigorously. Too often it seems that the service providers start with cost avoidance or cost limiting measures which do not put the health and wellbeing of service users, their family and their carers first. Serious consequences would need to be introduced for failings in this area in order to encourage compliance. The embedded rights to choice, through care plans and personal budgets if chosen, to ensure that a range of high quality services are available locally (which applies equally to services being available to carers) is paramount to the health and wellbeing of service users, their family and their carers.

In a local case Social Services assessed financial responsibility before assessing the needs and care plan for a disabled person. In a local case the NHS PCT fought hard against all of the other professionals including other NHS staff in order to avoid the costs of continuing care. Locally both Social Services and the NHS appear to delay funding and have procrastinated by not responding to correspondence nor increasing direct payments to agreed levels.

Ref: CJL UK SOCIAL CARE 04-09-2015

*4 September 2015*

## **Leigh Day Solicitors – Written Evidence (EQD0126)**

### *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?

1.1. Overall, the Equality Act 2010 (“EQA”) has helped to harmonise disability discrimination law. However, there are still significant gaps in the law, and there are still significant difficulties in bringing claims under it, which undermines its overall potential strength.

2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?

2.1. One gap we have identified is how the concept of discrimination by association currently seems to be limited to direct discrimination under section 13 EQA. This would leave persons who are suffering from other forms of discrimination to suffer the same effects of those suffering direct discrimination, but having no recourse under the EQA. For example:

2.1.1.C is a sentenced prisoner and his wife is disabled. He is allocated to a prison far away from his family home. Prisoners are entitled to at least two visits a week from family and friends. However, because of her disability, C’s wife is unable to undertake the journey to visit C in that particular prison. The prisons closest to C’s family home and to which his wife would be able to undertake the journey to visit are local prisons. Prison service policy states that local prisons are only suitable for prisoners awaiting sentence. A reasonable adjustment would be to make an exception to that policy in C’s case so that he can be allocated to a local prison even if he has already been sentenced. However, although C is suffering discrimination because of his wife’s disability and the effect of that discrimination upon him is the same as if it was direct discrimination, it would seem that he has no recourse under the EQA.

2.2. Another gap we have identified is that the concept of providing a service to a disabled person in order for the EQA to bite seems to exclude some situations where a person is not accessing a service directly, but is nonetheless put at a substantial disadvantage by a failure to make reasonable adjustments. For example:

2.2.1.C, who is blind, fell over an object that was placed in the middle of a pavement by a shop. The placement of the obstacle in the middle of the public highway puts people who are visually impaired and/or wheelchair

bound at a substantial disadvantage compared with non-disabled people. However, it would seem that C has no EQA claim against the shop because he was not attempting to access their service when he was walking along the street. C does have a potential PI claim but this will not achieve the outcome that would make a practical difference to him (i.e. moving or removing the obstacle) that could be achieved by way of injunctions or declarations under the EQA.

### *Reasonable Adjustments*

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 sportsgrounds?

3.1. No. There seems to be very little understanding that (1) the duty is anticipatory and adjustments should be made by a service provider before a disabled person attempts to access the service, and that (2) the burden is on the service provider to proactively consider what adjustments are reasonable to make, rather than relying upon the disabled person to suffer the disadvantage and then suggest adjustments themselves. Furthermore, (3) the service provider will invariably rely upon a minor/tenuous/completely unrelated aspect of their service to say that they have met their duty to make “reasonable adjustments” towards a disabled person which, in fact, do not overcome the substantial disadvantage at all. In addition, (4) even if the service provider then does make an adjustment, it will invariably be the most limited option available rather than the option which allows the disabled person to access a standard of service as close as possible to that accessed by non-disabled persons. Finally, (5) service providers do not understand that their agents are also subject to the duty and that they will be ultimately liable for non-compliance with it.

3.2. Examples in relation to the anticipatory nature of the duty:

3.2.1. One of the most surprising examples is a case within the field of education where a University had no mechanisms in place and then refused to provide C with accessible materials for its course. This is despite knowing that (a) in general students with disabilities are highly likely to attempt to access its course and (b) being notified well in advance of the start of term of C’s disability.

3.2.2. We have a number of cases on behalf of blind/visually impaired people (“VIP”) in relation to exercising their right to vote. Our current electoral system, including voting by post and in person, is inaccessible to blind/VIP because it is paper based and information is not provided in alternative

formats (eg large print/electronic). Local authorities of course know that blind/VIP in their area will attempt to exercise their right to vote independently and in secret on an equal basis to non-disabled people, but have made no adjustments to their processes/procedures to allow them to do this.

3.2.3. We also have a number of cases on behalf of wheelchair-using prisoners in relation to difficulties they face in participating in day-to-day prison life. Clearly, the degree to which a person is able to mobilise without the use of their wheelchair will vary. However, at the very least, it is obvious that a prisoner who uses a wheelchair would face difficulties if they were not allocated to a cell on the ground floor and the cell itself was not wheelchair-accessible. Unfortunately, despite their disabilities being known, these difficulties are routinely not anticipated before their transfer. The result being that they are allocated to inappropriate floors and cells or are shipped from one prison to another until an appropriate floor and cell is found.

3.3. Examples in relation to the burden to consider reasonable adjustments:

3.3.1. Following on from the education example above, the University placed the responsibility of researching what assistive technology is available to enable C to access course materials on C despite having a specialist disability service within the University. While of course the University should consult C, they did not understand that the duty is a positive and proactive obligation upon the University, and it should not rely solely on C to suggest solutions.

3.3.2. Following on from the prison example above, even when a wheelchair-using prisoner is transferred to a prison where there is an appropriate floor and cell, the provision of further aids and services may be required. The responsibility for suggesting what aids and services to be provided is very much placed on the prisoner. However, in many cases, the prisoner will not know what aids or services can be provided, either because they have not faced those particular difficulties before or because they are not aware of what other resources are available in that prison or elsewhere in the prison estate.

3.4. Examples in relation to overcoming the substantial disadvantage:

3.4.1. We have a number of cases on behalf of blind/VIP in relation to the provision of auxiliary aids in train stations. The train company says that because they provide other sorts of assistance (which require advance

booking and do not allow the passenger to travel independently), they have met their duty to make reasonable adjustments. In fact, this argument misses the point that the lack of the auxiliary aids puts disabled people at a substantial disadvantage compared to non-disabled people; disabled passengers are not able to travel independently throughout our rail network and are, instead, required to plan their journey and book assistance (if it is available) in advance.

3.5. Examples in relation to the standard of service:

3.5.1. We have a number of cases on behalf of blind/VIP prisoners in relation to not being able to communicate with the outside world. Written correspondence, through the sending and receiving of letters, is a very important part of a prisoner's communication with the outside world, and there is usually no limit in the number of letters they can send and receive. Blind/VIP prisoners face significant difficulties in doing this. Therefore, a reasonable adjustment would be to provide the prisoner with a cassette tape recorder or similar so that they can do this independently and privately. However, prisons routinely either provide a "prison buddy" to read and write letters for them or provide a cassette tape recorder but limit the number of cassettes tapes they can send or receive. This means they can access the service, but, needlessly, the standard of the service is lesser than that accessed by non-disabled prisoners.

3.6. Examples in relation to agents:

3.6.1. Going back to the education example, the University argued that it cannot compel its guest lecturers to comply with the duty to make reasonable adjustments because it has no control over them. There was no understanding that the University is directly liable for acts of discrimination by their employees/agents and that it is their responsibility to ensure that they are aware of their duties under the EQA.

3.6.2. Going back to the prison example, prisons usually argue that they do not need to provide further auxiliary aids and services to wheelchair-using prisoners because they have not been advised to do so by healthcare or healthcare have advised that it is unnecessary (healthcare is commissioned by NHS England within prisons and usually provided by bodies or companies separate from the prison). There is no understanding that the prison retains ultimate responsibility for making reasonable adjustments within the prison and that if they do seek advice from elsewhere it is still incumbent upon them to form their own judgement about if and what they need to do to meet their duties under the EQA.

4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

4.1. No. It is useful for what constitutes a reasonable adjustment to be as wide-ranging and as flexible as possible because of the myriad contexts in which the duty arises.

#### *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?

5.1. The Public Sector Equality Duty (“PSED”) is procedural rather than substantive. Public bodies will often consider their PSED in their Equality Impact Assessments or similar, conclude that their proposed policy puts disabled people at a substantial disadvantage, but nonetheless implement it. The fact that they are deemed to have had “due regard”, often means that the duty has been satisfied. Therefore, the PSED often does not have any teeth in this context.

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?

6.1. No expertise to answer.

#### *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?

7.1. No expertise to answer.

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?

8.1. We consider that, given the difficulties faced in respect of the enforcement mechanisms available to private individuals (see answer to question 10 below), the Equality and Human Rights Commission (“EHRC”) should be more proactive in exercising its regulation and enforcement powers to ensure that the rights of disabled persons are protected, particularly against those persons carrying out public functions.

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?

9.1. We consider that the EHRC should work more closely with other regulatory bodies to monitor compliance with the EQA. For example, within the context of



prisons, there are several regulatory bodies, including HM Chief Inspectorate of Prisons (“HMCIP”). HMCIP produces inspection reports on individual prisons, as well as annual and thematic reports. HMCIP works with many different partners in doing this. HMCIP does look at diversity in the reports, but last produced a thematic report on disabled prisoners back in 2009. The EHRC should work in partnership with HMCIP in producing these reports and, if appropriate, should exercise its regulation and enforcement powers if any structural failings are identified.

- 9.2. We also consider that the regulatory bodies themselves should monitor compliance with the EQA more proactively. For example, in relation to payment of the National Minimum Wage, HM Revenue and Customs has the power to fine and “name and shame” employers who do not comply. Such a mechanism should be adopted by regulatory bodies for ensuring better compliance with the EQA.
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?
- 10.1. No. Disabled persons face significant obstacles in bringing cases under the EQA. Those obstacles include the relatively low value of the cases and the knock-on effect this then has on being able to fund them and to then recover costs if they are successful.
- 10.2. Over the last couple of years, changes in the law and the court rules have meant that the ability of Claimants to bring such claims has been significantly restricted.
- 10.3. The main reason for this is that these changes have not taken into account the relatively modest value of these claims. Awards of compensation in disability discrimination claims are guided by case law. The “Vento” guidance provides that compensation should be awarded to Claimants according to three bands: the lower band of up to £6,600; the middle band of up to £19,800; and the upper band of up to £33,000.
- 10.4. However, the relatively modest value of disability discrimination claims affects the ability of the Claimant to get funding and then to recover their costs.
- 10.5. Disability discrimination claims can be funded through legal aid. However, they will be subject to the Legal Aid Agency’s (“LAA”) funding criteria. This includes a proportionality test, which, in general terms, means that the likely benefits of the claim must justify the likely costs of bringing the claim. Therefore, claims

which are for compensation only and are in the lower and middle bands of the Vento guidance will often find it difficult to satisfy this proportionality test.

- 10.6. Previously, where a Claimant was not financially eligible for legal aid funding, or where a claim did not satisfy the LAA's proportionality test, 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, but, if the claim was unsuccessful, the Claimant was insured against paying the Defendant's costs.
- 10.7. However, with the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"), ATE premiums are no longer payable by the Defendant even if a claim is successful. Rather, the Claimant is now responsible for paying the ATE premium out of any compensation they have been awarded. Unfortunately, in many cases, ATE premiums can amount to thousands of pounds and, as such, can dwarf the compensation awarded.
- 10.8. To address this problem, the Civil Procedure Rules ("CPR") introduced the concept of Qualified One Way Costs Shifting ("QOCS"). In simple terms, QOCS mean that, if a claim is unsuccessful, the Claimant is protected against paying the Defendant's costs, which, in turn, means that ATE is no longer necessary.
- 10.9. However, QOCS only apply to claims which include a claim for compensation for "personal injuries" (CPR Rules 44.13 to 44.14). At present, there is uncertainty in the law as to whether or not "injury to feelings" is a "personal injury" for this purpose. Faced with such uncertainty, many Claimants in disability discrimination claims are understandably apprehensive of bringing a claim and then being exposed to paying the Defendant's costs if that claim is then unsuccessful.
- 10.10. Even if a Claimant is able to get funding for a disability discrimination claim, the introduction of cost-budgeting by the CPR then makes it difficult for them to recover their costs. When determining what costs are reasonable for the Claimant to recover if their claim is successful, the Courts will adopt the concept of "proportionality".
- 10.11. The concept of proportionality is very similar to the LAA's proportionality test in that the award of compensation must be proportionate to the costs of bringing the claim. The effect is that it becomes uneconomical for firms to bring disability discrimination claims on behalf of Claimants, as, whilst, the amount of work done and the costs claimed are the same as for other claims, the amount of costs they are then able to recover is much less.

- 10.12. Therefore, whether through ignorance or otherwise, these changes in the law and the court rules have created a justice gap whereby many Claimants who have suffered discrimination are unable to enforce their rights through the law.
11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?
- 11.1. Prepare a resource similar to the Judicial Studies Board guidelines for damages for injury to feelings under the EQA, as damages are difficult to assess, often very low and vary widely;
- 11.2. Include “injury to feelings” in, or in addition to, the definition of personal injury in the rules on QOCS;
- 11.3. Forge and enhance partnerships between the EHRC and other regulatory bodies to monitor compliance with the EQA; and
- 11.4. Increase the monitoring and imposition of financial penalties and “naming and shaming” by regulatory bodies of those of service providers and public bodies who do not comply with the EQA.

*4 September 2015*

## Leonard Cheshire Disability – Written Evidence (EQD0042)

### About Leonard Cheshire Disability

At Leonard Cheshire Disability we work for a society in which every person is equally valued. We believe that disabled people should have the freedom to live their lives the way they choose - with the opportunity and support to live independently, to contribute economically and to participate fully in society.

We are one of the UK's largest voluntary sector providers of services for disabled people with over 200 services across the UK. We have over 100 services in England regulated by CQC including care homes, care homes with nursing and homecare services. We aim to maximise personal choice and independence for people with disabilities and all of our services are designed to meet the needs and priorities of the people who use them.

### Introduction

1. Overall we welcome the Equality Act 2010 as it protects disabled people from discrimination, requiring businesses and services to make reasonable adjustments and improve access and helping to ensure disabled people retain their independence.
2. The Equality Act provides the framework in Part 4 for disabled people to take legal action where they are discriminated against with regards to housing. However, it has failed to ensure those with the power to plan for and create accessible homes for disabled people do so. As the Act is failing to have the required impact for disabled people with regards to housing, we have focused our response on this area. Since launching our Home Truths<sup>331</sup> campaign in July 2014 we have been campaigning to ensure disabled people can get the accessible housing they need to live independent lives. We have produced several reports (available [here](#)) which provide the basis of our response. We also ran a survey for the purpose of this submission of around a hundred disabled people, asking them about their experiences of this Act and the impact it has had on their lives. The case studies in this submission came forward in response to our Equality Act survey and our housing campaign.
3. Changes should be made to the Act so it more effectively encourages national and local government and housing developers to ensure housing meets the needs of disabled people. At present the only option is for individual disabled people to take the council or housing providers to court, which is often costly and emotionally exhausting, as well as providing no guarantee of success.

### Our Evidence

4. The research we have undertaken demonstrates the barriers that arise such as a lack of suitable housing, the inability of councils to provide appropriate housing or give an idea of how long it will be until they can, and the time taken to get adaptations to an

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<sup>331</sup> <https://www.leonardcheshire.org/campaign-with-us/our-campaigns/home-truths#.VdxLSE9OXcc>

existing home. In fact, 72% of disabled people we surveyed told us that the entrance to their property isn't accessible, meaning even getting into their homes is difficult.<sup>332</sup>

5. The Government is not doing enough to solve this problem. Councils are not routinely consulting disabled people on their housing needs and housing plans often do not consider the needs of disabled people. Only 16% of councils could provide any data on the number of homes in their area which were wheelchair accessible and only 10% could provide data on the amount of local homes built to Lifetime Home Standards.<sup>333</sup>
6. Further, almost a third (32%) of councils are failing to mention disability in their housing plan, or only mentioned it in passing,<sup>334</sup> and of those who had a housing plan, less than one in five (17%) set out plans to build disability-friendly homes in the year ahead.<sup>335</sup>
7. The following case study highlights how the failure of councils to meet the needs of disabled people puts undue strain on those residents. For example, Louise's\* situation (see below) shows that the council's inability to meet her housing needs is impacting her health and subsequently, her ability to work.

#### Case Study 1

Louise has Ehlers-Danlos Syndrome and sometimes needs a wheelchair to move around, when her condition has a flare-up. She currently lives on the second floor which means she cannot use the wheelchair when she needs it. Struggling in her flat without vital support from her wheelchair is making her condition worse - as a result she is having to cut down her hours at work.

Louise is currently waiting to see if the council can provide a suitable alternative for her but they lack information on what housing exists near to her which could meet her needs.

"I have had to reduce the days I work in the office, as despite my best efforts, getting out the flat is very hard work, and it causes my symptoms to get worse from getting up and down the stairs. Not being able to use my wheelchair inside the flat makes it hard to pace my activities and manage my pain levels and other symptoms."

"We've been accepted onto the local housing register, but nobody can tell us even approximately how long the wait for suitable housing will be."

\*Names have been changed to retain anonymity.

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<sup>332</sup> ComRes's polling. Base (those who reported a mobility impairment): 238. Extrapolation was based on the Census 2011 data (47,754,569 people aged 18+ in Great Britain)

<sup>333</sup> All councils in the UK which had a responsibility for housing were asked for this data including Wales where Welsh Housing Quality Standards are followed instead of Lifetime Homes Standard. The Lifetime Homes standard is a set of 16 design criteria which can be found in more detail here

<http://www.lifetimehomes.org.uk/pages/revised-design-criteria.html>

<sup>334</sup> Based on responses from 222 English and Wales housing authorities (84% response rate). Councils in Scotland and NI were not asked.

<sup>335</sup> As above

8. More than 5 million adults report having mobility problems, and more than one in ten have difficulty or are unable to move, walk or stand independently. For disabled people, housing can become a very real and unexpected problem, with 17% of surveyed British adults with a mobility problem reporting difficulty using stairs safely, 52% reporting their stairs aren't wide enough to fit a stair-lift, 44% don't have bathroom walls strong enough to install grab rails and 52% don't have wide enough hallways for wheelchair access.<sup>336</sup>
9. Leonard Cheshire Disability is calling for all homes to be built to Lifetime Homes standards because they are easily adaptable and will help to ensure disabled people get the homes they need. Building Lifetime Homes also ensures that people with progressive conditions are able to stay in their homes if they want to, and can make the changes they need for a minimum cost. Furthermore, building to Lifetime Homes standards would reduce the cost of adaptations for councils, as those made with Disabled Facilities Grants would be less costly. All of this is in the context of an ageing population and 800,000 working age people becoming disabled every year.<sup>337</sup>
10. Lucas'\* situation highlights the importance of adaptable homes, as his home is becoming increasingly unsuitable and it is not possible to adapt it to meet his needs.

#### Case Study 2

Seven-year-old Lucas\* has Duchenne Muscular Dystrophy, a progressive condition that will require increasing adaptations at home. His parents are concerned about how they'll manage his condition without the ability to adapt their home or move to a suitable alternative.

"Our council house can't be adapted to be safe and functional for Lucas. They are not building enough homes to cater for all the families with disabled children that need them. We are gold priority, but there's not a single property that becomes available that completely caters for Lucas' needs. Even now Lucas struggles in our house, he finds climbing the stairs difficult and I often have to carry him. Very soon the simple things like going to the toilet or having a bath will be difficult without hoists and other special equipment."

"When this happens we won't be able to live in the council house we have. But we have been told there is nowhere else for us to go and it could take a very long time to find the right property and also, to make things even worse, we are told that there aren't any suitable properties on their books anyway (vacant or occupied)."

\*Names have been changed to retain anonymity.

11. The combined financial cost of inaccessible homes to the NHS and care services is up to £450m per year.<sup>338</sup> For example, one trip to the hospital for someone who slips on the stairs as they can't install a stair-lift costs an average of almost £1,800<sup>339</sup> and a

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<sup>336</sup> ComRes's polling. Base (those who reported a mobility impairment): 238.

<sup>337</sup> Joseph Rowntree Foundation, Social exclusion and the onset of disability

<sup>338</sup> Based on £300m of health costs and £150m of care costs.

<sup>339</sup> Source: Cabinet Office unit cost database (2011/12)

hip fracture costs the NHS over £28,000.<sup>340</sup> If the Equality Act can be improved to ensure disabled people get the housing they need, a lot of these costs could be avoided.

12. The following case study highlights the impact on both the individual and the local health and social care services of the lack of accessible housing.

### Case Study 3

John\* was involved in a serious accident which left him completely unable to use his home due to him becoming a wheelchair user. The council have placed him in a care home aimed at older people, at a considerable distance from his wife and new-born daughters. All this is because there are no suitable properties for him and his family in the area.

“When I was discharged I was told there were no accessible properties to house me and my family, and the hospital even thought they may not be able to discharge me without a home for me to go to.”

\*Names have been changed to retain anonymity.

### Our Recommendations

13. The Act must be more effective in encouraging those responsible for housing (including national and local government, housing associations and other housing providers) to ensure accessible housing is available when disabled people need it. This will involve strengthening existing provision in the Act to make it clearer when obligations exist and to ensure enforceability of penalties when these obligations are not met by housing providers. The burden should no longer be on the disabled person to resolve issues reactively through court, but for the Act to ensure – proactively – that the necessary criteria are met to enable disabled people to live with maximised personal choice and independence. As such we believe the key requirement missing from the Act is for local housing authorities to ensure that all new builds are built to Lifetime Homes standards and that 10% of these are fully wheelchair accessible.<sup>341</sup>
14. The Act should ensure that councils, housing associations and other housing providers build enough homes to Lifetime Homes standards to meet the needs of the disabled population.
15. The Act must ensure that the Department for Communities and Local Government is obligated to require all councils and housing associations to keep a register of the disabled-friendly homes they have, so at any time they have a plausible possibility of identifying a home that works for them. In our view this should be considered a

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<sup>340</sup> Better outcomes, lower costs: Implications for health and social care budgets of investment in housing adaptations, improvements and equipment: a review of the evidence

<sup>341</sup> For a nominal cost (£1,100 per new home) homes can be built to this standard which ensures they can be adapted with minimal effort or cost and will therefore be homes that people can live in for their entire lifetime.

reasonable adjustment, and those local authorities who do not provide an accessible housing register should be considered in breach of the Act.

16. There needs to be greater involvement on the part of local authorities in their planning decisions. We are calling for strengthening of the duty to consult local disabled people on any plans for new development, for example by requiring developers to produce a report of who they have consulted with and the outcomes of the consultation. There should also be an obligation for local authorities and developers to consider the accessibility needs of disabled people during the planning stages of any new development. Doing so will ensure a sustainable housing supply that is suitable for everyone, and subsequently reduce cost burdens on councils, social care services and the NHS whilst simultaneously decreasing housing inequalities between disabled and non-disabled people.

*1 September 2015*



## **Level Playing Field – Written Evidence (EQD0141)**

**Written evidence submitted by:**

**Joyce Cook OBE, Chair Level Playing Field on 4<sup>th</sup> September 2015**

### ***General***

***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?***

- I. Whilst harmonizing the 9 protected characteristics, Level Playing Field (LPF) believes that the Equality Act 2010 has proved fairly ineffective in improving accessibility and inclusion for disabled sports spectators in many existing venues that host live sporting events. LPF have seen no clear benefits from the original legislation, the Disability Equality Act.
- II. Indeed, in our experience, some larger service providers, and their governing bodies appear to have shifted their focus still further from accessibility and towards other equality aspects. Level Playing Field has the sense that some service providers in sports may even consider that their progress in other strands of equality, somehow negate their responsibilities in other areas that they perceive to be more financially onerous (usually with no proof) such as disability access.

***Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?***

- III. Level Playing Field believes that there is a compelling case for further legislation as many topflight sports clubs and venues continue to discriminate against disabled people. Further evidence within this submission serves to demonstrate how ineffective the Equality Act has so far proved to be in terms of providing access adjustments and removing the barriers that still exist at many topflight sports clubs and grounds.
- IV. The current legislation relies on an individual taking legal action. However, a passionate and loyal sports fan has a unique relationship with the club that he or she supports at a local or national level. The club and/or sport is often chosen at a very young age and families often hand-down their loyalty from father to daughter or mother to son and so on. The decision to support a club is an emotional decision and usually not based on the standard of service being offered or the accessibility credentials of that venue.
- V. For disabled people, this relationship can be exceedingly difficult. Their love and passion for their team is often placed in direct conflict with the dilemma they face in the poor facilities and services offered to them on matchdays.
- VI. The disabled spectator is often offered a much poorer level of service than non-disabled

fans with limited access to tickets and accessible services and information, poor access, limited views of the field of play, no shelter from the weather, no choice of seating areas and unable to sit with fellow fans or other family members and friends. In other words, an absence of reasonable adjustments.

- VII. Yet, most disabled fans are extremely reluctant to challenge their club or to take legal action because of the relationship bond and emotional investment in their club. The same disabled person may also fear isolation and threats from other fans, friends and their clubs if they chose to challenge their club.
- VIII. Disabled fans will often ask Level Playing Field not to mention them by name when asking LPF to take up an access issue with a club. They fear repercussions or 'punishment' for speaking out. They are frightened that they will risk any future chances to buy match tickets or of being isolated or victimized.
- IX. In addition, when considering the significant resources of many sports clubs and stadia (especially top-flight clubs), the disabled person often fears the might of the sports club in question and its ability to appoint expensive lawyers and experts. This deters most disabled people from challenging sports clubs and venues with legal action in cases of discrimination.
- X. Many sports clubs have realised that they are very unlikely to be legally challenged by their own disabled fans. This is evident when considering the poor access provisions at many professional sports clubs and lack of legal action against such clubs in comparison to the amount of legal cases taken against much smaller entities and businesses (not sports clubs) over the last 20 years.
- XI. Clubs understand that individual disabled fans are either too fearful or too loyal to challenge the current situation. This runs counter to the original expectations of football's own governing bodies, DCMS, Sport England and the Football Licensing Authority (Sports Ground Safety Authority) when setting out their minimum requirements in Accessible Stadia in 2003 and in anticipation of the introduction of Part 3 to the DDA.
- XII. Clearly, the Equality Act and previous DDA has not worked in this regard and surely it is now time to put this right and so by ensure that all professional sports clubs and live sporting events are accessible and inclusive to all and that these venues are truly fit for purpose.

### ***Reasonable adjustment***

***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?***

- XIII. Given that the reasonable adjustment duty has existed since 1995, a sports ground built or substantially redeveloped since that date should have anticipated that a proportion of spectators - whether home or visiting fans - will be disabled. Older sports grounds and venues should not be exempt from making reasonable adjustments. Many top-flight clubs will argue that they have old stadiums with limited layouts and design constraints. Yet these same clubs have since rebuilt their stadiums from the inside out and they never seem to have the same design constraints and issues when further developing their hospitality and media provisions.
- XIV. In 2014, Premier League clubs found space for TV cameras in accessible areas of their stadia within 10 days and to add insult, in a few cases, they apparently removed existing disabled fans seats to make way for the new cameras. The HD and 3D cameras were required as part of the lucrative new Premier League broadcasting deals circa £5.4 billion.
- XV. Other legislation already exists in considering the design and layout of a spectator sports stadium. For example, Part M of Building Regulations states that the permanent wheelchair (user) provision for audience seating where there are 600 to 10,000 seats should be one per cent of total seating capacity. This is in line with Sport England guidance and based on the numbers of wheelchair users in the UK population. And larger capacity grounds are expected to meet the requirements of Accessible Stadia (which is imbued into Part M of Building Regulations).
- XVI. Council planners and inspectors only seem able to enforce this legislation fully for new stadium builds. They claim to have no legal jurisdiction over sports clubs and venues in terms of addressing longstanding accessible seating deficits and lack of amenities in the whole stadium but only in considering the provisions within the new stand or extension. This situation cannot be allowed to continue.
- XVII. City planners and inspectors should be able to enforce the minimum accessible seating numbers and amenities with regards to the whole stadium capacity and not only for the new stand or extension. This is a loophole in the existing legislation that is often exploited by topflight clubs and larger sports venues.
- XVIII. The current legislation is failing disabled people and local councils clearly have insufficient powers. The Equality Act provides an anticipatory and evolving duty to make reasonable adjustments at the first opportunity such as when undertaking building improvements and refurbishments but again it places the obligation on an individual disabled person to take a legal action against a large sports club.

***Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?***

- XIX. The minimum accessible seating requirements set out in Accessible Stadia should be clearly defined and imbued within the Equality Act to ensure that sports clubs and their

grounds are obliged to deliver at least a minimum specified number of disabled spectator seats, amenities and services in public venues with a set stadium capacity.

### ***Oversight and enforcement***

***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?***

- XX. The Sports and Disabled People’s Ministers share responsibilities when considering the best interests of disabled sports fans. Over the last 7 years, 3 successive Sports Minister have proved very supportive and sympathetic to the accessibility issues facing disabled fans. More recently, successive Disabled Persons Ministers have taken a keen interest in the agenda too and Level Playing Field has joined the Department of Works and Pensions Disability Alliance. This has been a useful collaboration for LPF and its members.
- XXI. Level Playing Field believes that both Departments are pivotal to finding lasting solutions and in ensuring that the agenda continues to move forward. The Sports Minister and DCMS meet with sports governing bodies on a regular basis and are best positioned to seek regular accessibility updates. And DWP recently commissioned a UK wide accessibility study of disabled sports fans and 223 professional sports clubs. The summary report is due to be published at the end of September and the study proves the findings of the 2014 BBC Sports investigation into Premier League clubs and the lack of sufficient access provisions for disabled fans at most clubs. Both studies have also validated the claims and evidence collated by Level Playing Field over the last decade or more.
- XXII. In 2008, Level Playing Field presented a State of the Game report to the Equality and Human Rights Commission (EHRC) having previously prepared a similar report for Gerry Sutcliffe, then Sports Minister.
- XXIII. LPF understands that the EHRC is currently advising and supporting sports governing bodies and their clubs to assist with further progress. The EHRC project has included access audits of top-flight professional sports clubs in the UK.

***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?***

- XXIV. Level Playing Field has been calling for an independent access audit of each professional sports ground (undertaken by NRAC accredited access consultant) for many years. This work is currently underway at topflight clubs with the project funded by the EHRC. However, it is not sufficient to only undertake access audits. The audits must be reviewed with subsequent Access Action plans agreed with the clubs and their governing

bodies and monitored by the EHRC to ensure lasting progress.

- XXV. LPF has long called for the Sports Grounds Safety Authority (as custodian and author of Accessible Stadia) to monitor accessibility requirements before issuing stadium licenses at the start of each season. LPF believes that the Sports Minister could simply instruct the SGSA to undertake this responsibility (as the regulator) within existing sports grounds and spectator legislation.
- XXVI. In addition, the EHRC should be instructed to take a more active role on behalf of government as its Equality Act enforcement agency. The EHRC should use its statutory powers more often where disability inclusion and accessibility progress has been non-existent or too slow at professional sports clubs, their venues and events.
- XXVII. Given the resources at the disposal of our leading sports clubs and national sports, there can be no more excuses. Sports venues should be instructed to undertake all necessary reasonable adjustments and to remove all barriers whether those grounds be they new or existing venues.

***Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?***

- XXVIII. Lord Faulkner of Worcester has proposed a Private Members Accessible Sports Grounds Bill. This Bill is currently at Committee review stage having achieved a successful 2<sup>nd</sup> reading in the House of Lords. LPF understands that the draft Bill is undergoing a number of amendments to ensure that it is fit for purpose having received overwhelming cross party support.
- XXIX. Level Playing Field welcomes Lord Faulkner's Private Members Bill as it is clear that existing legislation has failed many thousands of UK disabled sports fans who have endured poor access provisions at many topflight sports clubs for too long. This cannot continue and LPF hopes that the Select Committee will recommend that further regulation and enforcement is now necessary.

***Background evidence***

- I. Level Playing Field (LPF) is a registered charity, established in 1998 to represent disabled football fans in England and Wales. LPF extended its charity objects in 2008 to cover all

sports. LPF works with key stakeholders to improve access to sports stadia and venues and to ensure an inclusive live matchday and / or sporting event experience for disabled sports fans. By using the special influence of football and other sports, LPF also aims to raise awareness more widely whilst encouraging many more disabled people to attend and enjoy live sporting events.

- II. More than 12% of the population is disabled with one in four families having a disabled member. At any given time, more than 40% of the population will require easy access including families with young children, young children, pregnant ladies, senior citizens and people with temporary injuries or ill-health. More than 50% of all disabled people have never participated in leisure or sport activities.
- III. The annual spending power of the UK disabled community is estimated to be more than £80 billion. Accessible venues are more sustainable and inclusive and accessible facilities and services make good business sense. When disabled people are unable to attend an event or to use a service because of poor access, then most often, nor will their family or friends. Simply put, inaccessible venues lose business and risk their reputation.
- IV. We're a sport-loving nation and there are naturally an increasing number of disabled people who also wish to attend live events and London 2012 undoubtedly inspired many disabled people to follow live sports at a national and local level. We have personal testimonies from disabled fans who describe life-changing experiences in attending live sports for the first time, often giving them the confidence to try other new activities, and so by, helping to improve their daily lives.
- V. The public was enthralled by London 2012 Olympics and Paralympic Games and sports fans at each event played their part and in so doing, showed the British people at their very best. Those fans fortunate to have been at London 2012 will never forget their experiences. The feeling of collective pride and passion in being in a stadium at an iconic sporting moment is not easily described – you have to be there to really understand how it feels – ask any fan.
- VI. But for disabled fans that can only happen if our stadia and sporting arenas are truly accessible and inclusive. That means providing equal and fair proportions of accessible seating (wheelchair spaces and easy-access seats alongside fellow fans, family and friends), accessible services (such as audio-description for blind fans), accessible information (websites, easy read, and signage), provisions for assistance and guide dogs, accessible amenities, accessible transport links, drop-off points and parking and so on.
- VII. During London 2012, Gamesmakers and transport assistants provided additional support to disabled passengers with a marked improvement in services at most train stations and transport hubs. However, things seemed to have slipped again post Games and Paralympics, which is a shame.
- VIII. Transport links in the Stratford area are excellent for disabled people and this has left an important legacy post London 2012 for local disabled people. However this is not the case in other parts of London and the UK.

- IX. London 2012 also provided us with a great opportunity to improve access for the long-term with the Olympic Park showcasing just what could be achieved with its venues providing a legacy for disabled sports fans but there is still a great deal to be done before disabled sports fans can enjoy the same standards experienced by their non-disabled peers at other arenas.

***Accessibility at professional sports clubs and venues and findings of recent DWP study***

- X. Many of our top-level sports venues still have much to do on this front and there is often talk about the difficulties of improving access to existing stadia and venues. When considering some of our wealthiest sports, the case for making adequate access improvements becomes even more compelling.
- XI. LPF understands that the recent Department of Works and Pensions (DWP) study provided evidence that disabled people have the same interest as non-disabled people to attend sporting events. Football was the most frequently mentioned spectator sport with other sports including rugby, cricket, tennis, athletics and swimming frequently mentioned too. The desire to attend equestrian events, motor racing, ice hockey, basketball, American football, cycling, golf and darts were mentioned but less frequently.
- XII. The DWP survey showed that a significant number of disabled people had not been able to attend as many sporting events as they would like and there were some respondents who hadn't been able to attend any sporting event in the last two years.
- XIII. When asked why they had not attended a sporting event in the last two years, disabled people claimed a number of different barriers they faced which had prevented them. The most frequently mentioned barrier was that venues were difficult to access, with problems getting to and from venues and other transport problems, particularly parking, also cited.
- XIV. Disabled spectators mentioned various issues they faced when trying to buy tickets for a sporting event, whether on a match-by-match basis, for away games or when buying season tickets. Those responding mentioned issues in a number of areas, from the limited number of wheelchair (user) places, having no choice as to where they were seated, tickets for disabled spectators, not being available to purchase online and cost. Some respondents said they were unable to attend a sporting event at all because there were no appropriate tickets available for their needs.
- XV. The availability of wheelchair (user) places was frequently raised as an issue. Wheelchair users found it hard to obtain tickets as there were a limited number of places and it could be particularly difficult when attending away matches. There was also a view that wheelchair (user) places were not allocated on a fair basis.
- XVI. Respondents who were wheelchair users specifically mentioned concerns about not being able to use online booking systems for wheelchair places. They could not understand why tickets were not available online for their seats like they were for general seats.

- XVII. Some wheelchair-users also mentioned that they could not sit with their friends and family because the wheelchair (user) places only allow one space for a companion or carer. That meant that they would be separated from the rest of their party. Some grounds won't allow children to attend a match unsupervised and this makes it doubly hard for a disabled parent, where the other parent has to go as a carer – in this situation, the child would not be able to attend.
- XVIII. The choice of where to sit was also frequently raised as an issue by disabled spectators more generally, even those who weren't wheelchair users. Not being able to sit with family and friends and needing seats in a specific position (for example, at the end of a row, or close to the field of play) were both mentioned.
- XIX. Some respondents also expressed concern that they couldn't sit with their own supporters when they attended away games. Not only did this have an effect on their enjoyment but had risks, as supporters from opposing teams are generally segregated.
- XX. Another concern was that the seating for disabled spectators was often either the wheelchair (user) places or general seating, with nothing in between. This was not helpful for those disabled spectators who needed extra leg room.
- XXI. Some respondents highlighted the lack of facilities and awareness for sensory loss, including limited or no support for deaf spectators, no subtitles on the video screens, problems with actually viewing the big screen at some football stadiums and some clubs only showing replays on the big screen and not the whole game.
- XXII. A number of barriers were raised in relation to where disabled spectators were asked to sit. These included a lack of wheelchair (user) places, disabled season ticket-holders positions being closed for financial reasons, poor sight lines because the seat was on the same level as the sporting event, always sitting at the front of stands so not sheltered from the weather and unsafe wheelchair (user) viewing areas even in modern grounds.
- XXIII. The toilet facilities were frequently raised by respondents and not only by those who said they had continence issues. Problems raised included not having enough disabled toilets, restricting the use of disabled toilets, poor cleanliness and a lack of washing facilities. For some conditions, such as Inflammatory Bowel Disease, needing urgent access to either disabled or non-disabled toilets was an issue. Respondents mentioned the lack of access to clean toilets, and the lack of an adult bench to change pads, being a barrier to attending a sporting event.
- XXIV. The attitudes and disability confidence of all customer-facing staff is essential to make the sporting event a positive experience for disabled spectators. Some respondents mentioned that a lack of disability awareness among stewards and staff was an issue, including staff not being aware of the club's policy.
- XXV. Some respondents mentioned that the lack of disability awareness among other spectators was an issue. They mentioned issues such as people standing in front of wheelchair users, standing up in the seating areas during the game and the lack of



wheelchair (user) places for away supporters meaning having to sit with home fans, all of which could result in disabled spectators experiencing unpleasant behaviour.

- XXVI. By all accounts, the sports clubs in their submissions claimed that the design of the venue and buildings was their greatest challenge although some mentioned the location. Issues raised included the stadium footprint, the design of the stadium leaving little opportunity for improvement, the age of the stadium, the location of the stadium, for example, being in a residential / commercial district with little opportunity to make significant changes and obtaining permission to alter the stadium.
- XXVII. Some clubs mentioned that finances and lack of money was an issue, although some were also concerned about the challenge faced due to their lack of knowledge and expertise about disabled people's needs. "It is not so much a lack of finance that can make it difficult to cater for disabled supporters. But more the fact that other things can have higher priority for club spend."
- XXVIII. In conclusion, LPF understands that the survey concludes that sports clubs must ensure that disability issues are considered at all levels of the business and ensure that a broad range of disabled people are consulted before any decisions that may affect them are made. Further that clubs must work with disabled supporters and local disabled people's user led organisations to co-produce any changes to the physical features, or club policies that might affect disabled spectators. And clubs should increase the number of wheelchair user places to match the minimum levels set out Part M of the Building Regulations which refers to the Accessible Stadia for stadia with 10,000 and more seats.
- XXIX. In summarising the findings of the DWP survey, a number of key recommendations were made including the need to provide disability awareness training to all match day and clubs stewards. This training should also be extended to every member of staff that comes in contact with the public at a sports venue. The training should be provided by disabled people who have the lived experience. Any such training must be regularly reviewed and updated. Negative and abusive attitudes and behaviour towards disabled spectators should not be tolerated. Stewards and other customer facing staff should be trained to recognise negative attitudes and then be supported to take action where appropriate.

***Accessibility at professional sports clubs and venues - Level Playing Field collated data provided by professional football clubs***

- XXX. There has been some progress at a number of stadia with Football League clubs appearing to make the most progress on this front. The following information is based on the latest accessibility details provided to Level Playing Field by professional football clubs and Football League during the closed season.
- XXXI. Based on this latest club information, 25 of the 92 professional football clubs, almost 30%, do not enable wheelchair users to sit with their own fans.
- XXXII. Only 2 PL clubs meet football's own minimum accessible seating numbers (with 2 clubs at 96% and 92%). 50% of the PL clubs do not meet even 50% of these minimum

requirements.

- XXXIII. In addition, 36 of the 72 Football League clubs (Championship and Leagues One and Two), 50% of FL clubs meet less than 50% of football's own minimum accessible seating numbers.
- XXXIV. Only 12 of the 92 professional clubs (13%) in the Premier and Football Leagues meet football's own minimum accessible seating numbers (Accessible Stadia).
- XXXV. Level Playing Field recognises and welcomes the good works being undertaken by the Football League and its clubs each season to improve the situation. However, LPF considers that a short-term increase to the Football Stadia Improvement Fund should be provided to enable each Football League club to undertake its outstanding access improvements with most clubs keen to see this work completed. Given the current wealth enjoyed by the Premier League, this seems to be a very reasonable request in support of the lower league clubs. LPF would consider that PL clubs have sufficient resources to undertake all necessary access improvements as soon as possible.
- XXXVI. **There have been significant upgrades and extensions to both hospitality and media areas at Premier League clubs including additional TV camera spots to support the recent TV broadcasting deals. These improvements have most often taken place over the short summer pre-season break and at the stadiums alleged to be too old or complex to adapt for disabled people.**
- XXXVII. **When reviewing the Premier League rulebook, there are pages and pages of criteria that have to be met by its clubs to accommodate the media including detailed specifications and dimensions of press areas and camera and advertising positions. Yet, in spite of clear disability legislation dating back as far as 1995 and the setting of football's own minimum accessible seating requirements, criteria that were agreed by football's own governing bodies (and published in Accessible Stadia in 2003 in anticipation of DDA Part 3 Goods and Services Provisions), only one small and vague paragraph can be found within the PL rule book about accessibility for disabled spectators.**
- XXXVIII. There is a substantial shortage of accessible matchday seating within many stadia, such as places for wheelchair users and amenity and easy access seating for fans with limited mobility or who use an assistance or guide dog. Many professional football clubs are struggling to fill their stadia on matchdays, but still there are insufficient numbers of wheelchair user spaces in particular.
- XXXIX. It should also be noted that the Accessible Stadia's minimum standards are significantly lower than those set by the Olympic Delivery Authority - Inclusive Design Standards and the International Paralympic Committee.
- XL. Disabled fans often face having to sit with home fans as away supporters and many have stopped travelling to away games because the situation is so dreadful. This is completely unacceptable in terms of the football fan experience; it is quite simply miserable to have

to sit with the opposing set of football fans. Disabled fans are often asked to hide their team colours, to refrain from celebrating goals and so on.

- XLI. However, it can also be an intimidating and hostile experience. LPF has received complaints from a number of disabled fans travelling to away matches who were verbally abused (including extremely offensive language) and threatened by the home fans sat next to them.
- XLII. A 2012 fans consultation conducted by Kick it Out found that 15% of fans had witnessed discriminatory chanting aimed at disabled fans. 89% of fans say that abuse towards disabled people is seen to be the most important issue to tackle in football.
- XLIII. 82% of British football fans agree that being around other fans in the atmosphere of the grounds is as important as watching the game itself. 85% of British football fans associate football with friendship and camaraderie. (Football Passions Report 2008.) Disabled fans should not be deprived of this experience.
- XLIV. It is important to recognise the moral, legal and good business cases for providing truly accessible stadiums and other sporting venues. However, it should be noted that service providers have a legal duty to provide accessible facilities and to remove the barriers that may prevent disabled people from using their services (Equality Act 2010).
- XLV. **Some professional football clubs provide excellent facilities and services and LPF is always keen to celebrate good practice solutions, but we believe that many still do not comply with equality legislation and as such are discriminatory to disabled football fans. Many are failing to meet football's own guidance and minimum standards as described within the Accessible Stadia Guide. It is LPF's view that this is unacceptable within an industry that remains collectively wealthy with record-breaking resources including the new Premier League TV broadcasting deal in excess of £5.5 billion.**

**Ends**

**Thank you for your consideration. LPF will be pleased to answer any questions that the Select Committee may have and to give oral evidence to this inquiry.**

*6 September 2015*

## **Lewisham Shopmobility Scheme – Written Evidence (EQD0015)**

1. With regard to the call for evidence by the Select Committee on the Equality Act 2010 I wish to submit factual information about and on behalf of Lewisham Shopmobility, relevant to questions 2, 3, 5 and 9 in particular.
2. At the time of writing this submission Lewisham Shopmobility Scheme, the registered charity (and registered company) I have managed for six years and worked for in total for 14 years is about to close on 31 August 2015 owing to the loss of its local authority main grant at the end of June. The charity will carry on until the end of August and part of September when reserve funds will come to an end. We will have to clear out of our premises, given rent-free by the shopping centre where we are based and all vehicles will have to be sold. The closure will end 21 years of operation in Lewisham and a total of over 1,800 people registered with the scheme between 1994 and 2015, of which 565 are registered currently on our database. The scheme catered for over 1,000 visits a year and will be greatly missed by its users.
3. Lewisham Shopmobility is one of many schemes operating in the UK, 80% of which rely on local authority funding. The remaining 20% are run by new shopping centres where the cost can be met by a levy on shop rents, even fewer are privately owned by shops which sell as well as hire equipment. Unfortunately not many commercial businesses want to take on hiring because it is non-profitmaking, and core funding from sources other than local authorities is very thin on the ground because of low levels in interest rates. Councils are being squeezed for cash by central government and the result is that more and more shopmobility schemes are either losing or at risk of losing their funding and closing down.
4. Schemes were started in 1990 in response to an increasing number of town centres and high streets becoming pedestrianised and with undercover shopping malls. In addition parking was becoming more restricted and disabled people could no longer park or be dropped off outside one shop. Shopmobility was a simple idea to hire out mobility scooters and wheelchairs for people with either temporary or permanent impaired mobility to access a town centre. The service was free initially but charges were brought in for greater sustainability. Each scheme operated differently under its own management, having its own system of charging or remaining free to its users, with the opportunity to become affiliated to the National Federation of Shopmobility (NFSUK).
5. Many councils accepted the funding of these schemes until the recession in 2008 started to impact on council budgets. Shopmobility schemes started to be in the firing line for cuts. Despite the Equality Act 2010 and the Public Sector Equality Duty,

shopmobility schemes fell through the net. They also appear to be part of a bigger issue to do with accessibility of town centres and high streets. Shopmobility schemes have to operate in conjunction with accessible parking which is why many are based in car parks. They have to be in reach of a taxi rank or a mini-cab pick up point and easy to access bus stops. The schemes operate in conjunction with other services in order to be effective. Unfortunately judging by what I have seen in Lewisham no effective equality legislation is protecting these arrangements.

6. To give Lewisham as an example. The town centre is undergoing a massive regeneration programme (Lewisham Gateway). Two rivers are being diverted to create a park, a new road system is being created and many flats and businesses are being built. I have been told that there will be some ground floor flats adapted for disabled people and the two stations, main line rail and DLR have disabled access, all in line with current legislation. Then things grind to a halt for disability.
7. Shopmobility funding has been withdrawn leaving it with no chance of survival. The taxi rank has been moved to a space with a pavement part of which is inaccessible to wheelchairs and on a busy route, so cabs pull out and get stuck in a traffic jam. Some mini-cabs will only pick up on a road the other side of the busy bus route and people have to risk getting run over as there is no designated pedestrian crossing. At another mini-cab pick-up point cars have to drive across a bus stop onto a slip road congested with lorries and vans serving nearby shops and market stalls. Dial-a-Ride buses although given an allotted set down and pick up point by TFL, it is not recognised by regular bus drivers who tell the Dial-a-Ride drivers to move along. The town centre is becoming a nightmare for pedestrians and drivers alike and for disabled people it is turning into a no-go area especially once shopmobility closes. It was not ideal before, with our nearest road, a cul-de-sac outside the shopping centre patrolled by conscientious parking wardens. But there was on-street parking, both disability parking bays and a car park, a set down and pick-up point for Dial-a-Ride buses, mini-cabs and taxis and a bus shelter, which had been provided for people waiting. (Lewisham Shopmobility had campaigned for the bus shelter). When the new road system was introduced all these facilities disappeared as the cul-de-sac became absorbed into a main road, with no effective alternative provided.
8. No doubt the regeneration programme is something we have to put up with and inconveniences are to be expected, but what concerns me is the lack of any attention paid to the needs of disabled people wanting to access the town centre. There appears to be no overall strategy both during and after all the regeneration work is finished. Following a press release I sent to the South London Press and subsequent article headed 'Access denied' (27 March 2015) I was contacted by the director of Muse Developments the private contractor for Lewisham Gateway. A meeting was

held on 31 March in my office with [NAME REDACTED] and some of his colleagues including a representative from the council. I took them on a guided tour of the town centre and pointed out the health and safety issues, the lack of accessibility etc. The taxi drivers complained about their cab rank, where incidentally there are no seats for people to wait. Since the meeting nothing has changed or appears likely to, with no signs of a clear plan for disability access.

9. With regard to question 2 in the call for evidence, there is a clear gap in the law on disability and equality. In Lewisham town centre, some roads come under TFL others the responsibility of the council. The responsibility for ensuring that disabled people can get from the kerbside to visiting various town centre facilities falls in no man's land with each party regarding it as someone else's problem. In a quite literal way there is a gap that disabled people are unable to bridge. This problem has knock-on implications for responses to questions 3 and 9 in particular, though it is relevant to all questions regarding oversight and enforcement. Who is to ensure that 'reasonable adjustment' is made that can enable disabled people to get support whilst in the town centre? Who can adjudicate on this matter? How can it be made practical for individuals and small organizations like Lewisham Shopmobility to appeal for fairness?
10. In 2011 David Cameron asked Mary Portas to compile a report on the state of UK high streets. This was in response to so many town centres becoming 'for sale sign deserts' as people and retail businesses migrated to out-of-town shopping complexes. In her report Ms Portas recommended high streets become "attractive, accessible and safe". Town centres are an important asset to the local economy as well as giving a sense of local community cohesion and identity. Shopmobility schemes provide a vital role in making town centres accessible to disabled people especially when they are linked in with accessible transport, disability parking facilities, designated set down and pick up points for taxis, mini-cabs, accessible transport buses (in London Dial-a-Ride and community transport schemes) and adequate bus stops with shelters and seats. These facilities should not be treated as an afterthought to town planning but integral to a well-functioning town centre, accessible to everyone.
11. With reference to question 5, if local authorities (and in the case of London, combined with TFL) carry overall responsibility for putting these facilities in place (and if not who does?) how can the PSED be made more effective? In one town centre, Lewisham it is not working at all. The council has been pushed to make draconian cuts in its budget, yet at the same time the regeneration of the town centre is creating a vast number of residential properties (all for private ownership) and later in the next phase of development more retail businesses, which will

generate more revenue in rates. Only a tiny proportion of that revenue would be needed to put in place and sustain a shopmobility scheme and the above-mentioned accessible transport facilities. It is not too much to ask and it is about prioritizing the needs of an important sector of society who have as much right to shop, socialize, go to the leisure centre, library, opticians, bank and all the other amenities as everyone else. A right enshrined in the Equality Act 2010.

12. People with impaired mobility, which includes those who are temporarily or permanently disabled, and the elderly are more likely than those with full mobility to become depressed and isolated in their own homes. Daily life becomes restricted, the effort of buying essentials such as food and household items becomes a struggle and people do not like to keep asking neighbours, relatives and friends to do them favours. Going out becomes an obstacle course and then it seems less bother to stay at home and watch TV. Not much of a life. What people want (and I felt the same after a hip replacement) is to get out. Shopmobility schemes are a life-line, they give people back their confidence, dignity and their independence.

Quotes from users: “I’d been unable to leave the house for two years till I found Shopmobility.” “The service is a lifeline to people like myself who can’t get out and shop independently.” “If Shopmobility were to close it would be my last link with the outside world.” “A godsend, thankyou!” “For me the shopmobility scheme is invaluable.” Service users help boost the local economy and the schemes themselves become a social venue where people get to know the staff and volunteers. Some service users become trustees and take an active role in management. Whatever the cost of these schemes to the public sector it is far outweighed by the economic and social benefits to individual users who might otherwise become more dependent on Social Services and the NHS.

13. With the loss of the main grant to Lewisham Shopmobility some of our members and myself started sending emails and letters to the council, MPs and Government Ministers, including the PM. I contacted the NFSUK and their Chairman Ray Hodgkinson sent a letter to the CEO of Lewisham Council Barry Quirk. The letter he received came from [NAME REDACTED], Head of Culture and Community Development. The same letter was sent as a reply to one of our members, from [NAME REDACTED], Executive Director for Community Services. To quote the third paragraph:

“The application from Lewisham Shopmobility was assessed against agreed criteria along with all other applications received. Although it was accepted as a good application, other projects were considered to provide greater value for money, delivering outcomes to a larger number and cross-section of our local community. Of course in reaching that conclusion an appropriate Equality Analysis Assessment was completed and made available to the Mayor and Cabinet in its decision making

capacity. An appeal was heard by the Mayor and Cabinet and the original decision was upheld; although the Mayor did instruct officers to help explore alternative solutions for users of the scheme who had eligible care needs.” We were asked to put names forward but everyone said all they wanted was an ongoing shopmobility scheme to help them retain some independence.

14. One of our members received the following letter from the Department for Local Communities and Local Government:

“Thank you for your letter of 21 July 2015 to the Prime Minister about the potential removal of shopmobility in Lewisham. I have been asked to reply on his behalf as I work in the high streets team within the Department for Communities and Local Government. The government is committed to supporting healthy, vibrant and accessible high streets. I do sympathise with your situation and I understand that this decision will affect many people, however we do not fund directly or grant fund shopmobility schemes. The shopmobility network came under the management of the British Healthcare Trades Association (BHTA) on 1 November 2014. A number of these schemes are run through or supported by local authorities. The provision of funding for shopmobility in Lewisham is ultimately the responsibility of Lewisham Council; it is for them to determine what is best for their own area. Ministers have no remit to intervene in a local authorities day to day affairs, except where specific provision has been made in an Act of Parliament. You are correct therefore to raise this issue with your MP. You may also wish to write to Lewisham Council to find out why the funding was withdrawn and what they are doing to meet their equality duties. There is a public sector equality duty (PSED) which requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Part of this is to consider and assess the potential equality impact of changes proposed to policies, procedures and practices.” (From [NAME REDACTED] at the DCLG).

15. Lewisham Council, according to their letter did the appropriate Equality Analysis Assessment thus abiding by the PSED, but to go back to paragraph 9 is it fair? Is the Equality Act 2010 and the PSED really working for disabled people in Lewisham town centre?

*6 August 2015*



## Lewisham Shopmobility Scheme – Oral Evidence (QQ 141-146)

Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley

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### Examination of Witness

**Martin Phelps**, Management Committee Treasurer, Lewisham Shopmobility Scheme

**Q141 The Chairman:** Mr Phelps, thank you very much for coming. I think you were here at the beginning and you heard what I had to say about transcripts.

**Martin Phelps:** Yes, indeed.

**The Chairman:** You did—good—so I will not repeat it again. Thank you very much for coming. I know that you are the trustee and treasurer of Lewisham Shopmobility, but it would help all of us if you were able to talk about national problems in Shopmobility as well as the regional problem that you know about so well. I am sure you can do that.

**Martin Phelps:** I can do some of it.

**The Chairman:** Good.

**Martin Phelps:** I do not have hard data on the national picture and I do not think anybody does. It is from impressions that I have gained in talking to members of the National Federation of Shopmobility UK and some surveys that I have conducted around maybe 20 or 30 different Shopmobilities in the south of England. I do not know whether you want me to make a statement or if you are just going to plunge straight into the questions.

**The Chairman:** If you have a brief statement to make, please do.

**Martin Phelps:** There are three things to which I would particularly like to draw people's attention that come directly from our own experience. First, it seems possible to ignore the needs of, and impact on, disabled people when major developments are going on. I rather expected that there would be some provision that said you are not allowed to do that and that you really need to take these things into consideration, yet it seems that, in practice, these can be ignored. I can go through in some detail the example that we have encountered in Lewisham of the redevelopment scheme.

Secondly, I would like to emphasise what the real meaning of accessibility might be, which gets confused with wider doors and ramps, when, actually, accessibility means being able to get there. Being able to get there depends on more than just some ramps and things. It is all very well having a system in place with Dial-a-Ride and such things that deliver you to a

pavement and doors some 100 yards away that are wide enough to get through, but if you have no means of getting from one to the other, that unit—that whole thing—is inaccessible. For something as fundamental as a town centre, which is a core civic amenity, it seems to me to be absolutely critical that there needs to be some form of assisted mechanism for getting round that. Shopmobilities could have a big role to play there, but there might be other means. It might not be terribly economical to send everybody with a carer. It might be a lot more efficient to do it by hiring out some scooters economically.

The third thing is that in all these problems that arise you pit David against Goliath. It is always a vulnerable individual or small-scale operation. Lewisham Shopmobility is half a dozen of us trying to do some good. If we come across a problem, we are pitted against a major redevelopment company with a series of planners or against a local council with all of their back-room staff and difficulties. We have no mechanism for going back and saying, “You are not playing fair”. We would love to see some form of simple, easy-to-access mechanism that enables us to get them to play fair—a mechanism that gives us the authority to turn round and say, “You really ought to be doing this, Lewisham Council”, or developers, or whoever it is.

My three points are: do not let us be ignored; give us some teeth to be able to do something about it—teeth that bite hard enough to hurt—and worry about what real accessibility is; and give us a means of appeal to somebody who knows what it means and knows what the implications are. I am sorry that, as an introductory statement, that was quite long.

**The Chairman:** No. That is very valuable indeed and a great help to us in writing our report—most interesting. Thank you. The first question is from Lord Foster.

**Q142 Lord Foster of Bishop Auckland:** I have no relevant interests to declare. In your written submission you highlight problems created by regeneration works. You have already touched on some of these problems. Can you give us more detail about the main problems and how they could have been avoided? Do you know if other areas have had similar problems and how they could have been avoided?

**Martin Phelps:** I will answer the last question first because I do not know about any other areas. The case that we face is this, and, because it seems to imply general rules, I would be surprised if it did not apply to other areas. I am sorry if the things sound as if they are a bit trivial, but they add up to quite a lot of a problems.

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 Dial-a-Ride, and they took away the stop so that they could no longer get there. Anybody knows that that is going to be a problem. Had they done their homework on the way that people use the whole town centre, they would have also known that they were going to close down anywhere where disabled people could be dropped off within reasonable walking distance to the town centre. Instead, now they have to be dropped off a couple of hundred yards away and cross a very busy road, a road that London Transport tells us is so busy that it cannot put a crossing on it because it would be too disruptive. I would have thought that might have been a reason to put a crossing there, but it did not seem to think so.

They have moved the taxi rank. With their clever town planning, they have moved it 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. We saw a big drop-off in the number of people who were able to use our service and constant complaints from the

people that come in. We pestered them about this. As soon as we knew it was happening, we wrote piece after piece; we went to our local MP and she tried to do her bit of pestering. For nine months, we nagged them without getting any serious response until we went to the local press and did a big thing of “Access Denied” on the front page, and immediately the developers were on to us, trying to be more reconciliatory. We had a long meeting with the developers, the designers, the local councillor and the local authority. One small remedial step was taken—this is since March—where they have now taken over another bus stop for Dial-a-Ride to have somewhere to go. But all the other problems persist and there is nothing in their planning that is due to change them. That is shameful. It shows that they did not bother to do their homework about whether disabled people could use the system, that they did not consider what their needs were and they have no plans. They have done all that without there being any consequences. If it is easy to ignore, then I cannot help but think that other people doing the same sort of thing will ignore it too.

**The Chairman:** There is something in what you say in common with the earlier evidence, which you heard, which is lack of forethought.

**Martin Phelps:** Yes.

**The Chairman:** Is it something to do with there being no access officers, no single person or body of people in the local authority responsible for thinking about disability access before major works are carried out?

**Martin Phelps:** My experience of local government is that they tend to worry about compliance—that is, forms to fill in—so it might be helpful if there were a form to fill in that said you have to do your research about how people are going to use it and consult people who are likely to know about it. Lewisham Shopmobility is closer to the redevelopment than I am to you physically. It should have occurred to them that we might have a point of view about what was going to happen to disabled people locally. That they did not talk to us smacks of either incompetence or malice.

**Q143 Baroness Campbell of Surbiton:** That leads into my question very well because you may or may not remember the public sector equality duty where there was a duty to liaise with disabled people in your locality to improve access, et cetera, for disabled people. You suggested in your submission that the Equality Act and the public sector equality duty are not working for disabled people. I am quite interested to know what needs to be done to change that, and do you think there has been any change since the Disability Rights Commission and the Disability Discrimination Act were brought together under a generic equality banner? I am interested in your thoughts on all that.

**Martin Phelps:** I do not know whether anything has changed. I have been involved in this field for only the last four or five years, so I cannot comment on what it was before then. I have given the example of somebody ignoring it. Within that, there was quite a strong element of passing the buck. In the meeting that we had with them, the one body that was not there was Transport for London, and it came in for lots of criticism from all the other parties involved because it was the one who was not in the room. The habit of passing the buck seemed to be a generic issue, which brings me back to a core theme. There is a duty, but who does the duty lie with? When we were applying for a grant, for instance, at Shopmobility, I had to appear in front of the mayor and Cabinet on two different occasions. I put the case for the impact that this was going to have on disabled people and then there was an extended question and answer session. There were no questions about the impact on disabled people—none at all. That was never part of the discussion. There were lots of questions about why it was somebody else’s fault, why it was somebody else’s

responsibility: “Surely it is the shops or some new body of 100 different businesses that are going to get together and come to save us. It must be their responsibility to produce some sort of scheme and cough up the money”. In all the debates with them it has always been about why it is somebody else.

**Baroness Campbell of Surbiton:** Do you think the local authority are abrogating their responsibilities?

**Martin Phelps:** They did not see it as their responsibility. I do not know whether it is their responsibility because it comes back to the issue, as I say, about the definition of genuine access. It may be they see it as their responsibility that there are dropped pavements, but they do not see it as their responsibility that people should actually be able to go to the shops, the library, the chemist and the opticians. They have ducked it.

**Baroness Campbell of Surbiton:** Do you have an access officer in Lewisham?

**Martin Phelps:** I do not know whether there is a Lewisham access officer. We have a monitoring officer who deals with our grant and to whom we have to report to comply with—

**Baroness Campbell of Surbiton:** But you would know if there was an access officer, presumably, because their job is to ensure that the local environment is user-friendly and inclusive.

**Martin Phelps:** If there is an access officer, they have not been very visible.

**Baroness Campbell of Surbiton:** Okay, that is good. Is there anything else that needs to be done, as this Act and public sector equality duty are not working? Is there anything big that you would like to see?

**Martin Phelps:** There is also an attitude that I would like to see change within the local authority. I said before that they like compliance, but they like compliance to the detriment of impact. In our dealings with them, I said we had a monitoring officer. Let me give you an example. The monitoring officer is fairly thin on the ground. We are monitored quite carefully. We have to submit quarterly information about the number of people that we deal with, and we send that in, in great detail. We have never had a question about any of it. That just seems to be filed in a bin and moved on. But once a year we have a very extensive survey done on us, which has about 100 sections, which we go through with the monitoring officer; we have a series of face-to-face meetings, lots of correspondence and many hours’ work to compile this 100-section form. Not one section in that form is about whether or not we help anybody. That, for me, tells the story about the way that they approach things. If their approach is not about whether or not you impact on any disabled people, if their primary concern is not about their welfare but ends up about ticking some boxes to go through some internal audience, then you will not get the right sort of outcome. I would like to see an attitudinal change among local authorities. I would like to see them have a duty to make sure that there is genuine access. I would like to see there being some form of ombudsman that whom could go to, to see whether this falls short. I would like to see it impossible to ignore the needs of disabled people if you are coming up with a major planning activity.

**Baroness Campbell of Surbiton:** Have you ever used the Equality and Human Rights Commission?

**Martin Phelps:** We sent it some data about the situation that we were in. It took quite a long time to get a response.

**Baroness Campbell of Surbiton:** Was it a helpful response?

**Martin Phelps:** The response was that we may have a case but it was not very clear. We are not lawyers; we are just people trying to help people, and we probably did some things wrong in the way that we presented that case.

**Baroness Campbell of Surbiton:** Was it not able to help you re-present it in a way that would be helpful? There was not an offer.

**Martin Phelps:** We have not reached that stage yet, it is fair to say.

**Q144 Baroness Jenkin of Kennington:** You have covered a certain amount of this anyway, but in your experience how well do local authorities engage with disabled people and their organisations when deciding on planning and housing policy and in the design of major infrastructure projects in their areas?

**Martin Phelps:** I think I have mentioned that.

**Baroness Jenkin of Kennington:** They do not.

**Martin Phelps:** I do not get the impression that they do not. In housing policy, we do not know; we have no dealings with that side. But we are absolutely next door to a major redevelopment and nobody at any point has talked to us except to answer when we have nagged them. They have sent back a note that has said, “This is what is happening”, rather than—

**Baroness Jenkin of Kennington:** Being proactive.

**Martin Phelps:** Yes, or in responding to the issues that we raised by saying, “We can find a solution to this by taking some other step”. There were not even issues that were that difficult to solve. I am no planning officer, but just a bit of common sense in the way that Lewisham is laid out would have said, “There is a very good spot there where you could resolve those issues if you had started by thinking of them rather than trying to bodge a fix at the end of it”.

**Baroness Jenkin of Kennington:** You mentioned that you have been working with a local councillor on that. Did that have no effect either?

**Martin Phelps:** I think she felt every bit as frustrated as we did.

**Q145 Lord Harrison:** Mr Phelps, you report that you have recently lost grant funding from the local authority. What do you think should be the role of local authorities in funding programmes that enable accessibility of public spaces for disabled people? Would the money be better spent on making the infrastructure more accessible?

**Martin Phelps:** The barrier to access by and large is not architectural. Most town centres, if you think about them more generally now, are becoming pedestrianised areas, and quite large pedestrianised areas, so that, if you are a disabled person who struggles to walk 50 yards, being dropped off 200 yards away from the town centre and then negotiating a massive pedestrianised area is a real challenge. They have to be conscious of that when they are designing things that way. The only mechanism that I can see that makes real sense is to have some sort of Shopmobility-type scheme. There might be other ways of doing it, but I admit I shall be rather narrowly focused in saying that that seems to me to be a pretty efficient way of using volunteers and sharing assets, which are all these scooters and wheelchairs; it is going to be much more efficient than trying to give a scooter to every individual or send a carer in with them to push them around. I would say that there ought to be an obligation on local authorities—and I can see that it is only local authorities that can do it—that genuinely makes these places accessible.

**Lord Harrison:** I was much taken by your complaint about forms to fill in or indeed—you put it another way—that compliance rather than impact was important for you. Unless I have misunderstood things, there used to be a necessity to spend at least 2% of the cost of any

new building on an arts project. Has there been anything done like that which recognises the plight or the opportunities of the disabled? Further, would there be any sense whatsoever in identifying a certain amount of any new build that was made or money that was spent where it was spent specifically on bringing out some of the issues that you have already brought before us today for the disabled?

**Martin Phelps:** When you say it in terms of a new build, that sends a signal that says, “Here is a one-off cost; you have solved the problem—it has gone away”. That is not true. It is an ongoing cost because people need to go this week, next week, the week after and every other week. You need an ongoing funding mechanism rather than a one-off funding mechanism. That can only, it seems to me, be achieved with something like business rates—there should be something that is part and parcel of that. We have a shopping centre and Land Securities has a compact area with about 40 of the shops: 40 of the 150 or 200 shops that are in Lewisham are in one lot. You cannot get 200 different organisations to agree to cough up money voluntarily. If you need revenue from them, it is going to have to be something like part of the business rate for being in the town centre.

**Lord Harrison:** I am a great promoter of markets in towns—fruit and vegetables and everything.

**Martin Phelps:** Yes. We have a splendid one in Lewisham.

**Lord Harrison:** They have many frustrations as a result of trying to establish themselves and making themselves accessible. Do you have anything to say to us about that? All through your commentary, I am afraid I have been running through in my mind my own home town of Chester, and I have been pushing wheelchairs and walking round and thinking where I would drop off some of my more elderly relatives. I fear I may be embarrassed by that little journey I do in my mind. I wondered whether you had come across the world of markets, which are so vital.

**Martin Phelps:** Yes. Lewisham has a splendid, vibrant market; it is terrific, a wonderful multicultural place; it is a joy and a bargain, too, to be highly recommended. The market is not particularly difficult for people to negotiate, and those who are on our scooters or in wheelchairs are well served by it—if they can get there.

**Lord Harrison:** If they can get there.

**Martin Phelps:** That is the challenge.

**Q146 The Chairman:** I have had the same reaction in relation to Oxford, which has become very pedestrianised. There have been fewer wheelchair users than there used to be, for sure. They cannot get there; you are right. If you could give us one recommendation that you think would really transform the rather dire situation you have described to us, what would it be?

**Martin Phelps:** Being parochial, I would go back to, “Define the accessibility issue to mean that you need to have assisted visiting of town centres. Define the town centre as a core civic amenity to which people have a right to be able to get proper access”.

**The Chairman:** Thank you very much. The people of Lewisham are lucky to have you working for them. Thank you for all you do, thank you for sharing it with us and we will do what we can.

**Martin Phelps:** I am sorry if I sound a little impassioned at times, but it does matter.

**The Chairman:** We absolutely appreciate it. We will do what we can in our report. Thank you very much indeed.

24 November 2015

**Lewisham Shopmobility Scheme – Supplementary Written Evidence (EQD0185)**

1. In the session on 24.11.15 Baroness Campbell of Surbiton asked about using the Equality and Human Rights Commission. The response given at that time was inadequate needs and clarification.
2. Lewisham Shopmobility contacted the Equality and Human Rights Commission about the withdrawal of its grant. The response said that there may be a case for judicial review challenge and possible solicitors were suggested by the Equality Advisory Support Services. When we contacted solicitors who had worked pro bono with us previously, we were told that they would be reluctant to take on a case against a local authority. It would be necessary to look elsewhere for help.
3. While this was happening, Lewisham Shopmobility was trying to arrange a merger with another local charity in order to maintain some sort of service for disabled people. That charity, though unconnected to working with disabled people, had some revenue but was about to lose its premises. Lewisham Shopmobility had premises but had lost its revenue. A joint, smaller scale, operation seemed and still seems possible. However, the time demands and possible financial risk involved in pursuing the judicial review challenge, would have meant that Trustees of the other charity would not have been able to recommend the merger. The Trustees of Lewisham Shopmobility therefore decided that it would be more likely to benefit disabled people in Lewisham if the merger went ahead and the judicial review challenge was not pursued.
4. This dilemma again highlights the need for a simple, easy-to-use, appeal procedure when disabled people and those helping them feel that justice has not been done.

*30 November 2015*

Local Government Association, Housing Law Practitioners Association, Department for Communities and Local Government, Rachel Smalley – Oral Evidence (QQ 131-140)

**Local Government Association, Housing Law Practitioners Association, Department for Communities and Local Government, Rachel Smalley – Oral Evidence (QQ 131-140)**

[Transcript to be found under Department for Communities and Local Government](#)



## **Local Government Association – Supplementary Written Evidence (EQD0194)**

During my evidence session of the 24 November 2015 with the Select Committee on the Equality Act 2010 and Disability I undertook to provide your Committee with further information on accessibility and access officers, the spare-room subsidy and shared space schemes.

### **Accessibility and access officers**

The LGA advocates the use of early, collaborative discussions between developers, public sector agencies and communities ahead of planning applications being submitted for consideration. Pre-application discussions can help to shape better quality, more accepted schemes and ensure improved outcomes for the community, including detailed consideration of accessibility and site design amongst other issues.

Whilst voluntary pre-application discussions can offer an opportunity to discuss and encourage the potential for enhanced accessibility on new developments, earlier this year, the ability for local authorities to require enhanced accessibility standards for new housing through local planning policy or planning conditions attached to planning permissions was restricted.

In March 2015 the government announced a new approach to the setting of technical housing standards in England, including those for accessibility and space. This rationalised the many differing existing standards into a simpler, streamlined system. Now, local planning authorities will only be able to require housing standards provided in a new set of streamlined national technical standards which provide specifications for accessible homes in three categories. These range from a base line largely aligned with the existing Part M of the Building Regulations to a category designed to meet the needs of wheelchair users as occupants. 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, before they can adopt policies to require compliance with the higher and take those into account in decision-making on planning applications. Councils continue to play a key leadership role in influencing the design of the wider built environment through local plan making, including planning and design guides, which aim to promote higher standards of design and layout of new developments.

During my evidence I highlighted the impact of funding reductions on local authorities. Over the last parliament local authority funding reduced by 40 per cent. Following the recent Spending Review announcement by the Chancellor core central government funding to local government will fall by 24 per cent in real terms and councils face a further £10 billion in cost pressures. This is more than local authorities currently spend on highways maintenance, children's centres, libraries, museums, and keeping street lights on.

These pressures have an impact on the resourcing of planning departments. Currently, year on year, tax payers are subsidising 30 per cent of the estimated cost of processing all planning applications in England because nationally set planning fees do not fully cover the costs. Since April 2012, the cost to councils of subsidising the processing of applications has been in excess of £450 million. The LGA is calling for the introduction of locally-set planning fees to ensure responsive and effective council planning services.

### **Spare-room subsidy**

The LGA does not have figures on the impact of the removal of the spare-room subsidy on people with disabilities. The Department of Work and Pensions does however collect data and statistics from local authorities on where the removal of the spare room subsidy has been applied and local authorities use of discretionary housing payments and how much their use was associated with the removal of the spare room subsidy. These latter figures include the amount spent by local authorities on assisting disabled people with the ongoing rental costs of living in adapted accommodation.

### **Shared Space**

On the issue of shared space schemes, the experts in this area, the Chartered Institute for Highways and Transport (CiHT) and Department for Transport (DfT), are producing further practical guidance. The LGA is in discussion with the CiHT and DfT about the development of this work and will use that as an opportunity to highlight the need for it to include good practice on consulting people with disabilities both before and after schemes are developed. The LGA will help to ensure that the learning reaches all our member councils.

I hope this additional information is helpful to the Committee's enquiry.

Yours sincerely,

Cllr Jonathan McShane  
Chair, LGA Community Wellbeing Portfolio

*15 December 2015*

## **Lord Low of Dalston – Written Evidence (EQD0165)**

by Colin Low (Lord Low of Dalston CBE) with the Assistance of Gay Moon

### Introduction

1. This is a personal submission to the Select Committee which is made on a purely individual and not a corporate basis. I have had the invaluable assistance of Gay Moon with the section on the Public Sector Equality Duty, but the views expressed are my own.

### *General - Summary*

2. I believe the Equality Act 2010 has by and large been successful in consolidating the legislative framework of disability discrimination law. I have addressed the Select Committee's questions selectively: I begin by considering a gap in the law relating to the accessibility of manufactured goods. Many of the reservations about the Equality Act concern its enforcement. A good deal of this focuses on the duty to make reasonable adjustments, and I deal next with a particular aspect of this, the duty to provide information in an accessible form. I deal next with the Public Sector Equality Duty (PSED), which is admirable as drafted into law by the Equality Act, but whose value has been diminished by a more restrictive approach to its implementation introduced by the Coalition government. Finally, as regards non-legislative measures that would improve implementation of the Equality Act as regards disability, I point to changes in the rules regarding costs which have had an untoward impact on disabled people and suggest how this might be averted.

### *A Gap In The Law - Manufactured Goods*

3. 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.

4. Attempts to do this through an Equal Treatment Directive or a European Accessibility Act since 2008 have either stalled or not got off the ground. It is believed that the UK is amongst those member states which have either been resisting or not proactively promoting this approach. The UN Convention on the Rights of Persons with Disabilities (UNCRPD), which has been ratified by the UK and the EU, requires action by states parties to promote inclusive or universal design. Article 4 (1) (f) contains a commitment to “undertake or promote the research, development, availability and use of universally designed goods, services, equipment and facilities to meet the specific needs of persons with disabilities, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, and to promote universal design in the development of standards and guidelines”. Failure to address the issue of inclusive design could put EU manufacturers at a competitive disadvantage with the United States.

5. It would be helpful if the Select Committee were to recommend a more positive approach on the part of the British Government.

*Reasonable Adjustments - Accessible Information*

6. When the Equality Act was going through Parliament, I was successful in having section 20(6) inserted to make it clear that the duty to make reasonable adjustments included a duty to provide information in an accessible format where appropriate. This has provided a useful tool for lawyers and charities seeking to enforce this particular type of reasonable adjustment. It provides clarity that sections 20(3) and 20(5) include the requirement to provide information accessibly, obviating the need to argue that they should be interpreted in this way. (It is perhaps worth making the point that although the Equality Act dates from 2010 the requirement to provide accessible information has actually been in force since 1999 when the relevant reasonable adjustment duties came into force.)

7. However it is regrettable that this provision has not been more effective in promoting better practice amongst organisations as regards making their provision of information more accessible. One of the biggest "culprits" in this regard is government. Some sectors have embraced the requirement, particularly banking and energy (although 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.

8. In the case of the DWP, RNIB received a stream of accessible information complaints when Employment & Support Allowance was rolled out a few years ago. They asked blind and partially sighted people about their experience of receiving accessible information from DWP and very quickly amassed over 90 complaints which appeared to be just the tip of the iceberg. They threatened to take legal action and as a result DWP agreed to review their provision. However, the review took a considerable period of time and has yet to be implemented. In the meantime blind and partially sighted people continue to receive inaccessible communications from the Department.

9. The NHS recently agreed its accessible information standard and implementation has begun with all NHS organisations expected to comply by 31 July 2016. This is obviously welcome but charities are planning considerable campaigning activity (and potentially further legal challenges) to ensure the requirements of the standard become a reality.

10. It is to be hoped that the NHS standard will have a knock-on effect on local authorities and that blind and partially sighted people and their organisations will be able to use this as a lever to promote better provision across authorities where practice is particularly poor, since the requirements extend to social services. However it seems likely that litigation will be necessary before authorities—who have less excuse than most service providers for failing to make the necessary provision since they hold registers of blind and partially sighted people—ensure that they are providing their information in an accessible format.

11. As a spur to best practice, I would recommend that 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.

### *The Public Sector Equality Duty (PSED)*

#### *Why the PSED Is Important*

12. The Equality Act aims to improve the situation of disabled people in two ways: it gives them rights which they can enforce by suing employers and service providers, and it lays on service providers an 'anticipatory' duty to take reasonable steps to alter their arrangements so as to make appropriate provision for disabled people. The second of these is arguably more important than the first because (a) it obliges service providers to think about the situation of disabled people generally, not just specific individuals, in advance of any individual expressing or manifesting a need. It thus underpins a strategic approach to enhancing the situation of disabled people; and (b) it is much more arduous and expensive for the individual disabled person to have to go to court to assert their rights.

13. The PSED, in requiring public authorities to consider the equality impact of their actions, has an important strategic role. Commercial organisations routinely gather information about their customers and target their services so as to meet their needs: the equality duty prompts public bodies to do likewise and deliver their services fairly and accurately. When difficult choices have to be made about the allocation of resources there is a significant risk that groups of people with protected characteristics will be disproportionately affected unless active consideration is given to making cuts as fairly as possible.<sup>342</sup>

14. The PSED has had an impact on increasing the consideration given to the needs of people with disabilities by public authorities, for example, in the introduction of Inclusive Design Advisory Panels to advise local authority planning committees on the needs of disabled people in relation to proposed major infrastructure projects.<sup>343</sup> However, further improvements are still needed, particularly in the education sector and in central government.<sup>344</sup>

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<sup>342</sup> Equality and Diversity Forum submission to the Government's Equality Duty Review, 2013, p1, available from <http://www.edf.org.uk/blog/government-review-of-the-public-sector-equality-duty/>

<sup>343</sup> Such as Leicester City Council, see *ibid* p 15-16

<sup>344</sup> For example, as an indication see early research done by the EHRC between September and December 2012 on the setting of equality objectives - <http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/public-sector-equality-duty/monitoring-and-enforcement> This showed that 21% and 23% of primary and secondary schools had set one or more equality objectives, 65% of central government departments compared to 94% of Police Forces and 95% of NHS Commissioners and providers.

*Problem: The PSED Levelled Down from the Disability Equality Duty (DED)*

15. The PSED was enacted by section 149 of the Equality Act 2010 as a replacement for three specific equality duties relating to race, gender and disability. The Disability Equality Duty (DED) previously enacted by section 49A of the Disability Discrimination Act 1995 (DDA) 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.

16. Moreover there is a patchwork of specific duties across the country. In England, the PSED is backed up by very limited specific equality duties imposed by regulations and there is no statutory Code of Guidance to guide public authorities or inform the courts. By contrast public authorities in Wales and Scotland are subject to much more detailed specific regulations that underpin the disability aspects of the PSED.

17. Public authorities have been helped by the fact that the PSED sets common principles and standards in relation to the 2010 Act's protected characteristics. Yet it is clear that people with disabilities, particularly in England, have been disadvantaged in this process. The detailed specific duties in the DED have been replaced in England with only very limited non-statutory guidance on the PSED. The English guidance only requires public bodies to:

- Publish information to demonstrate their compliance with the PSED; and
- Prepare and publish one or more specific and measurable equality objectives which will help them further any of the aims of the PSED.

Thus a public authority might omit or set only very limited disability related objectives.

*England Contrasted With Wales and Scotland*

18. This is regressive compared to the DED and contrasts very poorly with Wales and Scotland where more detailed specific duties are imposed. In those parts of the UK the subordinate specific duties underpinning the PSED 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.

19. The Welsh ECHR report on the application of the Welsh specific duties commented in 2014 that they ...' support[ed] and help[ed] progress on equalities work in ways additional to the Great Britain-wide duties by:

- Providing greater clarity than under the English specific duties about what needed to be done, thereby reducing the likelihood of under compliance or the tendency to over-comply due to uncertainty about what compliance means;
- Highlighting and clarifying through implementation and practice the best types of training needed to comply with the general and specific duties; and
- Ensuring that equality and diversity is fully integrated into service planning and organisational decision-making through the requirement to conduct equality impact assessments.<sup>345</sup>

### *A Compelling Case For Improvement*

20. Accordingly the specific duty regulations relating to implementation of the PSED in England should be brought into line with those in Scotland and Wales.

21. Authoritative guidance is needed to illuminate and explain how to comply with the disability aspect of the PSED. The absence of a statutory Code of Guidance to guide employers and service providers should be remedied by giving the 'Technical Guidance on the Public Sector Equality Duty', published by the EHRC in 2013, statutory force as with the DED.

22. Public authorities spend significant, and increasing, proportions of their income on buying in goods and services (public procurement).<sup>346</sup> The PSED also applies to the procurement functions of a public body and in this way public authorities can influence the equality practices of private contractors. This can be usefully used in order to promote disability equality both in suppliers' employment practices and the way in which supplies are provided. However, in order to ensure that such contractual requirements are met, the terms need to be properly monitored, and this can be where problems are encountered.

### *Enforcement*

23. The EHRC has some powers to enforce the PSED: they can do an assessment which can be followed up with a compliance notice or they can reach an agreement with a public authority on action to be taken.<sup>347</sup> The PSED can also be enforced by Judicial Review taken

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<sup>345</sup> 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](http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Review_of_PSED_in_Wales_Ex_Sum_english.pdf). Additionally, the EHRC in Scotland has just issued two reports on the workings of the PSED in Scotland they are available at <http://www.equalityhumanrights.com/publication/measuring-report-4-performance-report-public-authorities-performance-meeting-scottish-specific> and <http://www.equalityhumanrights.com/publication/measuring-report-4-practice-report-public-authorities-practice-meeting-scottish-specific-equality>

<sup>346</sup> Estimated in 2015 to be £238bn—House of Commons Library Public Procurement Standard Note: SNSTEPST6029 23 February 2015, Lorna Booth.

<sup>347</sup> The EHRC did undertake an important review of the Treasury's approach to the PSED.

by an 'interested person' or by the EHRC itself. However it is a regrettable fact that cuts to the EHRC have necessarily limited the number of cases it can take up. It has tended to prefer intervening in cases rather than bringing them in its own name. Whilst this may be a cost effective way to make its voice heard, it is not helpful to those seeking to bring important cases if they are unable to find funding to initiate them.

24. This limitation must be seen also in the context of a series of retrograde changes to the practice and procedure of Judicial Review, compounded by increased limitations on the availability of legal aid.

#### *Action Needed*

25. The Select Committee is urged to encourage the new Government to commit to changes in the way the PSED operates - particularly for persons with disabilities by:

- Making regulations on specific duties to underpin the PSED in England, that are no less detailed and effective than those in Scotland and Wales;
- Giving statutory force to the EHRC's Technical Guidance on the PSED so that it becomes a statutory Code of Practice, that both public authorities and courts will have to take into account;
- Providing improved funding for the enforcement of the PSED through either or both of more funding for the EHRC to support cases and/or a dedicated supply of increased legal aid for cases that challenge mis- or non-compliance with the PSED; and
- Promising to provide a biennial report to Parliament on the way in which the PSED is being applied and the improvements it has secured.

#### *Costs*

26. Goods and services cases under the Equality Act brought in the county court can be very expensive, especially if the claimant is faced with having to pay the costs of the defendant if they lose. Legal aid is available in only the smallest number of cases - in 2013 only four certificates were issued - and the number of solicitors who can offer it is minimal.

27. Until recently, such cases could be brought because people would take out 'After the Event' (ATE) insurance to protect them from having to pay the costs of the defendant if they lose. Then, if they win their case, they could claim back the cost of the premium from the defendant. However, the civil costs reforms brought in as a result of LASPO (Legal Aid, Sentencing and Punishment of Offenders Act) 2012, which bans recovery of ATE premiums from defendants in successful cases, have made it almost impossible for a disabled service user to enforce their rights because of their exposure to costs if their case fails. If a defendant wins a case, their fees are paid by claimant funded ATE policies. If the claimant wins, they lose their damages to pay for the insurance necessary to protect the defendant. So the claimant is financially disadvantaged for winning their case.

28. There are two possible solutions to this problem:



1) Apply Qualified One Way Costs Shifting to cases brought pursuant to the Equality Act Goods & Services provisions. This could be done by amendments to the Civil Procedure Rules, by Statutory Instrument.

Advantages of QOCS:

- Claimants are given equal access to the Courts as in other forms of civil litigation;
- Rights available to groups protected by the Equality Act are restored;
- Claimants may be more prepared to utilise the socially important legislation to the wider benefit of society.

Disadvantages of QOCS:

- Defendants bear their own costs even if they successfully defend a claim;
- Defendant companies say that they are not indemnified for acts of discrimination, whereas they are indemnified for personal injury and fatalities under Employers' Liability and Public Liability (EL/PL) cover. QOCS is viable in that work because EL/PL insurers receive sufficient premiums to bear their own legal costs even in positive cases.

2) The alternative solution is to restore recoverable ATE to Equality Act cases.

Advantages of Recoverable ATE:

- Claimants can proceed on a level playing field with large opponents;
- Claims must meet an independent assessment of merits before being accepted on risk.

Disadvantages of Recoverable ATE:

- Increases Cost of litigation to the losing Defendant, by adding to legal costs.

On balance I would favour option 2.

Recommendations

29. (1) EU legislation should be introduced to promote inclusive design of products by manufacturers across the EU, and the UK Government should adopt a more positive approach to securing this.

29. (2) The ODI (Office for Disability Issues) 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.

29. (3) The Government should introduce regulations on specific duties to underpin the PSED in England, that are no less detailed and effective than those in Scotland and Wales.

29. (4) The Government should give statutory force to the EHRC's Technical Guidance on the PSED so that it becomes a statutory Code of Practice, that both public authorities and courts

will have to take into account.

29. (5) Improved funding should be provided for the enforcement of the PSED through either or both of more funding for the EHRC to support cases and/or a dedicated supply of increased legal aid for cases that challenge mis- or non-compliance with the PSED.

29. (6) The Government should report biennially to Parliament on the way in which the PSED is being applied and the improvements it has secured.

29. (7) The ability to recover the cost of “After the Event” insurance cover should be restored to Equality Act cases.

*18 September 2015*

## **Manchester Disabled Peoples Access Group – Written Evidence (EQD0092)**

### **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?**

1.1 The Equality Act has weakened some of the anti-discrimination law relating to disability. In particular, the Public Sector Equality Duty does not include the requirement for public bodies to consult disabled people and to produce Disability Action Plans as was in the Disability Discrimination Act. Public bodies no longer consult disabled people on a regular basis and although they are required to set objectives, this is not adhered to and not monitored. They are not clear on what evidence to collect and publish so do very little. The previous Disability Action Plan produced before the Equality Act came into force was completely abandoned and the lack of enforcement for any of the requirements of the Equality Act with the emphasis on individuals taking cases, has led to public bodies generally ignoring the requirements.

1.2 There is no attempt or understanding in public sector bodies of how to incorporate or harmonise one or more protected characteristics. One example in Manchester, where the issues, standards and best practice relating to access for disabled people have been ignored is in Manchester City Council's management of the Age Friendly initiative. Although many older people face access barriers because of impairments, City Council offers regularly ignore the best practice of disabled people's experience and guidance for example, producing guides in accessible formats and promoting projects which ignore the City Council's own policy in their "Design for Access 2" manual. Although there is a level of co-operation with disabled people, mainly as a result of MDPAG getting involved in Age Friendly Manchester's activities, the general direction of work with older people ignores best practice and does not effectively "foster good relations between different groups", one of the general duties under the Equality Act.

1.3 In relation to the Built Environment, Manchester City Council has not consulted effectively with disabled people's organisations and ignored the comments of disabled people in relation to new developments in the Town Hall Complex, in particular, in the construction of the Link Building between the Library and the Town Hall Extension and Lloyd Street between the Town Hall and the Town Hall Extension. This has been documented in the evidence given and the report of the Planning Inspector relating to the Public Inquiry over the stopping up of Library Walk which took place during September – November 2014.

1.4. The increasing use of shared space which seriously discriminates against many disabled people who are now unable to safely access some public spaces, well publicised by Lord Holmes, has been difficult to challenge under the provisions of the Equality Act and there are examples in Manchester and Poynton, which has received plaudits from some sectors of the built environment profession.

1.5 It is helpful that other protected characteristics are included in the Equality Act as many disabled people have multiple identities and can be discriminated against because of more than one characteristic. However, public bodies and service provider still do not appreciate this by, for example, placing baby changing tables too high for disabled parents to use.

1.6 The Equality Act has not strengthened disability discrimination law in many areas, when, for example, there needs to be an additional Accessible Sports Grounds bill, currently being debated and supported across all parties, in the House of Lords.

## **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

2.1 Voluntary workers are not covered under the Equality Act

2.2 People on work experience are not comprehensively covered, including the right to reasonable adjustments, such as the installation of a necessary lift. It is also not clear that disabled people trying to work through agencies or on zero hours contracts are properly covered.

2.3 Government has been allowed to stop requiring public authorities to use Equality Impact Assessments (EIAs). This has had a major effect on allowing policies and procedures to be implemented or continued, which continue to discriminate against disabled people and others covered by the Equality Act both at local and national levels. However, even where EIAs were used, there was a lack of understanding of the range of barriers experienced by disabled people with a wide range of impairments.

2.4 Similarly, the government has limited the use of Design and Access Statements at the planning stage of applications and changed Access Statements to Access Strategies in Building Regulations, instead of strengthening them and ensuring that new buildings and environments anticipate the needs of a wide range of disabled people, including many older people, not just wheelchair users. The original Circular 01/06 “Changes to the Development Control System” encouraged the involvement of disabled people’s organisations but this now happens rarely. It has led to 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.

## **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?**

3.1 Most staff in public bodies and employed by service providers do not understand the full scope of reasonable adjustments, particularly relationship to the continuing and anticipatory duties, and are unaware of the many barriers experienced by people with sensory impairments, learning difficulties, mental and other health issues, neuro-diverse people and people with multiple impairments, as well as people with a wide range of mobility impairments.

3.2 There is a widespread lack of knowledge in most organisations about making information accessible and they are unaware of the use of any clear print guidelines, (available from MDPAG and circulated regularly) with many poor examples regularly available from the

public sector including local authorities. A recent example of poor design is “An alternative Age-Friendly Handbook (for the socially engaged urban practitioner)”, 2014, produced in partnership with Age UK, RIBA, the University of Manchester Institute for Collaborative Research on Ageing (MICRA) and Age-friendly Manchester and the 2014 UK Urban Ageing Consortium, which is intended for designers, but not useable for those with a visual impairment, even in a large print version. Many websites, particularly in the private sector, are inaccessible and do not comply with national standards (BS 8878:2010) or international standards (Web Accessibility Initiative (WAI)).

3.3 MDPAG gets many complaints about the behaviour of bus drivers and there are still issues in the design of transport environments, including the introduction of cycle routes behind bus stops, without sufficiently safe crossing points for visually impaired and other disabled people. Examples also include discrimination by some taxi drivers, particularly in refusing to visit addresses where they know there are wheelchair users or refusing to use their ramps or seat belts designed for wheelchair users. The policies, procedures and design of public transport often discriminate against disabled people who use scooters or larger wheelchairs, including many buses, trains and trams. Door to door transport which many disabled people rely on is often underfunded, unreliable and with limited range.

3.4 There are no standards or provision for safe crossing points on streets with light rail transport, for example, Metrolink in Greater Manchester, leading to some public areas, such as Piccadilly Gardens, being unsafe and inaccessible for visually impaired people and other disabled people.

3.5 The BBC reported on a government sponsored survey in December 2014 identifying many shops and restaurants continuing to be inaccessible for wheelchair users. This survey should also have considered other barriers which exclude assistance dogs, such as narrow aisles and no room between or under tables, lack of information for sensory impaired people, poor lighting and acoustics and inappropriate seating amongst other access barriers. The lack of enforcement and the difficulty faced by individual disabled people in making complaints and taking legal action maintains a climate of exclusion. Events such as the Manchester Food and Drink Festival continue to give awards to venues which exclude disabled people, even where they would never consider excluding other people with protected characteristics.

3.6 Wayfinding and signage is a continuing problem for many disabled people as organisations and designers often have little understanding of communication issues and often do not consider wayfinding at an early stage of a proposal. This is a particular problem for people with learning difficulties, people with multiple impairments, including some stroke survivors and others who require assistance with orientation.

#### **4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

4.1 There should be more publicity and information around reasonable adjustments, which includes information about the barriers faced by a wide range of disabled people. More

publicity for the outcome of successful cases would also help to change attitudes towards what is acceptable and unacceptable.

4.2 There should also be a requirement to carry out reasonable adjustments and not just settle out of court when legal action is taken.

4.3 Existing standards are currently inconsistent and although useful, do not cover all the barriers faced by disabled people, so that it would be difficult to limit the definition of discrimination only to the scope of existing national and local standards. However, minimum, not maximum, requirements for reasonable adjustments should incorporate recognised standards such as BS8300 and elements of other national standards and guidance.

### **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?**

5.1 It is not as effective as were provisions under the Disability Discrimination Act. MDPAG gave a presentation given to the EHRC Disability Committee on the PSED and the Built Environment in July 2015 and has additional examples and evidence. The PSED, in our view, is supported in principle but the impact on reducing discrimination is very limited.

### **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?**

6.1 The specific duties are not well understood and not adhered to. In particular, there is no specific requirement for local authorities to require each department to set equality objectives e.g. planning, licensing, housing, corporate services, markets, health, sports, leisure and arts and consultations. As there is no understanding or enforcement of the Equality Act overall, there is little incentive to collect appropriate information on a public body's compliance with the Act and then to publish it. Cuts to public sector services and organisations have also affected any commitment to spend funds on collecting and publishing relevant information.

### **7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?**

7.1 Different government departments appear to have varied responses to compliance with the Equality Act. Most documents on government websites are no longer available in alternative formats and are usually provided only in PDF, and not Word, RTF or other formats. Where requests are made for consultation documents to be made available in alternative formats, the documents generally arrive too late for individuals or organisations to participate in the consultation. Government services are increasingly delivered by other private sector organisations, but the original contract does not appear to require these services to be accessible. This would seem to be in contravention with the public sector equality duties. Efforts to get relevant information from government departments, related to disability, has led MDPAG to have difficulties with one government department, DCLG,

which has not responded effectively to requests for information or clarification of government legislation and guidance. This continues to be the situation, even after requests from a local MP.

7.2 Sometimes legislation from different government departments appears to conflict with each other and with the provisions of the Equality Act, particularly in the work of the DCLG and the DWP. For example, effects of changes in government policy in relation to disabled people, which has increased discrimination, exclusion and isolation and reduced services are contradicted by Ministerial statements supporting the need for additional services and reasonable adjustments to be made for older people.

### **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?**

8.1 Since losing staff and having its budget and focus reduced, the EHRC has been mostly ineffective in regulating and enforcing the Equality Act, in comparison with what they were able to do in the past, particularly in taking on and publicising major investigations in some sectors.

8.2 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. For example, neuro-diverse people and some deaf people do not recognise that they have impairments but are regularly disabled by a wide range of social, financial, communication, physical, sensory and attitudinal barriers.

### **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?**

9.1 This would be very helpful if it was not costly to individuals and if the inspectors and ombudsmen followed the guidance and codes of practice developed by the EHRC, understood the wide range of barriers and were able to demonstrate practical improvements in reducing discrimination and promoting reasonable adjustments.

### **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?**

10.1 It is extremely difficult, costly and stressful for individuals to take legal action or even to make a complaint. Many people avoid making complaints, for example, about inaccessible football stadiums and football club ticketing procedures, as they are emotionally engaged with the sport and its social benefits and are concerned that they may be excluded if they take legal action. Similarly, most disabled people do not make complaints about healthcare services, as there are examples of people being excluded from GP practices and other health services if they complain and are sometimes labelled as troublemakers.

10.2 Clear and simple advice and guidelines, even from the EHRC, and advice services with knowledge of equality legislation, are not widely available, particularly as most free legal and services have lost their funding in recent years.

10.3 Many people in work have used trade union representatives to support them at tribunals and courts, but in a large number of situations, disabled people are not in full-time or part-time work with trade union representatives or are unaware that they can join a trade union, so do not have access to this source of advice and guidance.

10.4 Please note the inappropriate use of the term “people with disabilities” in this question, which does not fit with the social model of disability.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

11.1 Alongside better enforcement, additions and changes to the Equality Act noted above, if disabled people’s access groups were given national recognition and support, they would be helpful in giving a voice to the experience and knowledge of disabled people and help to improve understanding of the Equality Act in local communities and organisations, and promote reasonable adjustments in relation to the built environment, transport, information and services.

11.2 An important addition to the legislation 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. This approach would make monitoring and regulating commitment to the Equality Act more available and widespread, and focus the attention of organisations on the need to conform to recognised national guidance and standards as a minimum requirement. This should not take the place of existing rights for individuals to take cases to court, where service providers have not anticipated their needs and not made reasonable adjustments, but would be an additional way for groups and communities to engage with organisations and encourage best practice, while helping to provide a more accessible community for everyone.

*3 September 2015*



## **Gerry McFeely – Written Evidence (EQD0119)**

**Chair Person, College of Occupational Therapists Specialist Section Work (COTSS –Work)  
Macmillan Consultant Occupational Therapist – Vocational Rehabilitation (cancer and long term health conditions) NHS Lothian. Operational lead for DWP Fit for Work Service.**

### **Executive Summary**

- The UK currently faces the very real and serious prospect of an ageing work force with multiple and long term health conditions with the concomitant increase in disabilities (Mercer et al, 2012). We must also find a way of keep ageing employees who are in work there for much longer. One way of doing this is through recognition of their disability in law and through a solution focussed approach to reasonable adjustments in the workplace.
- It is estimated by the Office of Disability Issues (2011) that there are some 5 million people of all ages in work who are disabled within the meaning of the Equality Act 2010. Many of these individuals will have a need for reasonable adjustments at work.
- It is the view of some, that there is emerging evidence of the ineffectiveness of present day enforcement of equality duties around employment and disability. This is in relation to both working within the spirit of the Act as well as implementation of the duties. Concern can start with the role of the EHRC itself through to those who interpret and apply it on a daily basis in the area of employment such as Occupational Health.
- We begin with two fundamental background problems:
  - Firstly, some 70% + of the UK work force is without access to meaningful occupational health coverage (Faculty of Occupational Health Medicine, 2014). Where it does exist, such occupational health provision can be of variable quality and not necessarily skilled in disability assessment, and specification of adjustments to help both employer and employee. (Thorbury, 2013; Williams, 2008; Mason, 2013; Chih Hoong Sin, 2009).
  - Secondly, EHRC enforcement has no teeth comparable with Title 1 of the Americans with Disability Act and the Office for the Equal Employment Opportunity Commission (EEOC). The EHRC is not visible on the ground on a daily basis nor necessarily accessible to those who need such support. It provides limited representation in cases of strategic significance, and an advice helpline. However it does not provide the proactive monitoring and compliance role as its equivalent in the United States, which requires adherence to the concept of reasonable adjustments on a daily basis by employers.
- This posits several interlocked questions that this submission attempts to highlight:

- How can we sensibly address this issue of health & disability in the population in the present day using existing or changed equality duties?
- How can we improve the lot of disabled people in employment through preventative, early and effective disability management in the workplace, where employment tribunals are seen as a last resort?
- Who is to do this and when? The absence of fit for purpose individualised assessment in the age of outsourced and telephonic Occupational Health services raises serious questions. Disability can only be truly assessed with attention to detail and when it comes to reasonable adjustments, specificity is the silver bullet.
- The new DWP Fit for Work Service may in time assist the implementation of reasonable adjustments for employees without access to occupational health services. However, early indications of a telephonic only, time limited service suggests that their ability to individualise assessment, otherwise referred to, may not yet be possible.

#### **Selective response to consultation questions by number**

##### **Reasonable adjustments**

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?)**

##### **Background on employment and the reasonable adjustment duty**

- 3.1 We know right at the beginning of any discussion of this matter, that employment is a key area of disadvantage for disabled people. Jones and Wass (2013) quoting the Labour Force Survey of 2011 report that 30% of the working age population have a longstanding illness or impairment with 11.6% reporting that this was actually 'activity limiting' both at work and in their day to day activities.
- 3.2 The work place is also where most people develop and disclose common health problems, some of which may constitute a disability within the meaning of the Equality Act 2010 (Foster and Wass, 2012). Many do not know that they have such rights for the reasons articulated by Mortelmans et al (2006): namely that they are disadvantaged in information terms.
- 3.3 In addition, as the state of research and governmental policy initiatives on illness and work has shown over the last 10 -15 years, limitations caused through illness and impairment at work are vitally important concerns to health care planners as well as a burden to the UK economy (BRSM, 2003; DWP, 2004, 2006; Waddell and Burton, 2008; Black and Frost 2011; Scottish Government, 2013). They are also of

vital concern to disabled people. Disability and how it is managed at work is a fundamental part of this discussion, and therefore matters.

- 3.4 However, when disability management is done efficiently, it improves job tenure, performance and satisfaction from employer and employee alike (Gold et al 2012; Mcfeely, 2012) and achieves the overall societal objective of maintaining people in work with health conditions. Or to paraphrase the Equality Act: removes the substantial disadvantage faced by the person with the disability and allows equalisation of opportunity for disabled people in work.

### **Occupational Health Services as agents of the employer and Disability Assessment within the UK**

- 3.5 Occupational Health as a service phenomenon conjures up notions of a by gone age, of the friendly occupational nurse down the hall. Those days are gone. Nowadays it is multi billion pound business largely absented from the employee; usually telephonic; usually time limited and algorithmic (i.e. measured against 'normative' responses). It is also the agent of human resource departments.

- 3.6 OH is singled out here for mention for a reason: it is because OH is seen sine quo non as the near exclusive agent for functions of disability assessment in the workplace in the UK today. Occupational Health has a fundamental role in identifying those to whom the employer's duty to make reasonable adjustments applies, and in making meaningful recommendations for reasonable adjustments to the employer. If as the UK Government's own Guidance on determining those who fit the definition within Section 6 of the Equality Act is accepted - namely that around 5 million people in work are covered; we can assume that they are not all aware of this and nor are their employers, without assistance.

- 3.7 We have to be careful in our assertions of ineffectiveness when criticising such an established notion as OH. The comments need to be balanced and constructive and to be based on the best available research base. The OH research base itself is probably the best source and it is here that we find little of substance on disability in recent years or since the introduction of the Equality Act in 2010 with some notable exceptions (Kloss, 2009). However, if there is one thing clear about disability assessment it is this: it is usually highly individual; very specific; requires careful and timely unpicking/investigation and requires the detail to be addressed to get the resolution.

- 3.8 A separate issue arises in relation to employer's accepting and implementing this advice.

### **Interpretation of the Equality Act duties in relation to disability by OH.**

- 3.9 Very little can be found in the UK OH literature on how the 'definition of disability and reasonable adjustment are to be applied. The field of practice itself appears somewhat formulaic.

- 3.10 To judge how primary disability legislation is being interpreted by OH we may need to find the closest parallel in this regards if nothing specific can be found, in

order to make an estimate of how well OH might be applying primary disability legislation as agents of the employer. To do this we may have to rely on OH's own review of less onerous UK occupational health legislation, such as Access to Medical Records Act, and the Data Protection Act (Masupe and Parker, 2013; EHRC, 2013; Batty et al, 2009). Here we find evidence that OH struggles with primary legislation compliance.

3.11 If this is an accurate reflection of fact then this raises questions as to the profession's ability to assess and advise based on knowledge of the Equality Act, and as to whether there is sufficient awareness and understanding of the Act's intentions 5 years after its introduction? The agency issue is a sensitive one which can lead to contractual contingencies and commercial sensitivities which may not always operate in the best interests of the very question being asked.

#### **Disability Sensitive Tools.**

3.12 The OH literature reveals little evidence of occupational health practitioners using disability sensitive tools and or making reference to the Office for Disability issues guidance notes on how to define disability with a few minor exceptions (Pritram, 2011; Williams, 2008).

#### **Employment Tribunal and OH.**

3.13 No one would claim that the matter of determining disability is a black and white issue, or that it is the domain of one discipline. However the proposition that health and disability decisions made by OH professionals must await an employment appeals tribunal to either be 'defined' or to get action on reasonable adjustment, is not credible assertion any more. In occupational health reports, where deferment to the judicial process occurs; or where excessively cautious advice on either disability status or the need for reasonable adjustment is given, it does not provide the specific individualised and proactive assessments needed. It cannot therefore be considered in these circumstances, to be proactive and effective management of disability, which serves to retain those with a disability in terms of the Act in employment.

3.14 We consider that promotion of the Office for Disability's Guidance Notes ('Guidance on matters to be taken into account in determining questions relating to the definition of disability', 2010), and encouraging assessments based on the spirit and positive application of the Act to be essential if there is to be better understanding of those with disabilities and the attendant duty to make reasonable adjustments. The Equality Act does not define reasonable adjustments and nor does it provide detailed guidance on what amounts to reasonable adjustments, or determine reasonable adjustments. The current guidance is central to OH and other health professionals having sufficient awareness of the application of the Act. As a profession and as Chair of the specialist section on work I see evidence of low awareness on this matter on a regular basis. It is my expert opinion that our colleagues in OH should be required to incorporate this knowledge into their practice if we are to achieve positive change. (Pritram, 2010).

**Traditional distinctions and lack of communication between occupational health providers, NHS staff and GPs.**

3.15 Following on from what has just been said there is reasonable evidence of a need for greater communication between all stakeholders in this discussion and agreed approaches to the use of, and application of the 2010 Act and the essential guidance notes (Mcfeely,2013, Waddell and Burton, 2008; Beaumont 2003; BMJ, 2003)

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

- 4.1 Yes the law needs to propose greater clarity of the expected process for employees and employers and what form it would take. How can you audit something that has an amorphous structure, or bench mark it and then if need be measure and enforce it without greater clarity? A solution is proposed below under section 4.8. Individualised assessment by agents of the employer is essential. Guidance similar to that provided in relation to determining the definition of disability can be an important and quick response to this short term. Employers and their agents in occupational health need to be charged with using the current and any additional Guidance Notes together with the EHRC Code of Practice to better define both disability and suggest reasonable adjustments.
- 4.2 Cancer is a good example.
- 4.3 Cancer patients are automatically protected under the Equality Act from the point of diagnosis and are a group for whom the somewhat circuitous route to protection and reasonable adjustments is not necessary. This means that cancer patients have an entitlement to reasonable adjustments from diagnosis. One might reasonably surmise that the workplace response to a disclosure of cancer (a slam dunk disability within the meaning of the Act) will bring the optimal work place response, and that is a clear recognition of rights and the provision of reasonable adjustments. Research, however, appears to indicate that this is most definitely not always the case (Amir ET all, 2008; Amir et al 2009; Bannon 2011; Bains et al, 2012).
- 4.4 The Chartered Institute for Personnel Directors, Cancerbackup (a cancer charity which has since merged with Macmillan) and the Working with Cancer Group conducted a survey in 2006 of employers' handling of cancer and found that 73% of employers had no formal policy for managing employees diagnosed with cancer. Some 20% of employers were unaware that cancer was a disability within the meaning of the then Disability Discrimination Act and it was found that there was insufficient support and information available from employers to employees with cancer. In a UK national survey of OH physicians in 2009 Wynne and Woodcock found that 45% of respondents indicated that referral to OH for cancer patients took place too late to be effective to meet their needs. Amir et al (2010) in a survey of attitudes

and experiences of line managers on the theme of return to work for those living with cancer found that line managers reported the need for more advice and guidance on how to put any organisational policies regarding cancer related disability into practice.

- 4.5 Similarly Lyndon and Hughes (2012) in a study of people with cancer, highlighted the ambiguity and confusion that exists for patients who seek definitive advice on their rights when seeking reasonable adjustments at work, and found that 2/5 of employers did not know about rights that flowed from the 2010 equality legislation for workers with cancer. Less reassuringly still, many of the treating NHS staff health professionals expressed limited confidence around providing advice on cancer and work which highlights the low base that we start from on this matter.
- 4.6 If this is the experience of cancer patients 5 years after the enactment of the Equality Act, and almost 20 years after the introduction of the Disability Discrimination Act, what then might one reasonably surmise to be the experience of those workers with 'hidden conditions' (read here, mental health conditions - Adamou, 2011). Or for that matter those workers who live with the 'common health problems' (read here musculo skeletal, mental health and cardio respiratory conditions - described by Waddell and Burton,2008) - who collectively (as all the top line research tells us) cost the most to society ?
- 4.7 All of the above points to the need for greater awareness of equality duties, employment and health law and how to apply these in practice without which ultimately, significant job losses will occur. This resonates in the health and social literature around disability management (NES 2008; de Boer et al 2009; TUC, 2013). Evidence suggests that with the right information, appropriate support and the identification of rights under the Equality Act, job retention amongst our patients would improve. Thus fulfilling what one assumes is the central tenet of the Equality Act by uniquely allowing positive discrimination in disability cases.

## **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?**

- 8.1 In our view, greater promotion and strong advice on the need to use the guidance notes is desperately needed by the EHRC as a starting point to avoid evidence of discrimination. This can be backed up by similar guidance in relation to the duty to make reasonable adjustments. However these are 'soft' options. In our view there may be a need for a more 'interactive process' as the American with Disabilities Act (ADA) calls it.
- The Amendment to Title 1 of the ADA (employment) provides us with a future road map for change: an approach that systemised American audit and compliance. This means 'framing' patients health – work problems clinically, and using evidence based practice to realise the two functions of equality under discussion: namely identifying

who is covered and enacting reasonable adjustments. Unless the former is done competently the second is usually denied

- 8.2.1 The approach adopted under the ADA , while attracting penalties for failure to apply, is actually a proactive and interactive conversation between employer and employee. This results in better communication between employees and employers in an area where work and private matters around health can overlap and can lead to difficult and sensitive conversations. In itself this would likely increase the likelihood of positive work outcomes if the better framing occurred - a process described by Gold et al (2012) as akin to marshalling the evidence, developing the arguments and getting employees to represent their case firmly but respectfully to employers.
- 8.2.2 This process is not without challenges in the UK at present, as we have seen from the experience of those living with cancer in the workplace. We need to understand the challenges facing employees disclosing disability and seeking reasonable adjustments in the workplace. However, by redesigning the model and with an eye to the benefits to be gained, there must, we believe, be a good chance that these hurdles can be overcome.

The ADA effectively requires every employer to have a policy on reasonable adjustments within the workplace which makes explicit the procedure by which an employee can make a request for reasonable adjustments, and the approach that the employer will take to this request, encouraging an interactive and solution focussed conversation around this with the disclosure of sensitive medical information between the employee and Human Resources or the Line Manager kept to a minimum and stored separately. Employers are encouraged to use the health expertise of relevant third parties with the expertise to assist when necessary. With both parties requiring to take responsibility for making this process work, and tangible and documented evidence emerging that this process has occurred. This creates solutions when they are possible but fundamentally fair and transparent processes. The 7 steps that employers are encouraged to adopt can be summarised as follows: (Links are provided below to relevant policies under section 9)

1. Recognise a request for reasonable adjustments
2. Parties to engage and to continue to engage in the ‘interactive process’
3. Confirm the existence of a disability using a registered health agent.
4. Determine the demands of the job
5. Find a solution that accommodates the job demands and the health need if reasonable
6. Implement reasonable adjustments as soon as possible if no undue hardship in the business applies
7. Document the process.

**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?**

**Comment:** Yes, and an enforcement wing comparable to USA EEOC – see links:

[http://www.ada.gov/ada\\_title\\_1.htm](http://www.ada.gov/ada_title_1.htm)

<http://www.eeoc.gov/policy/docs/accommodation.html>

## **11. Are there other legislative or non-legislative measures that would improve?**

### **Implementation of the Equality Act 2010 in respect of disability?**

- 11.1 The important point here and is that better trained intermediaries should take it upon themselves to assist the process. NHS staff are a good example of intermediaries well placed to assist this process and should be encouraged by the EHRC to perform this role more competently and there could be a learned modular approach to this undertaken by the EHRC. The more NHS staff inform patients or disabled people of their rights, the more likely employers will be to provide the adjustments that they need (Lockwood et al 2011; Griffith, 2010).
- 11.2 The process undertaken by NHS staff can create cooperation, mutual respect and trust between employee and employer as honest brokers. The aim is to make a compelling case for the reasonable adjustments through a clinical paperwork trail, of formal medical and functional evaluation (Gold et al, 2012). This could lead to a radical re balancing of the asymmetry that Mortelmans et al (2006) refers to and is widely apparent to any of us who work in the field of vocational rehabilitation. Where often times the power rests with the employer, and in the words of Fevere et al (2012) and Jones and Wass (2013) the employee has to beg for adjustments through special pleading rather than as a legal right. In the process risking exposing themselves to the misuse of absentee management policies in lieu of appropriate disability sensitive policies (Taylor 2013; Hepple, 2011).
- 11.3 Sometimes this can lead to outright hostility and disciplinary processes and cross examination about their disability status (Foster and Wass, 2012; Lawson, 2011; Fevere et al, 2013). When in fact, what the person needs is proper individualised assessment that answers questions about disability, and for the employer to know that informed and independent health professionals will assist them in negotiating this difficult and sensitive terrain (Gold et al, 2012)
- 11.4.1 We believe in occupational therapy that the evidence supports NHS staff involvement in this regard and offers a 3rd way to address the dearth of occupational health services, dispute laden scenarios and the costly path that lies ahead in litigation, employment tribunals, and people falling off the employability pipelines that local and national government wish to prevent and into which the DWP have, and are, ploughing many millions of pounds.
- 11.4.2 NHS staff offer something very unique in regards to simple and complex work place scenarios by bringing greater neutrality, objectivity and specialism to where it currently might not exist. Occupational therapist expertise especially in the assessment activity of daily living and other areas of functional capacity are core to this process. They can help employers realise that disabled employees are not seeking preferential treatment when their disability is acknowledged and reasonable



adjustments are sought. They are simply seeking to remove employment barriers which prevent them from making an equal contribution (Fevere et al, 2013).

11.4.3 In occupational therapy there are moves afoot in the profession towards more positive and effective disability management as we have recognised that such approach chimes with the spirit of the Equality Act (2010). We are beginning to recognise more that disability and the need for positive action to remove the disadvantage faced by people with ‘disabilities’ in the workplace is central to the effective implementation of the Act’s intention and our future professional practice. In other words, as experts of functional capacity assessment we are choosing to assess the disability against the definition of disability as found the Act and guidance notes. We see this as an opportunity to assist the interactive conversation between patients and employers and see it as our public service duty to argue for reasonable adjustments.

It should be apparent from this brief report just how many of our patients in NHS treatment may be covered under the Act and how important it is to identify this matter more fully. Given the high proportion of those people with developing health conditions, being in work now and in the future. As a professional group occupational therapy welcomes further involvement in this important discussion. As Chair of the specialist section on work I am happy to provide more detailed suggestions or contribution as needed by the committee upon request.

*4 September 2015*

## **Professor David McLoughlin – Written Evidence (EQD0124)**

### **Introduction**

The comments made below are based on my experience as:

- i. Visiting Professor in Psychology and author of three books on dyslexia in the adult years.
- ii. Consulting educational and occupational psychologist, providing diagnostic assessments for adults in tertiary education and the workplace, as well as making recommendations with regard to the ways in which they can be supported through adjustments.
- iii. Expert witness providing reports and verbal evidence for Employment Tribunals.

My expertise is in specific learning difficulties such as dyslexia and dyspraxia, which I will refer to here as Hidden Disabilities.

### **Evidence**

I have not addressed all the questions but used the numbering as shown in the Call for Evidence.

1. One of the ways in which the success of disability legislation is reflected is through is the disclosure rate; that is, the extent to which individuals inform employers that they have a disability. Research in the United States and Canada (1, 2, 3, 4) revealed that the majority of people with hidden disabilities sampled:
  - Did not ask for adjustments in the selection process
  - Did not tell employers during an interview
  - Did not ask for adjustments in the job

Some of the reasons given reflect much misunderstanding, both in terms of the stereotypes held by non-disabled people as well as the lack of understanding disabled people have of themselves. Some of the reasons given for not disclosing were:

- I never thought it would apply to work
- I was afraid to be found out - they might have taken the job away
- They would think I couldn't do the job
- People would look down on you
- I was embarrassed
- I didn't think it was my place to ask for those things
- I would feel like a burden if they gave me anything extra

As there were no such UK studies we (5) undertook a study of graduates who had been provided with adjustments such as extra time to complete examinations whilst they were students. The sample consisted of UK and overseas students. We found that overall less than a fifth of the sample (16.7%) had disclosed any details of their disability to their employers. In addition, we found that UK resident participants were no more or less likely than non-UK resident participants to disclose details of their disability to their employers.

We asked participants why they had not disclosed. The most common response was that participants felt that it was not an important factor at work (35%).

The second most common response was that participants felt their employer would discriminate against them (32%). This discrimination could be personal, in the form of a manager who does not care or understand, or it could be institutional discrimination in that there was a feeling that disclosure could limit promotion within the company.

The next response was that participants felt that if they disclosed their employer would feel they are not able to do the job as effectively as someone else (30%).

In addition, 27% of participants reported that they felt they would not even be considered for a job if they disclosed upon application.

The 17% of participants who did disclose did so at different points in the application process: 43% did so upon applying; 14% did so in the interview and 43% did so once they were in employment. We then asked these participants why they had disclosed and the most common responses were that they felt it was important to do so and they could be better understood if they disclosed. None of the participants who had disclosed to their employer said they did so in order to be given adjustments at work.

On the basis of this research it would seem that legislation has been less effective than hoped. The Equality Act 2010 was new at the time we conducted the research but we have no reason to believe that the situation has changed, particularly as our findings were consistent with those of international research.

3.&4. I do not think that reasonable adjustment duties are well understood, one of the problems being the compound noun 'reasonable adjustments'. It has become part of the language in the disability world as in 'I look forward to receiving my reasonable adjustments'.

I assume the intention of the Equality Act 2010 was to require the making of adjustments that are reasonable. In my view and as I have written elsewhere (6) the considerations in making adjustments reasonable are:

- (i.) They should be based on documented individual needs - recommendations for adjustments should be evidence-based and individualised. In my experience there is too much provision for the average dyslexic person, for example, as there is no such individual. It is best illustrated by the 'extra 25%' provision, which is a made up figure and not evidence based. I was concerned to learn that evidence might no longer be required to seek assistance through the Access to Work Programme. Syndromes such as dyslexia are "hidden" and anyone could claim to have a disability when this is not the case. Even if they do it might not be an impairment that has substantial day-to-day effects.
- (ii.) They should allow the most integrated experience - as I understand it the underlying philosophy of equality legislation is inclusion. Adjustments should allow an individual to be included, and there is a risk that too many adjustments can exclude and lead to

learned helplessness. They can also lead to a perception of unfairness amongst colleagues.

- (iii.) They do not compromise the essential requirements of the job – it should be assumed that when someone applies for and secures a job they will have most of the qualities and competencies required. It is my understanding that adjustments are intended to level the playing field and make it possible for individuals to demonstrate their competence without the difficulties stemming from their disability proving a major hindrance. The Equality Act 2010 should not be supporting people in job roles for which they have no aptitude and to which they are entirely unsuited.
  - (iv.) They do not impose an undue financial or administrative burden – in making adjustments financial and administrative constraints should be considered. This might apply to specialist equipment but, even a manager needing to devote an overwhelming amount of time supporting one individual, particularly at the expense of their own work and the management of others should not be considered reasonable.
7. There seems to be some inconsistency with regard to the criteria used in different government departments. An example is the criteria used for awarding funds through the Disabled Student's Allowance in higher education are rather less stringent than those necessary to determine disability under the terms of the Equality Act 2010. A student might be regarded as being disabled for the purposes of receiving funding for equipment and tutorial support whilst at university but, in the workplace they might not be considered disabled and entitled to assistance through the Access to Work Scheme.
10. My experience of providing expert written and verbal testimony at employment tribunal's is that they are not as accessible as they should be for people who have hidden disabilities. It is not unusual for such people to be on a low income and have limited financial resources. The Tribunal system is not particularly user-friendly, being a rather legalistic and individuals who need to represent themselves are at a considerable disadvantage in a Tribunal setting when employers are able to engage the services of highly paid solicitors and barristers. I have been

involved in Tribunals during which it has been evident that the members of the panel have a limited understanding of hidden disabilities, and their attitude and behaviour has bordered on being discriminatory.

11. I am in no doubt that there are non-legislative measures that would improve the implementation of the Equality Act 2010. In particular, there is a need for employers to be educated in terms of their responsibilities, but this also applies to advocacy and self-advocacy groups. The first often assume that if they "throw technology" at the problem or allow extra time for training it will be resolved. This reflects a very limited understanding of the nature of hidden disabilities, not helped by advocacy and self-advocacy groups promoting myths such as the 'gift of dyslexia' and resorting to new and meaningless classifications such as neuro-diversity. They sometimes create a sense of entitlement that encourages individuals who have disabilities to assume that they will be protected by the Equality Act 2010 when this is not the case.

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4 September 2015

## **Peter McTigue, Nottingham Trent University – Written Evidence (EQD0021)**

1. This submission is, in part, based upon recent research undertaken by myself which examined the extent to which the law protects People Living With HIV/AIDS (“PLHA”) within an employment relationship from discrimination and harassment. Part of this research involved undertaking twenty in-depth interviews with PLHA currently within employment. Quotes from these interviews will be used to illustrate points made. In terms of focus, the submission will concentrate on the following issues; firstly the definition of disability employed by the Equality Act 2010 (“the Act”), secondly the issue of disclosure of one’s disability and thirdly, the concept of reasonable adjustments.

### The definition of disability

2. The definition of disability is found at s 6 of the Equality Act 2010. This represents a hurdle which the majority of individuals with disabilities must clear if they are to acquire rights under the Act. Yet due to paragraph 6 of Schedule 1 of the Act, individuals with either cancer, HIV or multiple sclerosis are deemed to be disabled from the point of diagnosis. In spite of this explicit treatment by the Act my research found that PLHA were reluctant to identify themselves as disabled.
3. Key themes emerged in relation to PLHA being unwilling to think of themselves as disabled. The prevailing theme was that participants generally perceived individuals with disabilities as individuals with physical and/or sensory impairments. In addition, the stereotypical view of individuals with disabilities as being those who were less able or capable persisted:

*“Maybe my perception of disability is, is way out there...But, disabled to me would mean, someone who is, whose ability to do something has been impaired.”*

4. Many felt that there was a certain element of stigma to being labelled as disabled, they did not like the negative perceptions and “baggage” associated with disability:

*“I’d be insulted to be thought of as disabled...And again, disabled brings along another load of baggage, like, you’re expected to be in a wheelchair or on crutches or have a wooden leg or be blind or deaf or whatever else it is.”*

The problem this presents is that there is the distinct possibility that a number of PLHA are not availing themselves of their rights under the Act as they do not consider themselves disabled. There is, of course, the distinct possibility that this issue arises in relation to other individuals with disabilities as well and is not unique to PLHA.

5. In spite of the above, whilst the use of the label “disabled” provided by the Act was generally disliked by PLHA participants were overwhelmingly in support of being afforded protection from discrimination:

*“I can see that, that piece of law, badly titled as it is I guess, offers us much needed protection,”*

### Disclosure



6. In common with other individuals with hidden disabilities, disclosure presents a predicament for PLHA. For PLHA, the issue as to whether to disclose their status to their employer is often one of the most vexatious decisions they have to take during their employment relationship.
7. A number of the individuals interviewed opted not to disclose their HIV status to their employer. A number of factors motivated these individuals. Some did not want to complicate their working environment and were of the opinion that, in any event, their status was a personal and private matter:

*“I’m not disclosing because, I want every day at work to be, uncomplicated really. I don’t want to complicate my work by bringing in what I see as my personal, my personal life really.”*

8. Another theme to emerge was that participants assumed disclosure would inevitably change the employer’s perception of their identity. Engel and Munger<sup>348</sup> argue that in Western culture, the very fact of being employed confers moral citizenship. Thus, a disability that limits or prevents employability threatens social standing and self-respect. Consequently some participants wished to “prove” themselves to their employers. One participant was relatively young and had only recently commenced employment. He was particularly anxious that his employers might perceive him to be incapable of doing his job or particularly prone to periods of ill-health and absence:

*“And, I just wanted to ensure that I got into the job, show that I could do my job, and that, oh, if it’s a year down the line and I disclose, that should be like, [he] hasn’t had any sick days, [he] looks very healthy, [he] has worked...Whereas I think if I went in saying it, from the moment I’m on unequal footing to other people,”*

9. Another common theme to emerge was that the heightened level of stigma surrounding HIV prevented individuals from disclosing. It also affected some participants’ perception of self. The fact that stigma and other issues prevent some PLHA, and arguably those with other hidden disabilities, from disclosing is problematic as it prevents individuals from being to fully utilise the Act, for example by way of requesting reasonable adjustments.

#### Reasonable adjustments

10. It was intended to talk with participants primarily about reasonable adjustments that they had requested and/or received from their employer under the auspices of the Act. However, it quickly became apparent that many individuals had chosen not to request reasonable adjustments, opting instead to choose to make their own personal, informal adjustments to working patterns and practices.

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<sup>348</sup> Engel, David M., and Munger, Frank W.(2010), *Rights of Inclusion : Law and Identity in the Life Stories of Americans with Disabilities*, University of Chicago Press: Chicago, IL, USA

11. Very few participants had requested or received reasonable adjustments under the Act. Indeed through conducting the research it became apparent that there were a number of main barriers to PLHA requesting reasonable adjustments. These were: firstly, an awareness of the legal concept of reasonable adjustments but a lack of awareness that PLHA could request them; secondly, an unwillingness to have reasonable adjustments made for fear of attracting attention to oneself; finally an unwillingness to disclose one's HIV status in order to obtain reasonable adjustments because of potential stigma and/or discrimination.

12. There was little understanding of the fact that PLHA could request reasonable adjustments. The main reason for this lack of knowledge stemmed from the fact that the majority of individuals only perceived reasonable adjustments as being available to those with physical disabilities:

*"Question - Were you aware of that, the concept of reasonable adjustments?"*

*I was aware, I was aware of that. I hadn't really thought about it applying to HIV"*

This misunderstanding of the concept of reasonable adjustments meant participants assumed that, in any event, adjustments were solely linked to changes to physical features of buildings or premises:

*"I can't say I'm aware that [reasonable adjustment] applies to people living with HIV. I guess, for people with physical disabilities, yes, I can, I am well aware of that, for instance about the ramps for example...But, for people living with HIV, I wasn't aware that you could actually request for adjustments to be made in the workplace for you,"*

13. In terms of overcoming this misunderstanding that reasonable adjustments were solely linked to changes to physical features of buildings or premises, one participant described how there was a dearth of potential information for PLHA concerning HIV when compared to other disabilities. Here the participant, who is also dyslexic, describes how his experience of reasonable adjustments in relation to HIV fundamentally differed to his experience in relation to 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."*

14. Another barrier to having reasonable adjustments made was a fear of attracting attention to oneself. One participant described how the mere fact of having adjustments made would cause fellow employees to question this perceived preferential treatment which could lead to greater numbers of individuals in the workplace becoming aware of the individual's status:

*“Eventually everybody will know about your status, because, you know, a lot of people will start thinking, why are you having preferential treatment? Seems everything’s being adjusted for you, what’s your problem?”*

15. Stigma also prevented individuals from requesting reasonable adjustments in two ways. Firstly, as their condition is hidden, PLHA must disclose to their employer if they are to be able to request reasonable adjustments. As previously noted, some were reluctant to do this due to the heightened stigma associated with HIV and fear of consequent discrimination. Secondly, the unwillingness to perceive themselves as disabled due to stigma surrounding the wider concept of disability meant that some PLHA were not requesting reasonable adjustments due to their failure to self-identify as disabled. Hence the majority of PLHA interviewed were aware of the concept of reasonable adjustments, however relatively few perceived themselves as being disabled and so would not assume that the concept applied to them. Of particular note was a comment from one participant which indicated that perhaps the language employed by the Act in terming PLHA “disabled” was contributing to this lack of awareness. This participant had previously worked for not only a number of organisations in the HIV sector but also for organisations providing advice to individuals with mental health difficulties. He was not aware that he could request reasonable adjustments and explained his lack of awareness as follows:

*“Do you know, I never even thought about it like that, even till now, when I’ve worked with organisations with people around mental health, making reasonable adjustments for people with mental health difficulties. [laughs] It’s very odd, yes. That’s probably because I didn’t see myself as being disabled.”*

#### Concluding Points

16. A number of the issues raised by this submission will not be able to be addressed by legislation alone. By way of example, decreasing stigma and removing mistaken assumptions that individuals with disabilities are less able or capable than others cannot be achieved by changes in legislation alone. Yet, wherever possible, it is important that the Act is drafted in manner that enables all individuals with disabilities to feel able to accept the label “disabled” for the purposes of acquiring legislative protection. In addition the applicability of the duty to make reasonable adjustments to all individuals with disabilities needs to be made more explicit, whether in the Act itself or accompanying Codes of Practice.

*13 August 2015*

## **The Mental Health Foundation – Written Evidence (EQD0030)**

The Mental Health Foundation (MHF), incorporating the Foundation for People with Learning Disabilities (FPLD), is the leading UK charity working in the field of mental health and learning disability. We combine policy, research, campaigning and service development to promote good mental health and to improve services for anyone affected by mental health problems or with a learning disability.

### **1. Introduction**

1.1 The Mental Health Foundation is pleased to have the opportunity to respond to the call for evidence on the impact of the Equality Act 2010 on people with disabilities. Our contribution is based on over 60 years of experience of research on mental health and learning disabilities, advocating improved mental health for all, and influencing reform in policy and practice.

1.2 The focus of this response is the implementation of the Equality Act 2010 for people with dementia. During a policy consultation project, funded by the Joseph Rowntree Foundation, on framing dementia as a disability we collected evidence which highlighted that, **in the case of dementia, the reasonable adjustment duties are not known or understood by both a) people with dementia and b) those who have duties under the act.**

1.3 More widely we are concerned that often people with dementia are not considered to be disabled and therefore are not considered as rights holders. We believe that people with dementia are rights holders, and that reasonable adjustments should be made, using a social, human rights based approach, to ensure they can access the services and provisions they need. By treating people with dementia as rights holders they become positive actors in their community and are empowered to participate in society.

1.4 In this response we shall start by discussing how dementia is not regarded as a disability despite falling within the definition of one, and the consequences that come with this. Following this we will explain what we wish to see happen, a shift towards a human rights based approach to dementia, and how this can be implemented using a ‘PANEL’ approach. This is a set of 5 principles that can be used by those with duties under the Equality Act 2010 to examine whether they are putting human rights into practice. [The policy discussion report on Dementia, rights, and the social model of disability accompanies our response, should you require more information.](#) Please note this discussion paper is confidential until its launch in October 2015.

**Q3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?**

- 3.1 Although dementia falls within the definition of disability, it has failed to be considered so.** The Equality Act 2010 defines a disability as a physical or mental impairment that has a ‘substantial’ and ‘long term’ negative affect on a person’s ability to do normal daily activities. Dementia is a long term mental impairment; it is an umbrella term for a range of conditions that cause damage to the brain. This damage can impact on a person’s thinking, memory, language, and their ability to carry out everyday tasks. Therefore dementia falls within the scope of disability as defined in the Equality Act 2010. (Page 5 of briefing)
- 3.2 There are currently 850,000 people living with dementia in the UK. Dementia affects one in fourteen people over the age of 65, and one in eight people over the age of 80. As an ‘ageing society’ we can expect to see the number of people living with dementia increasing. In fact by 2025 it is estimated that there will be over a million people living with dementia in the UK. (Page 5 of briefing)
- 3.3 Although the Equality Act 2010 adopts the social model of disability, the human rights lens has not been widely applied in relation to people with dementia.** During our consultation we found that people with dementia frequently reside in the medical model with others – in particular, clinicians – who often make decisions on behalf of the individual, prescribe a treatment regime (often only pharmacologically focused) and retain (perhaps sometimes unintentionally) the power in the relationship; thereby, the person with dementia is often rendered a passive dependent. Similarly, policy makers, service providers, employers and others with duties under the Equality Act 2010 are failing to treat dementia as a disability. (Page 15)
- 3.4 The consequence of this is that people with dementia as well as employers, service providers, and others with duties under the Equality Act 2010 do not know and understand their reasonable adjustment duties in relation to this group.** This means that reasonable adjustments are not being made to ensure that people with dementia can fully participate in society and access the services they need. Through not being seen as disabled in the social sense, people with dementia aren’t being treated as rights holders and are not getting the reasonable adjustments endowed to them by the Equality Act 2010. As a result people with dementia do not feel like, and aren’t being seen as, empowered members of the community.
- 3.5 The Mental Health Foundation would like to promote practical and systematic change in order to embed the social approach to disability. **We would like to see those with duties under the Equality Act 2010 doing what is required of them to ensure that people with dementia can fully participate in society; and that the services they provide are fit for purpose.** This can be done through a human rights based approach (HRBA). **The HRBA presents an opportunity to manifest the social and rights based model of disability into**

**practice.** (Page 18)

3.6 Throughout our engagement we heard that one of the major challenges for the world of dementia is how to move towards a social/rights based model of dementia in practice. However, people agreed that communities, towns and cities should take steps to implement the social model largely driven by dementia activism and third sector organisations. As a first we advocate a shift in language. Language is critical as it is one of the ways in which barriers are created in communities and exclusion and oppression are maintained. Simply put, we want to see a move away from labels such as ‘sufferers’ and ‘demented patient’. Dementia should stop being seen as a ‘ticking time bomb’, or a ‘global epidemic’.

3.7 We also want people with dementia to know their rights and the reasonable adjustments that they have the right to access and to feel empowered and involved in the community. We would like service providers, employers, clinicians, policy makers, and others with duties to take a human rights based approach to people with dementia. To recognise them as disabled in a social sense, and ensure that the necessary provisions and services are there for them.

3.8 In order to implement the HRBA in practice, five ‘PANEL’ principles were developed (Pages 18-19). These are Participation, Accountability, Non-discrimination and equality, Empowerment, and Legality of rights. These principles are a way to operationalise a human rights based approach in practice. It is a tool which can be used by policy makers, clinicians, service providers, employers and others to examine whether they are putting human rights into practice. The next paragraph explains the five principles in greater detail.

3.9 **Conclusion:** Currently people with dementia are not seen as having a disability. Consequently, **many people with dementia do not know their rights, those with duties to make reasonable adjustments are not doing so, and individuals with dementia are not empowered members of the community.** Employers, service providers, clinicians, policy makers, and others with duties under the Equalities Act 2010 should take a human rights based approach to dementia, recognising it as a social disability. This can be implemented using the PANEL principles. We believe that taking a human rights based approach will help to ensure that people with dementia are seen as rights holders and feel empowered.

*24 August 2015*

## **Mind – Written Evidence (EQD0147)**

### **Who we are**

We're Mind, the mental health charity for England and Wales. We believe no one should have to face a mental health problem alone. We provide advice and support to empower anyone experiencing a mental health problem. We campaign to improve services, raise awareness and promote understanding.

We work in partnership with our network of over 150 local Minds to provide a range of services tailored to the needs of their local community. Each local Mind is an independent charity run by local people, for local people. Each is responsible for its own funding and the services it provides, but all are affiliated to Mind. Local Mind services include supported housing, crisis help lines, drop-in centres, counselling, befriending and advocacy, employment and training schemes. In 2014, local Minds supported more than 400,000 people across England and Wales.

### **Introduction**

Mind welcomes the opportunity to respond to this call for evidence as it covers important issues that have a huge impact on the daily lives of people experiencing a mental health problem. We will respond under the headings of the committee's questions. Our response is based on the expertise of our Legal and Policy & Campaigns teams; the policy work we have carried out in key areas, such as employment; and the experience of staff on our legal advice line.

### **General**

Has the Equality Act 2010 achieved the aim of strengthening and harmonising disability discrimination law?

There are some areas where the Equality Act 2010 has strengthened and harmonised disability discrimination law. Positive changes include: broadening the definition of disability from the definition in the Disability Discrimination Act (DDA) 1995 to better reflect mental health; including disability in indirect discrimination and the single 'objective justification' test to replace the different tests previously used; and the new concept of 'perceived disability' for direct discrimination and harassment.

While there have been some improvements to how the law is codified, our experience is that these gains haven't always carried through 'on the ground' for people with mental health problems.

We believe this opportunity could still be more fully realised with some adjustments and improvements to how the Act is enforced and promoted. When operating effectively, the Act, and in particular the equality duty, can promote the delivery of better public services which understand and meet the needs of the entire community, as well as help public bodies make fairer decisions about the allocation of resources. We're keen to not lose sight of this rich potential and risk 'throwing the baby out with the bath water'.

A major reason for the Act's failure to achieve its full potential is how it has been rolled out and put into practice. The Equality Act is an ambitious piece of legislation which had the aim of getting public bodies onto the front foot by encouraging a positive, proactive approach to equality. Its aim was to change cultures in public services by fundamentally altering how public bodies think about and approach the design and delivery of their services – so as to

place equality right at the heart of this process. For this reason the need for senior leadership within public bodies to drive forward this change is particularly important. However, since the introduction of the Act we feel that government has often articulated and enacted an approach to equality that runs contrary to the previous direction of travel and purpose of the Act. After the 2010 General Election, moves were made to water down key provisions of the Equality Act and to repeal and/or shelve a number of key pieces of equalities legislation, many enacted through the Act. Central to this was a significant weakening of the initial set of specific duties intended to support the Equality Duty. The net impact of these changes has been to further devolve responsibility to progress equality away from the state and public bodies.

What government has said about the Equality Act could be as important as what it has done. The ‘mood music’ from the Coalition may have undermined the necessary buy-in and senior leadership, and weakened the reach and impact of the Act by confusing and watering down the message being sent to public bodies and their leaders. Repeated pronouncements from government that characterised equality considerations largely as bureaucratic red tape undermined the effective implementation of the Act as a whole and particularly the equality duty. For example, the value of undertaking Equality Impact Assessments (EIAs) has been called into doubt and dismissed by a number of voices in government – including the Prime Minister.

Additionally there are a lack of data in some areas to reliably measure the impact of the Act, e.g. statistics on the types of discrimination cases brought and the outcome of legal aid cases. This limits the ability of the government and other agencies to monitor the effectiveness of the act and understand where improvements might be required.

### **Specific issues with employment**

Staff on Mind’s Legal Line have noticed an increase over the past few years in calls relating to employment and people being treated unfairly or discriminated against. We frequently hear from people who have been bullied, demoted or dismissed because of their mental health problems. But with huge cuts to legal aid, legal advice and information is now much harder to access. Combined with the introduction of tribunal fees, this means most people simply don’t feel able to challenge this treatment so discrimination is going unrecorded and unchallenged.

We also know from calls to our Legal Line that there is a great deal of confusion among employees, employers and managers about about what an employer’s legal duties are under the Equality Act and how this applies to mental health. Despite the existence of some guidance, the application of the Equality Act is still substandard by employers in practice in relation to mental health.

This picture is further compounded by the huge stigma around mental health. Outdated and damaging views about the impact a mental health problem can have on somebody’s ability to carry out their role are all too common. We know that fewer than four in ten employers would knowingly employ someone with a mental health problem and 40 per cent of employers view workers with mental health problems as a ‘significant risk’. It’s not surprising that many people feel unable to open up about their mental health in work, which in turn creates a culture of silence. In this context health needs are often not explored when an employee is underperforming.



**Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

There are a number of gaps that mean people with mental health problems far too often do not benefit from full protection under the Act. These include: confusion among employers about how the Act applies to mental health; the definition of disability; and the fact that many people do not feel able to be open about their mental health status with their employer. The reality 'on the ground' is that many people simply do not get the benefit of protection and ultimately some are forced out of their jobs because of their mental health problem.

It is very positive that the definition of disability focuses on the effect of illness rather than the diagnosis. However, the definition excludes someone who has been unwell but does not meet the long term requirement of 12 months, for example, a person could experience a one-off debilitating episode and be off work for 10 months but not be included in the definition and therefore not entitled to reasonable adjustments. This could mean that someone does not get the support or adjustments that they need, despite experiencing just as, or even more, debilitating effects than someone who is covered by the act.

**Reasonable adjustment**

**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?**

It is very difficult to get reliable data about people's experiences of reasonable adjustments in different areas of life. Because there has not been a significant communication strategy to help people understand the Equality Act or the reasonable adjustment duties it is unlikely that many people have felt empowered to request an adjustment. However, anecdotally we know that there is a real lack of understanding of mental health as a disability because it is not 'visible' in the same way as a physical disability. For example we have heard a number of cases of people on public transport using a disabled travel pass being challenged by staff because they 'don't look disabled'.

In the workplace, our experience is that there is confusion among employers and managers about whether people experiencing a mental health problem qualify for adjustments (see answer to previous question about some of the 'gaps' for our beneficiaries). For example, staff on our Legal line report regularly hearing from people who've been told by their employer that they cannot make adjustments for them because they are not physically disabled. There is also sometimes an incorrect perception among employers that making changes to policies, practices and procedures to support an individual might mean treating others unfairly (i.e. those without disabilities), and this is sometimes given as a reason to refuse a request for a reasonable adjustment.

Often the focus from employers and managers is only about determining whether someone qualifies for adjustments under the Act rather than beginning an open conversation with the employee to understand what aspects of their role they are struggling with and what type of support they feel would help them. This minimum compliance approach has been shaped by pronouncements from government that have tended to focus largely on compliance and on telling employers what they don't need to do rather than more positive messaging to build their confidence to have a conversation with employees and listen to their needs. Mind has attempted to address this gap with guidance

(<http://www.mind.org.uk/media/550657/resource4.pdf>) for employers which takes a more positive and collaborative approach to adjustments.

Alongside this confusion there is also a lack of imagination and often a high degree of inflexibility from employers about what type of adjustment might be appropriate to support someone experiencing a mental health problem. Mind's Legal Line staff report that while most callers have a good idea of the type of adjustment or support that they need, many report that their employer or manager is not prepared to listen to their suggestions and people often have their suggestions refused. Our experience is that beyond making changes to working hours or to disability absence policies, employers are often quite resistant to other adjustments. Clearly there is a role for improved guidance for employers in this area to help them think more positively about adjustments and to better understand their duties to disabled staff.

**Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

There are arguments for and against making the law more explicit on what constitutes a reasonable adjustment. However, it is Mind's view that, on balance, more guidance would be very helpful. This is because 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. However, we feel strongly that any guidance would need to make clear that the suggestions are not exhaustive and that listening to the individual is often the best approach to shaping an appropriate adjustment. Guidance could also be used to challenge misunderstandings and myths that may exist about what reasonable adjustments might constitute.

**Public Sector Equality Duty**

**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?**

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. The duty can do this 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. However, we feel that the duty's effectiveness has been undermined by the reduction and weakening of the specific duties that has occurred. It was also decided that the new Equality Duty would not be supported by any statutory code of practice as originally intended. In light of the weakened specific duties the role of statutory guidance became even more vital. Taken together these two decisions were therefore extremely damaging to the potential effectiveness of the duty. The phrasing of the duty as a need to have 'due regard' is also problematic and has encouraged a "tick-box" approach that emphasises procedures rather than outcomes. This issue has been further exacerbated by pronouncements from government that have had we believe have served to play down the requirements on public bodies - for example through comments referenced previously that have undermined the use of Equality Impact Assessments.

However, when assessing the Equality Duty's effectiveness it is important to acknowledge that this sort of tool, or method of working, will always take time to become embedded

within the working processes of any organisation. Addressing institutional discrimination and barriers, and changing institutional practice, are long term projects requiring a gradual improvement in working methods. The Equality Duty must therefore be seen as a work in progress which develops with continuous improvements: the more it can be embedded within the existing procedures of an organisation, the easier it will be to operate. The easier it is to operate, the better it will work.

### **Diluting the specific duties**

The initial specific duties intended to support the Equality Duty were changed significantly following the 2010 General Election to reduce obligations on the state and public bodies. The final specific duties were much weaker than originally intended - just two remained: a requirement to publish some equality information and a requirement to publish at least one equality objective. Vital specific duties related to engagement and the analysis of equality impact were lost (even though both are generally considered necessary to show 'due regard'). The omission of any specific duty on engagement was a particular loss for people with mental health problems who had previously benefited from a strong specific duty to involve disabled people under the former disability equality duty, by it being ensured that their views would be heard.

### **No statutory code of practice**

The new Equality Duty was to be supported by a statutory code of practice prepared by the EHRC, as previous duties had been. Without detailed specific duties to guide public authorities and the courts on what the Equality Duty required, the code was expected to be of even greater value and significance than earlier codes. However, in spring 2012, it was decided that 'further statutory guidance may place too much of a burden on public bodies' and the government scrapped the plan.

This omission of statutory guidance was significant. We believe that rather than creating regulatory burden, statutory codes have a valuable role to play in making clearer to everyone what is and is not needed to comply with the Equality Act.

We are also concerned that some guidance that has been produced, including guidance from government departments, focuses too much on what public bodies do not need to do and not enough on what they do need to do. Whilst it is helpful to ensure public bodies are clear about the limits of their duties, guidance that is framed largely in negative terms does not promote effective performance and tends to send the message that the Equality Duty is about bureaucratic processes rather than about improving outcomes.

### **Due regard**

Due regard, which is central to the duty, is an inherently proportional concept. It requires public bodies to consider equalities issues in a proportionate manner and not in an excessive or irrelevant way. However, there is confusion about what it means in practice, and this has been exacerbated by Government comments about what equality impact assessment means and whether it is beneficial or required. For example, 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'.

However, it is our experience that this positive, proactive approach is not universally understood by public bodies and that many often fail to understand that they are required to abide by these provisions. This means they don't collect and analyse the necessary

information required to ensure their decisions and actions are in line with the Duty. In particular the PSED is often perceived as simply meaning that public bodies cannot discriminate against protected groups, when in fact it requires them to proactively “advance equality of opportunity” and “foster good relations”.

Furthermore we feel the specific wording of the Act may have encouraged a “tick-box” approach, with an emphasis on procedure rather than outcome. Consequently, it is enough for the authority to consider the equality impact but then to move on, without taking any action to achieve fairer representation. We believe it would have been better to replace “due regard” with an obligation to “take such steps as are necessary and proportionate for the progressive realisation of equality.”

**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?**

Since Mind does not cover Scotland, we cannot comment on implementation there.

However, our experience in Wales is that additional provision around reporting and monitoring/assessing the impact of the Act, and greater clarity around the duties contained in the Act, have led to better outcomes and a more embedded approach to equality.

However, as in England, we have ongoing concerns that the primary focus is on physical rather than mental health, and that the duty does not go far enough in increasing representation in workplace or indeed public sector boards and positions.

**Oversight and enforcement**

**How effective has the Equality and Human Rights Commission been in exercising its regulation and enforcement powers?**

**What contribution has this made to the impact of the Equality Act 2010 on people with disabilities?**

The EHRC is good at producing a range of guidelines aimed at a variety of different audiences, for example, employers and service providers. We would have liked to have seen statutory guidance to support the PSED. The EHRC also appears to have been less effective in undertaking investigations, inquiries and assessments on the implementation and operation of the Act.

While there is a disability committee within the EHRC, the emphasis on disability (as compared with when there was a separate disability rights committee pre-EHRC) as a focus area, has reduced. The powers that exist are not used as strategically and usefully as they could. Furthermore, within the disability field there is very limited focus on mental health specifically. This is particularly surprising given, for example, the cuts to budgets for the provision of mental health services and information coming to light about local authorities’ limited spending on mental health services.

There have only been two inquiries that relate to mental health (one specifically, the second tangentially): (1) Preventing Deaths in Detention of Adults with Mental Health Conditions; and (2) Disability-related harassment. As such, mental health does not seem to be a priority area, as we believe it should be.

**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?**

There can be no doubt that the Act is most effective when incorporated into existing inspection regimes such that how well a public authorities meets the duty becomes part of the inspection process. This is crucial to ensuring that equality is at the core of improvements in the quality of services. A strong case can be made for further strengthening the role of the regulatory or inspection bodies in monitoring compliance and outcomes on disability equality.

The EHRC and its functions are hugely important and should not be further diluted by reduced funding or limiting its powers. However, introducing an ombudsman for individual complaints about organisations might fill a gap that seems to be missing in the system. The complete independence of an ombudsman is also of value.

**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?**

Changes to legal aid have made Tribunals less accessible for people with mental health problems. Due to a number of factors, but particularly as a result of fees being introduced, the number of claims has been reduced significantly.

Discrimination legal aid has only been available through a telephone gateway since April 2013. We have heard a number of issues with this new system, including:

- Low levels of awareness of the gateway
- Issues with accessibility, such as the content of the call and the types of questions asked; and communication barriers, including difficulty establishing trust
- Non-legal specialists manning phones so incorrect advice given and high turnover of staff leading to loss of developed expertise
- No review of the quality of advice given so limited ability to improve the service

**Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

It is disappointing that there are parts of the Act that have not been brought into force or have been repealed despite the Act being in its infancy, for example, the socio-economic duty under section 1 and the statutory questionnaires.

There is a need to address misunderstandings about how discrimination law relates to mental health and what the duties of employers are, as well as to the entitlements of someone with a protected characteristic. The experience of staff on our Legal line suggests there continues to be considerable misunderstanding here.

Mind believes this is necessary legislation for an equal and inclusive society and with a proper framework for implementation, assessment and monitoring could provide a strong and effective opportunity to realise this aspiration.

*9 September 2015*

## Mind and Scope – Oral Evidence (QQ 52-59)

Members present  
Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Browning  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### Examination of Witnesses

**Mr Elliot Dunster**, Group Head of Policy, Research and Public Affairs, Scope, and **Mr Paul Farmer**, Chief Executive, Mind

**Q52 The Chairman:** Good afternoon, Mr Dunster and Mr Farmer. Thank you very much for coming to see us. We have read your evidence with interest. May I just remind you that the session is open to the public, and a webcast of the session goes out live as an audio transmission and is subsequently accessible on the parliamentary website? A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy and it would be very helpful to us if you could advise us of any corrections as quickly as possible. If, after this evidence session, you wish to clarify or amplify any points you made during your evidence, or have any additional points to make, you are welcome to submit supplementary evidence to us.

May I now ask you to introduce yourselves? In turn, when we ask questions we will declare at the start any relevant interests that we have relating to this inquiry. Mr Dunster, could you introduce yourself, please?

**Mr Dunster:** Thank you very much. My name is Elliot Dunster. I work for the disability charity, Scope. We are a pan-disability charity representing disabled people in England and Wales. Thank you very much for inviting us to give evidence here today. Did you want some introductory comments as well, or is an introduction okay?

**The Chairman:** No, they will come out during the questioning.

**Mr Farmer:** I am Paul Farmer. I am Chief Executive of the mental health charity, Mind.

**Q53 The Chairman:** Thank you. Perhaps this question is more directed at Mr Farmer than Mr Dunster. Some witnesses to the inquiry have suggested that both employers and disabled people, either in employment or who want to be in employment, can be unclear about what reasonable adjustments are possible for those with mental health issues. How might this be remedied?

**Mr Farmer:** I suppose our starting point is our very strong support for the principles and intentions behind the Equality Act. We think that certain elements of it have made a significant difference to people with mental health problems, particularly some of the

clarifications of definitions in the transition between previous legislation and this legislation. It is in this area of supporting people with mental health problems in employment where we have certainly heard people being extremely unclear. Let me expand a little. For employers, I think the issue of defined lists of reasonable adjustments is not necessarily helpful. I think they are helpful as indicators and support ideas for supporting people, but sometimes that puts people into the context of having to decide what is or is not “reasonable”, whereas the starting point for a conversation with somebody with a mental health problem is often, “What is the kind of support you need to sustain you in work?”. This is hugely important. If the current Government are to achieve their ambition of halving the disability employment gap, when about 40% of people with mental health problems find themselves out of work, the need to tackle this is going to be hugely significant. From an employer point of view this creates a lack of clarity for people.

For individuals, there are two issues. First of all, as our written submission suggested, there is quite a low level of knowledge amongst the public generally of their entitlements under the Equality Act. Secondly, people often still feel intimidated by the stigma around mental health, which makes it difficult for them to disclose, whereas the Equality Act protects them through their act of disclosure and entitles them potentially to additional help and support. Our sense is that from both an employer and employee point of view, we have not quite managed to get this right in the actual working of effective reasonable adjustments for people with mental health problems.

**The Chairman:** Could this be clarified for employers? Does there need to be more guidance or more examples?

**Mr Farmer:** I think some guidance would be really helpful, including the recommended process that somebody might go through and signposting to areas of help and support. For example, we know that Access to Work will fund reasonable adjustments for people with mental health problems, yet on the latest evidence only between 4% and 5% of the Access to Work budget supports people with mental health problems. Help is at hand and plenty of information and support is available, but it needs some bringing together so that employers can be clear about the simple steps they can take.

**Q54 Baroness Browning:** I should have declared—it is in the register—my interest in several autism charities. I wonder if I could ask you to take a step back before people get into employment, before they get the job offer? There is a great gap. An awful lot of money and services go into being work ready, work preparation, preparing your CV, and then everybody ticks the box and walks away from the person. They are then left to go through the most difficult part, which is the actual application, which today, with so many large companies, is online, so they are suddenly faced with having to produce references online, things that many of them find very difficult to do and may not even have if it is their first job. Then there is the whole question of the interview process. When we talk about reasonable adjustments, for many people with learning disabilities, communication disorders such as autism, people with long-term mental health problems, quite often that reasonable adjustment would be to have some pre-briefing of the person doing the interview, even on some occasions to have somebody accompanying them to the interview. Is that reasonable adjustment? Is that why only 15% of adults with autism are actually in paid employment? Why is there this gap at this critical stage? Is there anything you can recommend that would help to plug that gap?

**Mr Farmer:** We would certainly agree with you that is often a gap. The best evidence that we have seen in mental health is the application of IPS programmes—individual placement

and support—which are personalised and localised programmes that work with the individual right the way through their employment journey. These are well-evidenced programmes and are currently delivering a back-to-work return rate of between 25% and 30% compared to the current effectiveness of the Work Programme of between 10% and 13% for people with mental health problems. Part of the reason why they are successful is because they stay with people both before and after they get a job, so they are in an environment where they can have a conversation around reasonable adjustments.

The second area that we have talked about previously on occasion, and it is particularly relevant to this conversation, is the idea of passporting your reasonable adjustment. We have seen examples of this, particularly in the broadcasting and creative industries, where staff are often on short-term contracts but will work across different organisations, such as the BBC, ITV and Sky. As a group of employers they came together to recognise the passporting of the support from Access to Work, which is in essence a reasonable adjustment. That cuts out a huge amount of bureaucracy for the employer, but it also gives the employee a greater degree of confidence. It means that when the employee comes to a job interview, they are able to say to their prospective employer, “Not only are you getting me but you’re actually getting the support that I need to be able to work effectively in this workplace”. Of course, workplaces differ and sometimes there is a need for an adjustment to the adjustment, but on the whole the workplaces will be similar, and the kinds of adjustments, particularly for people with non-visible disabilities, which are often about being able to take a break, having appropriate space around your desk and being able to work flexible hours, are not that difficult to put into place.

**The Chairman:** Mr Dunster, did you want to come in?

**Mr Dunster:** I completely agree with your point and with everything that Paul has said. I want to add a couple of things. The Government are in the process of deciding on the future of back-to-work support post-April 2017. Scope delivers Work Choice, which is the Government’s largest specialist disability employment support programme. We strongly believe that there does need to be a specialist disability employment programme for disabled people, and that enables us to do some of the things that you are describing. I can think of some examples of people both with physical disabilities and with autism who we have worked with, not only through their work readiness, as you [Baroness Browning] have described, but through the interview process, preparing people for interview, practising interview techniques to help people with their own problems to get the job, but also, critically, supporting disabled people once they are in work. Specialist programmes that allow that type of support are much more successful. I can think of an example of a young man with autism who, after that process, secured a job in a hotel bar. After a while, he was missing the autism group that he went to on a Thursday, but he found that difficult to broach with his employer in his first job. We were able to do some of that work with him and with the employer. He is now able to attend his group and is happily still employed. It is those sorts of things, intervening in those ways at that time, which can prevent people from falling out of work. You are absolutely right about work readiness and preparation for interview, but it is about job retention as well.

**The Chairman:** Mr Dunster, in your evidence you said you thought it cost £550 extra a month for a disabled person for expenses; it is what they need to spend. Could that be reduced if the reasonable adjustment duty was fully complied with?

**Mr Dunster:** The extra costs that disabled people face are for three broad reasons. This may seem obvious but it is worth delving into to answer this question. The first is that disabled



people need things that non-disabled people do not need—specialist equipment for example. Secondly, disabled people might need more of some things than non-disabled people. An example is energy bills for someone with a muscular condition. Finally, disabled people pay too much for some things. The benefits system recognises that disabled people face extra costs. We have the disability living allowance—the DLA—and its replacement, PIP, which recognises that.

However, on the question of how these extra costs can be driven down with reasonable adjustments, they could make a difference on the latter of those categories: where disabled people are paying too much for certain goods and services. A specific example that I would like to draw to the Committee’s attention is digital inclusion, digital accessibility, which you mentioned earlier. This year, Scope was pleased to support an independent commission called the Extra Costs Commission, and I am happy to provide the Committee with a copy of the final report. This looked exactly at this issue of how to drive down extra costs that disabled people face. One of the areas it looked at was digital inclusion. 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. That is one type of reasonable adjustment where we think there could be more guidance to improve disabled people’s access to the internet and their ability to be online in general. We think that could improve some things and certainly drive down costs in that latter category.

**Q55 Lord McColl of Dulwich:** Is reliance on individuals bringing cases to the courts and tribunals an effective way of achieving compliance with the Equality Act? Could it be made easier, and if so, how, please?

**Mr Farmer:** I am not sure it should be the sole way of ensuring compliance. Entitling people to bring cases to court is incredibly important, and it helps to clarify the case law as time goes on, and there is a great requirement for that. With the cuts and challenges to spend on legal aid, we will almost certainly see the number of cases diminishing quite considerably in this space. It is unlikely that the case law will shift significantly if we simply rely on that. We would argue it is important to make sure that individuals have that ability, but it is also important to find other ways to bring this into play. I suspect we might come on to this later in the context of the role of the regulator and where the Commission’s role potentially starts and finishes. I think our starting point would be to encourage people to pursue complaints internally within their organisations. This legislation is now five years old and there should be less excuse, if you like, for people not complying. The more we see people talking more openly about the legislation and the application of it, the easier it will be to achieve compliance.

**Mr Dunster:** I would echo everything that Paul has said. There has to be a balance with individuals being able to bring cases—we have some body of case law now—and the enforcement of the public sector equality duty is an important counterbalance to that. I would perhaps add a third thing here, which is the role of other regulatory bodies in other spaces. Perhaps they have a bigger role to play in looking at the enforcement of some reasonable adjustments, for example. An example that I would like to highlight from the Extra Costs Commission would be for the Financial Conduct Authority—the FCA—to look at the insurance industry. We know that insurance can be incredibly difficult for disabled people to access and incredibly expensive. That might be a role for someone like the FCA to

look at in more detail in order to understand what is going on in that market and how it could be improved for disabled people.

**Lord McColl of Dulwich:** Should organisations be able to take claims on behalf of individuals or groups, because they are not allowed to at the moment, are they?

**Mr Farmer:** I do not think they are allowed to. There are occasions when organisations will intervene in particular cases where they see a wider approach, and we at Mind have on occasion drawn to the attention of the courts a particular individual's experiences that have a potentially wider impact on a wider group of people. I think that approach of intervening is quite a powerful route. Obviously if an organisation were to take a particular case, they still need the resources to be able to do that, and I do not think there are many organisations, certainly inside the voluntary sector, that are in a position to do that. However, our ability to be able to intervene in cases of potentially wider significance, and indeed the Commission's ability to do the same, could well be an important way of helping to clarify areas of the law that might be otherwise unclear.

I would say that in substance, issues here are more about actual compliance where the employers are not complying. We have already seen far too many cases where employers are not complying, which is very unfortunate. Hopefully one of the benefits of this inquiry will be to give some amplification to the importance of the legislation as it currently sits.

**Baroness Browning:** What about judicial review where it is quite common for charities to collectively fund and challenge the Government—I know it is expensive—if they see that they are legislating in a way that is adverse to the equality rights of people with disabilities? Are you in any way put off as charities from having that collective role? Should the Equality and Human Rights Commission be encouraging you to do that?

**Mr Farmer:** I think all charitable organisations have a responsibility to use their resources sensibly, but equally voluntary organisations should have the ability, where appropriate, to explore a number of different options in their approach to changing the world on behalf of their beneficiaries, which is broadly speaking what we are here to do. In some cases we will pursue public means through the media, through the work that we do with you and your colleagues. However, it is important that voluntary organisations keep the capability to use the law and judicial review where that is appropriate. In fact, we and colleagues at the National Autistic Society and Rethink Mental Illness were involved in just such an intervention a couple of years ago.

**Baroness Browning:** I am aware of that.

**Mr Farmer:** However, it is important for organisations to be mindful of the potential cost to them. Although some protection is potentially available, it is something you have to enter into very cautiously. It is equally important to recognise that the ability to use judicial review should remain with organisations where that is appropriate.

**The Chairman:** Mr Dunster, do you think having an ombudsman for disabled people would be a good idea?

**Mr Dunster:** When the Disability Discrimination Act became part of the Equality Act, there were lots of changes that were broadly positive, and we can talk about those later. It may be true to say that something we lost in that transition was having a specific disability commissioner and disability commission, which has perhaps meant that some of that focus has changed a bit. Obviously we have the Office for Disability Issues and the Minister for Disabled People, and it is very important that is a cross-cutting government role. Although it sits in the Department for Work and Pensions it very much has to be across government, and the Minister and the ODI have an important role in looking at that

across government. It is certainly interesting for the Committee to look at ways in which we can strengthen that oversight across government policy.

**The Chairman:** An ombudsman would actually sort out issues.

**Mr Dunster:** It is not something that Scope has a particular position on, but it is certainly something that we could follow up after this session, if that would be helpful. As I say, it would be advantageous to have a greater focus on specific disability issues across government policy. It is something, as Paul said, that organisations such as ours try to do as well. Our relationship with such a figure or body would be important.

**Q56 Baroness Pitkeathley:** I have just one interest to declare as vice-president of Carers UK. My question very much follows on from what you have just been talking about. I want to ask you each specifically about your relationship with the Equality and Human Rights Commission. Perhaps you could start, Mr Dunster. Could you sum up your organisation's relationship with the Commission in one or two sentences, and expand on anything more you would like the EHRC to be doing, or anything different?

**Mr Dunster:** Certainly. The role of the EHRC is very important, and our relationship with it has been very strong on specific special projects that it has undertaken. I am thinking particularly of the project on hate crime, the work that it undertook on the UN Convention on the Rights of Persons with Disabilities and the ratification of that, and in the establishment of the Access to Elected Office for Disabled People Fund, which was about disabled people in public life. In those three areas we have had a very good working relationship with the EHRC. We recognise that limited resources and the wide remit of the EHRC make it very difficult for both us and it to engage more regularly than when on those specific projects. Hopefully, that addresses the general relationship that you were asking about.

In terms of what more it could specifically look at, I would come back to the idea of digital inclusion. I think the EHRC might be able to look specifically at how we can improve disabled people's access to digital technology and the internet in particular. We are mindful of the budget constraints of the EHRC, and we think it should be fully funded as well to enable it to do that properly. It was a recommendation that was set out in the Extra Costs Commission, which I have mentioned already, and we think that would be a good area for it to focus on in the future.

**Mr Farmer:** Like Mr Dunster, we have a good relationship with the commission. Similarly, we have supported and worked with it on individual inquiries and particularly the Preventing Deaths in Detention of Adults with Mental Health Conditions inquiry, which I thought was excellent; it looked at the very important issue of people who are under the care of the state and the support for their human rights and people who die in the care of the state, often people with mental health problems, of course. I would support the general view that those individual pieces of work are positive.

In terms of where we might want to go from here, it feels to me that there is a trend across regulators more generally to shift from being supportive and championing the issue and playing a regulatory role to really focusing their attention on the regulatory dimension. Those of us in the voluntary sector have seen a change in the approach that the Charity Commission has applied, for example, in its relationship with our sector, and I think we have seen the same with CQC and other regulators. At this point in the cycle of the legislation, there may be a strong argument for the EHRC to really focus on its regulatory powers and to play a stronger enforcement role. As we referred to earlier, the broad construction of the law is sound, yet it does not seem to have percolated sufficiently into the daily lives of

people in the workplace, for example. So we would encourage the commission to play that more regulatory role.

**Baroness Pitkeathley:** If it focused more on that regulatory role, would you see the support and championing role being lodged elsewhere? If so, where?

**Mr Farmer:** Clearly the regulator has a role in championing, as all regulators do because they have to walk the balance in the eyes of the public between the role they play as the arbiter, if you like, on behalf of the public and the Government of determining whether a particular sector is performing well or not and making sure you do not diminish trust in that particular section. There is an argument for seeing a stronger voice supporting the positive promotion of the Equality Act as it sits. Mr Dunster has already referred to the Disability Confident campaign, which is run by the Department for Work and Pensions, which has the potential to say a lot more about the entitlements that people have under the legislation. It is those kinds of initiatives that, with a broad base of support—ideally employers, voluntary organisations and the Government working together to promote the benefits of this legislation—would probably be a more effective way to communicate these important messages.

**The Chairman:** I am unclear about what you mean about expanding the regulatory role, because what we have tended to hear from organisations and disabled people in the last few weeks has been they need someone to actually enforce the law. It still seems as though there is a gap there. I do not know whether it is properly the role of the EHRC, which sees itself as very strategic. Who is actually going to go out there and enforce the law? It is a terrific burden on one disabled person to have to take action or be expected to go to court. Surely there must be someone to do it for them.

**Mr Farmer:** I think there is potential for the commission to see that as its role to warn employers about potential breaches and the approaches that individual employers might be taking. I think you are right that the construction of this has left a gap and that there is an overreliance on the individual to take the cases. Your suggestion of an ombudsman well may be a positive way forward, but maybe that role should be part of a redefined function for the Commission.

**Q57 Baroness Thomas of Winchester:** I should declare a few interests. I receive DLA, I am a trustee of Muscular Dystrophy UK, I am on a committee about disabled access to Lord's Cricket Ground, and I am a patron of Thrive. Some submissions have proposed that local authorities build access requirements into licensing provisions, such as for taxis. Are there ways in which local authorities could use their planning and licensing powers to help people with mental health problems or other disabled people where the barrier is not primarily physical access?

**Mr Dunster:** Taxis and private hire vehicles are a very good example here. There is certainly a gap between the Equality Act and licensing law. We think that could be something which the Committee recommends is looked at. We know that disabled people are more likely to use taxis and private hire vehicles. We also know from our research that two-thirds of disabled people reported being overcharged for taxis, so that is certainly an area we can look at. Compliance with the Equality Act is not a condition of licensing currently, and that is something that could change. The Law Commission has done some work in this area and we would support its recommendations. If compliance with the Act was a condition of licence and that meant that disability equality training was available for all drivers, a clearer complaints process was displayed inside taxis so disabled people had more understanding how they could make complaints, and there was a duty to stop when

hailed by someone who was visibly disabled, we think that would go some way to closing that gap.

It is also important to say the additional cost of 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. Sometimes it is important to remember that the barriers are not just for people with physical disabilities, and the extra costs of disability that I talked about earlier are certainly there in this instance for disabled people with non-visible disabilities.

**Mr Farmer:** We would agree that local authorities, like other public sector bodies, have the opportunity to enshrine the principles of the Equality Act in a whole range of activities where they play a role. I agree with the point that has been made specifically about licensing, but also the extent to which a local authority is properly gathering the information for its joint strategic needs assessment in identifying the needs of their local community. We know that these are incredibly important documents for understanding what a local community might look like, yet often the data presented to local authorities does not give the granularity of information about the numbers of disabled people, the number of people with mental health problems, and so on. It is so important for local government in this context to make the best possible choices in determining the priorities for their local communities to understand the nature of the population they have. Applying the principles of the Equality Act into those kinds of processes could be very, very powerful indeed.

The other dimension where local authorities and others have a role to play—this was discussed earlier, but it is worth pulling out a little more—is in their role as commissioners of other providers. Placing requirements on providers of services not just to sit within the Equality Act, which is a basic requirement, but to actively show how they are recognising the requirements of the legislation, could be quite powerful in embedding these issues within the different powers of individual local authorities. That also plays across to the point about the regulators, because ideally we want all the regulators to look at their work through an equalities prism. We do not want just the EHRC to do that, we want each regulator to think about the extent to which equality legislation is being complied with in different areas.

**Baroness Thomas of Winchester:** Would it need legislation, or do you think it can be done more informally than that?

**Mr Farmer:** I am not an expert, but I do not think this would require particular legislation. It is a question of guidance and encouragement.

**Baroness Brinton:** Some licensing authorities insist on accessibility training and disability training, some do not. Should it be made compulsory?

**Mr Dunster:** Certainly in the case that I outlined on taxis, yes, absolutely.

**Mr Farmer:** Yes.

**Baroness Brinton:** Sorry, it was a bit rhetorical.

**The Chairman:** Do you find it problematic that some parts of the Equality Act have still not been brought into force, in particular the part on taxis?

**Mr Dunster:** That would be the obvious example I would use; it is a very clear one. There are some other examples of where additional guidance might be advantageous as well as duties not being brought forward. A good example of reasonable adjustments in work and for employers is flexible working. We know that disabled people greatly benefit from flexible working arrangements, yet we also know that disabled people struggle to access those types

of arrangements, so some more guidance on what a reasonable adjustment would look like in flexible working would be helpful. Employers might not think of flexible working as a reasonable adjustment, and they might be more willing to look at it if they did. We have done some work looking at the benefits of a part-time sick leave or flexible adjustment leave model that would enable people not to take chunks of time off on sick leave when they have a fluctuating condition that is particularly bad at one moment or where they have just acquired an impairment and are making adjustments in their own lives for that. Perhaps that transition point is something that we could look at and strengthen for disabled people but also for employers so they do not lose valued members of staff for long periods of time on sick leave.

**Q58 The Chairman:** We have heard a great deal from your organisations and others along the lines that the law is more or less satisfactory but its implementation and enforcement is not. Is that right? What one thing would you do about it? There may be more than one thing?

**Mr Farmer:** Broadly speaking, that is right. The legislation fulfilled the difficult task of bringing together a series of different strands of legislation, and came up with an enhanced set of proposals for many people with mental health problems. When the Act was passed, we felt this was a significant step forward for people with mental health problems. The experiences of our legal line, for example, remain that this is poorly understood. Employers are contacting us believing that people with mental health problems are not covered by the Act, for example. If there were a single thing that would make the biggest difference, it would be to reinforce and increase the awareness and understanding for both employers and employees. I think there is a role for all parties, the Government and employers' organisations, to reinforce those messages strongly.

**Mr Dunster:** I am afraid you are getting a lot of consensus from us. Yes, I would completely agree with your assessment and with what Mr Farmer has said. An important difference for us in the Equality Act was lowering the threshold for discrimination from "impossible" to "substantial" disadvantage, which is very important. Greater guidance, greater understanding and greater enforcement would certainly help disabled people and employers to understand their obligations under the Act. The Act did something else that was important, which was to broaden its focus away from just the workplace to disabled people as consumers and citizens as well. It is important to think about that, not just in the space of employment and work but outside out that.

The aims of the Act might be something to think about more broadly. We may have to look elsewhere in government policy for those things to be realised. I talked earlier about the cross-cutting role of the Office for Disability Issues and the Minister, but more might be done to look at where different agendas across government can fit together, so that more disabled people can find work and stay in work, or at how we make sure when we are building infrastructure projects that we are doing so in a way that is completely accessible for disabled people. That should be done across government. That may not be specifically about enforcement of the Equality Act, but it might be about taking that spirit and making sure that it is worked across government.

**Q59 The Chairman:** Would you say that disabled people get their fair share of attention and focus under the Equality Act compared with the situation before 2010?

**Mr Dunster:** It is very difficult for us to judge that. We are well aware of the constraints on the EHRC in particular. We at Scope certainly try to do as much as possible to bring attention to the issues that disabled people face—there are lots of other organisations that do that

too—and we will continue to do that, speaking to you and your colleagues as well as to the public to make sure we highlight those issues.

**Mr Farmer:** The Disability Committee within the EHRC was a really important component in the governance of the EHRC to ensure that disability was not lost in this. There were concerns that that would happen. It remains a challenge to make sure that disability issues in the round are seen as an integral part of this legislation, especially when there are many other challenges on other dimensions of the Act.

**The Chairman:** Mr Farmer, would you say that people with mental health issues get an even worse deal, as it were, than those with physical disabilities?

**Mr Farmer:** The facts speak for themselves in the low numbers of people with mental health problems in employment and the large numbers of people who fall out of employment for a lack of appropriate support, despite the fact that that support is evidence-based and clear. People with mental health problems face very particular issues, and underpinning a lot of that is the ongoing stigma around mental health. Although we have made considerable progress in recent years in tackling public understanding, our evidence suggests that people with mental health problems still struggle to receive the kind of recognition of their entitlements under this legislation. This is not a criticism of other colleagues in the disability movement, who have worked extremely hard to make sure that disabled people are recognised, but for people with mental health problems—and to some extent this applies to people with learning disabilities and autism—there are particular challenges. We are trying to overcome a number of barriers to support people to work effectively, yet we know that people's contribution in work should be and is on an equal footing.

**Baroness Thomas of Winchester:** One more question following that up. I had something to do with asking the Government what they were doing to publicise the mental health support service that Remploy runs. It is a brilliant service but far too few people know about it. How could that be better publicised? How could it be better known by both employees and employers?

**Mr Farmer:** We and others do our best to make sure that those messages are clearly heard. This is part of the wider issue around the visibility of the Access to Work programme more generally. It still remains the Government's best kept secret. It remains extremely cost-effective to the state, yet it remains relatively unknown. Campaigns like the Department for Work and Pensions' Disability Confident campaign need to remind people of the range of support that is available and encourage more employers to use Access to Work. If we are looking at how you support the ambition, which we share, of halving the disability employment gap, which we all think is a very important ambition of this Government, one of the most powerful ways to do that would be to make sure that Access to Work and the support services around it, such as the Remploy programme, are properly publicised. I think you could make a huge difference quite quickly.

**The Chairman:** Any final questions from my colleagues around the table? No. May I thank you both very much, not only for coming here but for the valuable work that you do? We wish you every success in the future. Thank you very much.

*20 October 2015*

## **Mobility Issues Group for Goring and Streatley – Written Evidence (EQD0151)**

### 1 Key points:

This paper notes evidence that suggests there are attempts to downgrade public commitment to an expectations of accessibility improvements at railway stations that are not subject to significant redevelopment programmes

It proposes that the Department for Transport should make step-free access to platforms a condition of all train operating franchise agreement as they come up for renewal.

It proposes that railway and train operating businesses be subject to the same rigorous application of equality legislation as other large businesses.

It proposes that a deadline be set for making all stations step-free by the 30th anniversary of the Disability Discrimination Act.

### 2 On the basis of our experience of making (ultimately successful) representations to have passenger lifts installed at our local railway station, this group believes the Equality Act 2010 should be strengthened to make it easier for disabled and mobility impaired people to have their own local stations made fully accessible. In particular:

2.1 The Act should require all railway stations to have step-free access to all platforms no later than 2025, this being a reasonable period (30 years) after passage of the Disability Discrimination Act 1995.

2.2 Railway and train operating companies, regardless of whether they are publicly or privately owned, should be treated like other large, well-financed consumer-facing businesses and not be allowed to take advantage indefinitely of dispensations and other loopholes that enable them to ignore the need to make stations fully accessible. (Such reliefs should be available only to small businesses.)

2.3 Regulations already require all railway carriages to be fully accessible to disabled people by 2020. There is no current equivalent requirement for stations. It seems to us absurd to demand that trains be fully accessible without at the same time making it possible for disabled people to get on and off them at their local station.

### 3 MIGGS is a voluntary, non-political, not-for-profit group that exists to exchange information and represent the interests of people who have limited mobility and are residents of Goring (in South Oxfordshire), Streatley (in West Berkshire) and surrounding villages. Further information about the status and activities of this group is given in paragraph 21.



- 4 This evidence is based on our experience of making successful representations to have passenger lifts installed at our local, rural railway station, Goring and Streatley, which is on the Great Western main line between Reading and Didcot Parkway, the nearest fully accessible stations.
- 5 We are concerned that, outside the main urban areas and excluding special projects such as Crossrail, the impetus and incentives for railway and train operating companies to make their stations fully accessible may be diminishing. Here are two illustrations.
- 6 The government has an Access for All programme the value of which since its launch in 2006 is said to be £370m (<http://www.networkrail.co.uk/improvements/access-for-all/>). In December 2011 it was announced that £37.5m of spending on Access for All “mid-tier” projects would be brought forward so that work on these could be completed by March 2014 (<https://www.gov.uk/government/news/passengers-to-benefit-from-access-improvements-at-stations>). There has been no further announcement of new funding since 2011. We have not checked progress at all the stations covered but we know that work at nearby Theale station is well behind schedule. Access for All approval was originally granted in 2011, with completion expected in October 2013. In December 2013 Theale was included in the new money announced by the then transport minister. Other, non-access work was completed in May 2015 but, as of that month, there was no agreement to begin work on the proposed new footbridge and lifts and, given the stated need for 40 weeks to complete the work, there is no prospect of it being completed before June 2016.
- 7 Another GW station that has suffered delays in implementing works funded by Access for All is Nailsea and Blackwell. Like Theale’s, this project was originally announced in 2011 but, evidently due to bureaucratic obstacles, the work has not been carried out and cannot now be started until fresh funding is agreed.
- 8 We are most familiar with the Great Western network, although we have no reason to believe problems are confined to stations on the Great Western lines. Indeed, we know from first-hand experience that First Great Western (soon to be renamed Great Western Railway) has an exemplary record of responding to needs and making provision for disabled passengers, especially those with visual impairments.
- 9 EU Commission regulation 1300/2014 of 18 November 2014 “on the technical specifications for interoperability relating to accessibility of the [European] Union's rail system for persons with disabilities and persons with reduced mobility” apply to certain railway lines in the UK. Paragraph 4.2.1.2.2. covers “Vertical circulation” and says, inter alia:

“(1) Where an obstacle-free route includes a change in level, there shall be a step-free route providing an alternative to stairs for mobility impaired people...(3) Ramps shall be installed for persons with disabilities and persons with reduced mobility unable to use stairs where lifts are not provided. They shall have a moderate gradient. A steep gradient is allowed for ramps on short

distances only. (4) Stairs and ramps shall be provided with handrails on both sides and at two levels. (5) Lifts shall be provided where ramps are not available and shall be at least of type 2 in accordance with the specification referenced in Appendix A, index 1. Type 1 lifts are allowed in the case of stations being renewed or upgraded only.”

- 10 This regulation is implemented in the UK by version 4 of the “Design Standards for Accessible Railway Stations - A joint Code of Practice by the Department for Transport and Transport Scotland” (ISBN 978-1-84864-154-9). This supersedes version 3 of this code, published in November 2011 as “Accessible Train Station Design for Disabled People: A Code of Practice - A joint publication by Department for Transport and Transport Scotland” (ISBN 978 0 11 553210 8).
- 11 We are disappointed to see that between editions 3 and 4 the following words have been deleted, with the apparent effect of downgrading the role of lifts in enabling step-free access and lowering expectations that lifts will be installed:

(Version 3, p227): “Part 3 of the Disability Discrimination Act (DDA) places an obligation on operators to take reasonable steps to overcome barriers to access, such as those preventing many disabled people from reaching the trains. *In many cases this can be achieved by providing lifts* (Figure R1.1).”

(Version 3, p229): “b. *Lifts are the ideal option* for wheelchair users and others who cannot manage stairs.”

(Version 3, p235): c. In an emergency, an immediate response is expected. HMRI consensus is that a maximum of two hours from initial call to release is tolerable for entrapments. *Where there are lifts at a station, the station operator should ensure that appropriate staff are available with the necessary skills to release trapped passengers with the minimum of delay.*

- 12 As the code itself makes clear, this code applies to stations at which “major work” is to be carried out (Version 4, p13):

11. With certain exceptions set out in Annex II, operators are required to meet the European and national standards, as set out in the main body of this Code, when providing new, renewed or replacement facilities on passenger trains or at stations.

- 13 But it also goes on to add that:

The Code does not impose an obligation on operators to take action to enhance accessibility in other circumstances.

- 14 Given this, it seems to us that unless the opportunity to do so is taken through the review and amendment of the Equalities Act, there is nothing in railway regulations

and codes to ensure that a programme will be introduced to make all stations fully accessible over a reasonable and foreseeable time period.

- 15 Our view is that the time is now overdue to recognise that Network Rail and the train operating companies are nearly all big businesses that should be perceived and treated like similarly large, public-facing companies, such as the retailer, John Lewis and airport operator, BAA. These and other companies offering similar services have found the resources to comply with the spirit as well as the letter of equalities law. It is time for railway companies to do likewise.
- 16 It is our view that reasonableness exclusions be applicable to small organisations only or that, if extended to big businesses, the extension should be on a case-by-case basis and time-limited.
- 17 It will inevitably be argued that the cost of installing lifts or ramps at all stations will be prohibitive. A practical way to overcome the discrimination against disabled people on the railways at no direct cost to the Exchequer would be for the Department for Transport, when it prepares a franchise specification prior to inviting bids, to impose on a train operating company a duty to provide step-free access progressively at all its stations during the period of its franchise and to recover the costs, like other costs, through fares, retail rents and other revenues generated by rail travel. Such an obligation should be incorporated into an amended Equality Act.
- 18 It may also be argued that the extra revenue that would be generated from making it easy for elderly, disabled and mobility impaired people to use the train will not justify the expense of providing for their needs. Our experience is that elderly, disabled and mobility impaired people want to have the confidence that their needs will be properly catered for before setting out; and that when this is the case they will be more likely to choose the train in preference to other modes of travel.
- 19 Version 3 of “Accessible Train Station Design for Disabled People: A Code of Practice” puts this point emphatically (p11):

[This] document...provides advice and recommendations of good practice that all operators can implement to provide greater opportunity to travel for, and further enhance the experience of, disabled people using the railways. There are over 10 million people in Great Britain with a disability. The Government is committed to transport for all; and improving the accessibility of railway stations and passenger trains will encourage more disabled people to use the railway network – and to do so more regularly...

...Moreover, the principles set out in this Code will benefit all passengers. People with a large amount of luggage, or with small children and pushchairs, for example, will appreciate uncluttered stations...alternatives to stairs and doors that can be opened easily with one hand.

- 20 We conclude by reproducing the advice given to other service providers by the Equality and Human Rights Commission because it should be applied equally to railway and train operating companies, regardless of whether they are publicly or privately owned:

Equality law recognises that bringing about equality for disabled people may mean changing the way in which services are delivered, providing extra equipment and/or the removal of physical barriers.

This is the duty to make reasonable adjustments.

The duty to make reasonable adjustments aims to make sure that a disabled person can use a service as close as it is reasonably possible to get to the standard usually offered to non-disabled people.

When the duty arises, you are under a positive and proactive duty to take steps to remove or prevent these obstacles.

If you are providing goods, facilities or services to the public or a section of the public, or carrying out public functions, or running an association and you find there are barriers to disabled people in the way you do things, then you must consider making adjustments (in other words, changes). If those adjustments are reasonable for you and your organisation to make, then you must make them.

The duty is ‘anticipatory’. This means you cannot wait until a disabled person wants to use your services, but must think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

Many of the adjustments you can make will not be particularly expensive, and you are not required to do more than it is reasonable for you to do. What is reasonable for you to do depends, among other factors, on the size and nature of your organisation and the nature of the goods, facilities or services you provide.

If, however, a disabled person can show that there were barriers you should have identified and reasonable adjustments you could have made, they can bring a claim against you in court, and you may be ordered to pay them compensation as well as make the reasonable adjustments.

As well as being something you are required by equality law to do, making reasonable adjustments will help a wider range of people use your services.

- 21 MIGGS was set up in 2006 by two wheelchair users living in Goring. It has campaigned successfully to have lifts installed at Goring and Streatley station as part

of the Great Western main line electrification programme. MIGGS has raised money from local voluntary contributions towards the cost of widening a narrow pavement that is the last remaining obstacle to full accessibility at the station and has applied for funding of this project from the First Great Western Customer and Community Improvement Fund. MIGGS also raises money locally to co-fund, with Goring parish council, the local, door-to-door shopping bus service for elderly and mobility impaired passengers. We also make representations, most of which achieve some level of success, to have pavements improved and obstacles removed within the villages of Goring and Streatley. We have produced a local “access map” that identifies road and pavement obstacles and safe routes for disabled residents and visitors.

Submitted on behalf of MIGGS by John Boler, chairman.

*11 September 2015*

Rt Hon Nicky Morgan MP, Andrew Jones MP & Justin Tomlinson MP – Oral Evidence (QQ 174-192)

**Rt Hon Nicky Morgan MP, Andrew Jones MP & Justin Tomlinson MP – Oral Evidence (QQ 174-192)**

[Transcript to be found under Andrew Jones MP](#)

## **Rt Hon Nicky Morgan MP – Supplementary Written Evidence (EQD0199)**

When giving evidence to your Committee on 15 December, I undertook to provide comparative per-call cost analysis between the Equality and Human Rights Commission's helpline, and the current Equality Advisory Support Service.

As I stated to the Committee, a 2011 Government report found that the EHRC's cost per call was more than double that of a series of benchmarked comparators. The report found the EHRC cost per call to be £28 - not £281 as my briefing notes unfortunately stated and which I told the Committee. I apologise for inadvertently providing inaccurate information. EASS costs are calculated on a per-case basis, covering everything from an initial inquiry through to final action on behalf of the customer. The EASS estimate of the call element of a case, which most closely replicates the service EHRC provided, is under £10.

I hope this is helpful. I will write to you again in January with further information on some of the wider issues raised by the Committee, including the Independent Living Fund.

The Rt Hon Nicky Morgan MP  
Minister for Women and Equalities

*23 December 2015*

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When I gave evidence to your Committee on 15 December, I undertook to write to you about whether Government Equalities Office (GEO) officials were involved in any decisions or legal advice on the judicial review of the Government decision to close the Independent Living Fund (ILF).

As you will be aware, there were two judicial reviews of the closure: the first resulted in a Court of Appeal judgement in November 2013 which upheld the challenge against the decision, while the second led to a High Court judgment in October 2014 upholding the Secretary of State's further decision to close the Fund.

I can confirm that neither GEO officials nor its legal advisers were involved in any decisions or legal advice to the DWP on either judicial review, other than discussions across broader interdepartmental legal network which normally take place when a challenge to a significant Government decision reaches the higher courts.

Since 2010 the role of the GEO has been to offer, on request, advice to other Departments on good practice compliance with the public sector equality duty (PSED) through different means including workshops and presentations to staff. This has been supplemented by written guidance on understanding the legal requirements of the duty. This guidance is updated to take account of key court judgements, and lessons learned from the successful challenge against ILF closure in 2013 have therefore been reflected in more recent versions of this guidance.

I hope this is helpful.

The Rt Hon Nicky Morgan MP  
Minister for Women and Equalities

*11 January 2016*

## Neil Mukherjee – Written Evidence (EQD0029)

### Summary & Introduction:

1. This report is a response to a call for evidence on personal experiences faced by myself that has been affected by the evasion of upholding the Equality Act and the thoughtful exclusion of responsibility against following up Justice as enshrined in our UK Laws of the Equality Act 2010 & Disability. The Setting took place between the years of 2008 to 2010 which in its final stages led to being pressurised into withdrawing from a Higher Studies course in MA World Religions as no further request for support was being welcomed or entertained by the Department & Student Services of The University of Wales, Lampeter.
2. Main Body:
  - i.) I am writing in to give evidence about my experiences as a Distance Learning Student from the years 2008 to 2010 whilst studying with the University of Wales Lampeter, now known as The University of Wales Trinity St. David.
  - ii.) The question at hand is to provide evidence about experiences of Discrimination set under the Equality Act 2010 & Disability. Some of what will transpire may also apply to the previous Act: The Disability Discrimination Act as the events transpired over a course of 2 years up until Jan/Feb 2010
  - iii.) Having a long term condition of Schizophrenia that was well managed, I took up a course in World Religions under the Department of Theology & Religious Studies with The University of Wales Lampeter.
  - iv.) During this period I was working as a SEN Teaching Assistant with a school in East London. My aim was to progress as a Philosophy Teacher for Secondary Schools here in my home country and to socially mobilise myself from a lower grade salary from that of a Teaching Assistant towards the line of a prospective Teacher which was a long time ambition of mine.
  - v.) A number of difficulties ensued during my Residential Studies visits attended at the Lampeter Campus; the residential visits took place twice a year; in spring and in autumn.
  - vi.) The build up of grievances:
  - vii.) There were no study skill aids and learning skills adaptations given until after several months into the course.
  - viii.) The provision when provided was liaised between the University of Wales Lampeter & The University of East London. A Study Aids mentor was not secured until much later around 3 to 4 months before I left the course.
  - ix.) The officially stated grounds for leaving was for personal reasons because I knew my case was being torn apart and any further grievances & complaints could have been used to compromise me further.
  - x.) A case was built against me by my personal tutor [NAME REDACTED] who was also a lecturer in Religious Studies at the campus & [NAME REDACTED] of Student



Services University of Wales Lampeter. The suggestion was that my submissions showed a lack of clarity and cohesion in my essays as well as consisting of waffle.

- xi.) Furthermore [NAME REDACTED] in a one to one phone call between myself and her, stated whilst advising me in her role as Student Support Services Advisor, alleged that my condition of Schizophrenia was affecting my quality of work; a statement which she later strongly denied when she gave evidence in writing in the official paperwork in response to my complaint.
  - xii.) I also note that one such difficulty in receiving support was that it was much harder to access services because I was not a local resident in Lampeter which prevented me from accessing the Lampeter Campus Support Services, yet it came to the unfortunate result that according to [NAME REDACTED], I would find it difficult to stay on as a student at Lampeter. This was stated during my last few months of attendance as I struggled to stay on the course having failed my first term modules without the University having any further willingness to provide assistance from either the Religious Studies & Theology Department or Student Services.
  - xiii.) I still have evidence of this case which I am happy to submit on demand. The outcome of this entire situation led me to fall into debt over unpayable return of loans I had taken out to support my studies because I became unemployed soon after I left my course of study.
  - xiv.) I was also provided an unsatisfactory reference from my former employers from the school and local borough.
  - xv.) This I believe would not have happened had the direct pressures of my involvement with the Department at the University not ensued. A further knock on domino effect later ensued towards me falling into debt and the subsequent insolvency in 2010 which although cleared in 2012 still has resulted in an extremely poor credit rating which prevents me from progressing socially, condemning me to lifelong poverty and social immobility.
- 3.) Conclusion: This evidence is based on my direct experiences with the University in question. I have been set back by several years in social immobility and long term unemployment as a result of both losing my place on the course and for losing my job and having become insolvent back in 2010.
- I hereby close my evidence this day on the 23<sup>rd</sup> of August 2015. Thank you.

*23 August 2015*

## **Muscular Dystrophy UK – Written Evidence (EQD0052)**

### **About Muscular Dystrophy UK**

Muscular Dystrophy UK (previously known as the Muscular Dystrophy Campaign) is the charity bringing individuals, families and professionals together to beat muscle-wasting conditions.

Founded in 1959, we have been leading the fight against muscle-wasting conditions since then.

We bring together more than 60 rare and very rare progressive muscle-weakening and wasting conditions, affecting around 70,000 children and adults in the UK.

### **About Trailblazers**

Trailblazers is a group of young disabled campaigners from across the UK who tackle the social issues affecting young disabled people, such as access to higher education, employment, and social and leisure opportunities. Trailblazers aims to fight these social injustices experienced by young disabled people and to ensure they can gain access to the services they require. Trailblazers is part of Muscular Dystrophy UK, the leading UK charity fighting muscle-wasting conditions.

### **Questions from the committee**

***Before the Equality Act there was a separate law on disability. Have things improved or not because disability is now only one of nine groups in the law?***

The general consensus amongst Muscular Dystrophy UK's supporters is that there have been some improvements in relation to awareness; however, 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. There is often a lack of confidence that approaching an organisation or local authority will actually result in any action to make the reasonable adjustments which are required.

***Do people know about the sorts of changes that should be made to treat disabled people equally? How has this worked in transport, taxis, education and using sports grounds?***

### **Public transport**

[NAME REDACTED] reported to us last year in a blog for the *Trailblazers* website his experiences on public transport. While he has had good experiences on the Underground and buses, he did also report a shocking experience when attempting to board a bus:

*"It is always somewhat disheartening and insulting when a bus driver with an empty bus says to you "there is no space for you to get on" or that by letting the ramp out the bus will stop working. You can not help but think "I may be in a wheelchair but I am not an idiot"."*

[NAME REDACTED] C from Middlesbrough, who has spinal muscular atrophy, visited London with her sister. They both attempted to enter the same bus via wheelchair only to be rudely

turned away by the bus driver who said that there was a limit of one wheelchair per bus. This forced C and her sister to ride in separate buses to their location.

Also C was trying to organise a trip via minibus with other friends that are wheelchair users, therefore needing a wheelchair accessible bus. However, she found that the price was triple that of a standard minibus from the same company.

### **Education**

Muscular Dystrophy UK's Trailblazers young campaigners network conveyed experiences of reasonable adjustments needing to be made at universities in the University Challenge 2013 report on higher education.

[NAME REDACTED], who has limb girdle muscular dystrophy, studied at London Metropolitan University, said:

*"I had some classes in inaccessible rooms, as in the only route to get there was by climbing stairs. However, those lectures were later changed as soon as I or my lecturers made them aware that I couldn't get there. Also, lectures that required me to move from campus to campus were later changed so that all my lectures were on the same campus."*

[NAME REDACTED], who has spinal muscular atrophy, graduated from Manchester University in 2012 and overall had a positive experience at the graduation ceremony, although would have liked to have been sat with her classmates:

*"The university was good at accommodating me. I was able to go on stage like everyone else via a side lift. I was called to the lift a few minutes before my name was called so I had time to get up. Someone was also on standby to pop my cap on for the leaving procession. My only quibble was they sat me at the front with PhD students, not my classmates."*

### **Sports grounds**

[NAME REDACTED] M, who has limb girdle muscular dystrophy, has had problems when going to away games to watch Leeds United. Although Leeds United are well aware of his condition, other stadiums have difficulty accommodating someone who is ambulant disabled, and he feels that they cater for wheelchair users better. M uses the phrase "2<sup>nd</sup> class disabled" when talking about the difficulties he has faced.

[NAME REDACTED], who has congenital muscular dystrophy, told us about West Ham United's ground:

*"West Ham United's ground is a problem for me as they have rails up around the pitch but just at eye level of sitting in a wheelchair, so I can never see the game. And you're unable to sit next to friends or family as their seats are behind the wheelchairs and so it's quite unsociable."*

[NAME REDACTED], who has congenital muscular dystrophy, told us:

*"I go to Chelsea often. Access is fine but the view in west stand is poor, especially depending on how high or low your wheelchair is. At my eye level I see shins and feet of players depending on where they are on the pitch. They should raise it."*

[NAME REDACTED], who has spinal muscular atrophy and is a regular spectator at Premier League football games, told us:

*“I’ve been to loads [of stadiums] and I hate the grounds where as a [disabled] away fan you have to sit with the home fans. At Liverpool’s Anfield Stadium, you [wheelchair users] sit in front of home fans then get told off for cheering your team by stewards as this may upset people behind you. The stewards threatened to throw my friend out (who’s in a wheelchair from a car accident) as he was shouting, which we always do and we were told we couldn’t shout or cheer as home fans were behind us. If we were sitting with our fans would not have mattered. I want to be able to sit with the fans of the club I support so I am able to enjoy the match and not worry about the other fans’ abuse.”*

### **Employment**

[NAME REDACTED], who has FSH muscular dystrophy, told us about her experience a year ago whilst applying for student placements in the fashion industry as a part of her degree.

*“I struggled a lot trying to secure a placement; even though my applications succeeded quite far and I attended many interviews, I was not given any offers. The reasons given to me were either there were other students more suited to the role or their place of work turned out to have steps and no wheelchair access.*

*“Although I did not have enough substantial evidence to prove any discrimination it is hard to believe from the large amount of applications I gave that there was none present. Therefore I think there are gaps in making sure discrimination is not carried out by employers during the application process because they can too easily give a justified reason to cover.”*

### **Retail and leisure**

[NAME REDACTED], who has congenital muscular dystrophy, attempted to have a manicure at a nail bar in Westfield Stratford, but was unable to do so with the lack of an attempt to make reasonable adjustments.

*“I was in Westfield Stratford shopping centre and thought it might be nice to get my nails done, however when I approached the nail bar I was told that they would not give me a simple manicure because I couldn’t fit at their desk with my wheelchair, it was a health and safety issue and they would not be able to do a professional job!*

*“Not impressed by this explanation I explained to the duty manager that I had not had a problem at other such nail bars, and that my hands can be on my tray whilst they are being painted. My PA even gave an example of how it could be done, however he continued to say they would not do it.*

*“He even suggested I go elsewhere where there would be a big enough chair for me. When I tried to explain that I can't sit in another chair and I need to stay in the one that I am in he said, again, it's health and safety, they can't do a professional job and no, they would not do a manicure for me.”*

One lady from Worcester commented to us:

*“In my experience ‘reasonable’ means they don't have to. There are examples of that all over Worcestershire. In Worcester town centre 90% of male clothes are on the second floor and not many have lifts. The ones without are owned by [NAMES REDACTED].”*

### ***Are there any other ways we could make the Equality Act 2010 work better?***

[NAME REDACTED] F, who has spinal muscular atrophy, commented:

*“There needs to be more advice and guidance available for free online about what reasonable adjustments could include; examples of best practice; and how to complain if a reasonable adjustment is not made.”*

F has also written a blog for the Huffington Post, published on 28<sup>th</sup> August 2015. The text of the article is below:

[http://www.huffingtonpost.co.uk/fleur-perry/equality-lets-act\\_b\\_8053220.html](http://www.huffingtonpost.co.uk/fleur-perry/equality-lets-act_b_8053220.html)

“It's five years since the introduction of the much-hailed [2010 Equality Act](#), which combined legislation around disability, race and gender equality. So has equality been achieved for disabled people? Short answer: No. Long answer: No. Why? Because so much more needs to be done to communicate the ideas behind the Act.

If you've never read the Equality Act, here's the highlights:

1. A business or organisation has to make "reasonable adjustments" to prevent a person with a disability being at a "substantial disadvantage" compared to a person without a disability.
2. Businesses and organisations are expected to make these arrangements without being asked.
3. If they refuse to make a "reasonable adjustment", they can be sued for a breach of the Equality Act by anyone who has experienced a "substantial disadvantage".

In 2010 the Act was hailed as the dawn of a barrier free world. Looking around, this brave new world looks a lot like the old one. There are still shops with steps to the only entrance. There are still epic battles being waged on public transport. There's still no action the lack of wheelchair accessible housing. There are still problems with access to university education, air travel, cinemas... The list goes on.

That's not to say progress hasn't been made in any of these areas of course. Some

businesses are waking up to the lucrative [purple pound](#), and individual campaigners across the country are making headway against the tide of same-old same-old.

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? And how much of a disadvantage does there have to be before it can be called "substantial"?

The best definition of "reasonable" I can come up with is "not unreasonable", which is only marginally better. "Not unreasonable" points out that unless there's a good reason you can't, you should. But we're still left with another question: What counts as a good reason? A small business owner has neither the time nor the inclination to explore disability theory. A large business has the time, and the resources, but rarely the expertise or the incentives to ensure they are meeting their obligations. Local departments and not-for-profit organisations, like schools and GP practices, are essentially in the same position as the small business: no time, no money and equipped with very little information.

"Something should be done about this!", the old battle cry echoes. Why isn't anyone stopping these places breaking the law? The responsibility for calling people to account seems to lie in the hands of those of us with disabilities. Yet how many of us would know where to start? I wouldn't. Isn't suing somebody expensive? Who has the time?

Suddenly we're also in the position of the small business owner: short on information, money, and time. There is Legal Aid available to help with the cost of taking a disability discrimination case to court, but we're still short on the information. Doug Paulley, of 'Busgate' fame, has written the fantastically named [Disability Attitude Re-adjustment Tool](#). It's a set of helpful documents, letters and examples to help disabled people take legal action. For me, it should immediately be placed in a time capsule to tell future archaeologists everything they need to know about disability in the early 21st century. It's also a good read, though as Mr. Paulley states at the beginning, it's not legal advice.

The House of Lords is soon to debate the impact of the Equality Act 2010 so far. [Muscular Dystrophy UK is collecting the views](#) of disabled people with muscle-wasting conditions, to pass on to the committee reviewing the Act, ahead of the debate. I would tell Peers two

things. Firstly, do not under any circumstances scrap the Equality Act or water it down. It's pretty vague, but it's the best we've ever had and will continue to be a tool for progress. Secondly, the first-step to equality is to make sure businesses, organisations, and people with disabilities have access to good quality, in depth, easy-to-find information.

When a small business owner looks at you from the top of two steps to a doorway with a confused expression and says "We've never had anyone in a wheelchair come in here and ask for a ramp before," and doesn't understand why that's funny, something needs to change."

*2 September 2015*

## National AIDS Trust – Written Evidence (EQD0136)

### Introduction

1. NAT (National AIDS Trust) is the UK's leading policy and campaigning charity dedicated to transforming society's response to HIV. We welcome the opportunity to submit evidence to the Select Committee on the Equality Act 2010 and Disability. HIV is a disability from the point of diagnosis under the Equality Act 2010 and the Act provides important protections for people living with HIV.

2. NAT campaigned extensively when the Equality Bill was going through Parliament for several new provisions to be included (for example the prohibition of pre-employment health questionnaires). We welcome the new protections the Act has introduced. However, there are several areas where we feel the Act and its implementation could be strengthened and improved - for example the enactment and strengthening of provisions relating to dual discrimination and the reintroduction of provisions related to third party harassment. In addition, we believe that cuts to legal aid and the introduction of fees for employment tribunals, have had a serious impact on the ability of the Act to achieve its objects. Our concerns are outlined in more detail below.

### Responses to Committee questions

*i. 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?*

3. NAT believes that bringing together discrimination law into one Act has been beneficial for disabled people. People have many different elements to their identity – many people living with HIV are gay or bisexual and/or from African communities (in the UK the two communities most affected by HIV are gay and bisexual men and black African men and women). Bringing the legal protections for all the protected characteristics together has simplified things, both for individuals who seek protection from the law, and for public authorities, employers and service providers who have responsibilities under the Act. In addition, new protections in the Act, such as the prohibition of pre-employment health questionnaires, have made a real difference to people living with HIV and we have worked in partnership with the EHRC to effectively enforce these provisions (see question eight).

4. We are of course aware of the concerns that disabled people and disability law gets less attention when contained within a broader act. However, we feel that the benefits of simpler legislation, plus the new protections introduced by the Act, outweigh these concerns. We do feel that some of the provisions included in the Act that have been revoked since 2010 or have yet to be enacted should be urgently reviewed – see response to question two.

*ii. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?*



5. NAT welcomed the inclusion of protection from dual discrimination in the Equality Act. The Preamble to the UN Convention on the Rights of Persons with Disabilities highlights the importance of the issue of multiple discrimination:

*The States Parties to the present Convention...*

*(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status*

6. We actually campaigned for protection from multiple discrimination, and were disappointed when this was restricted to two protected characteristics. This is because, as noted above, HIV in the UK disproportionately affects two groups which experience inequality and discrimination – gay and bisexual men, and black Africans – and amongst black Africans, women are disproportionately affected. It is often hard to disentangle HIV discrimination from the homophobia, racism, anti-immigration prejudice and sexism which so many people living with HIV also experience.

7. However, although it did not go as far as we would have liked, the dual discrimination provisions marked an important step forward. We are therefore now calling on this part of the Act to be enacted as a priority, and ideally strengthened to cover multiple discrimination.

8. In addition, we would also like to highlight the recent repeal of certain provisions of the Act which now leaves gaps in the law. The repeal of third-party harassment provisions are of particular concern as we believe this could have a real benefit for people living with HIV. HIV remains a stigmatised condition and these additional protections made clear employers responsibility to protect their employees from harassment. Despite the fact that when the Government consulted on this issue, 71% of those that responded opposed the provision to repeal it, the Government went ahead. We would like to see these measures or something which offers similar protection reintroduced.

9. Finally we would also draw attention to the repeal of employment tribunals' powers to make wider recommendations. The power in section 124(3)(b) was seen by the Government as adding little to the powers tribunals already have and is merely discretionary. However, as the EHRC have made clear, tribunals very rarely made recommendations under the pre-Equality Act law, as the power was confined to recommendations relating only to the claimant. We would seek a re-introduction of this provision or something similar to increase the impact of tribunal recommendations.

*iii. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?*

10. NAT did some research with City University looking at people living with HIV's experience of work. As part of that we did a survey of nearly 2,000 HIV positive gay and bisexual men. Of these respondents, almost a third were not aware of their right to ask for reasonable adjustments. It is important to highlight that this research was carried out in 2009, but it

does suggest that there was a significant amount of work required to highlight people's rights, and we are not aware of any work that has been done by the Government to do this. This is particularly important amongst people living with HIV as many people do not think of themselves as disabled and so do not realise they have rights under the Act.

11. We would also underline our concern that the EHRC's code of practice on employment, which should help ensure reasonable adjustment duties are known and understood, has not been laid before Parliament.

*v. How effective has the public sector equality duty been in practice?*

12. NAT has concerns that the current duty is a watering down of the original duties. However, we also recognise some of the benefits of bringing the duties together and widening it out to include the nine protected characteristics. This is particularly beneficial to people living with HIV as, as set out above, many people are gay and bisexual men or black African men or women.

13. Although we feel the duty could be strengthened, there are many examples of when the current duty has been effective in practice. HIV organisations have used the public sector equality duty to successfully challenge funding decisions that had not appropriately considered the impact of cuts on people living with HIV. When applied properly, it is a useful tool and the requirement to have 'due regard' can have a real impact on decision making processes.

14. We have ourselves used the duty to challenge public authorities' behaviour. For example, in a recent case the CPS were attempting to charge an individual living with HIV with fraud for not disclosing their HIV status to their employer, even though the employer had used an illegal pre-employment questionnaire, and it was very clear that the case did not meet the public interest test. We wrote to the CPS reminding them of that 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.

15. NAT is concerned that the duty as it stands may be under threat, as it could be wrongly viewed as unnecessary 'red tape'. We would therefore highlight the positive impact the duty has had, though of course this does not mean it couldn't be improved and strengthened.

*vii. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?*

16. It seems clear that the division of responsibilities between Ministers and government departments affects the effective implementation of the Act in respect of disability. The EHRC's sponsoring department is DCMS, but ministerial responsibility lies with the

Department for Education and government policy rests with the Department for Work and Pensions. In addition to this, the Department of Health is a key department for people living with HIV and disability matters more widely. Although it is a positive step that there is now a Women and Equalities Select Committee, NAT would like to see transparent inter departmental working arrangements set up to avoid silo working and improve the development of disability and wider equality policy.

*viii. 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?*

17. It is clear that the extent that the EHRC can effectively exercise its regulatory and enforcement powers has been impacted on by the steady reduction in its funding. If one considers the budget for the Disability Rights Commission when it was in operation, and contrasts this with the budget for the EHRC which has responsibility for not one but nine protected characteristics, it is clear that the EHRC could have had a greater impact if it had been better resourced.

18. However, within its limited means, from our experience the EHRC has made a contribution to the impact of the Equality Act. For example, when we contacted them about a case where someone living with HIV had been asked to fill out a health questionnaire before the offer of a job was made (prohibited by the Act) they acted very quickly, contacting the company concerned and receiving an assurance that this questionnaire would no longer be used. They have encouraged us to alert them to other companies using questionnaires illegally so they can follow this up.

19. We do have concerns that the removal of the EHRC helpline and the establishment of the Equality Advisory Support Service has caused a disconnect between the EHRC and disabled people experiencing discrimination, perhaps impacting on the EHRC's ability to take landmark cases. We would recommend that when the helpline is retendered this impact is given proper consideration.

*ix. 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?*

20. NAT would briefly highlight the work it has done with the CQC on HIV and the Equality Act. They have supported the development of our new resource, [HIV: A guide for care providers](#) which makes clear what care providers responsibilities are to people living with HIV (whether they are service users or employees) under the Equality Act. CQC have added this resource to their inspectorate training programme and we are also working with the Inspectorates in Wales and Scotland to ensure that people are aware of how the Equality Act should be implemented in relation to HIV in a care setting. We would now like to see this broadened out so the CQC consider the Equality Act in relation to health services as we are often made aware of cases where people face discrimination because of their HIV status in a healthcare setting.

*x. 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?*

21. It is clear that the introduction of fees has established a major barrier to access to Employment Tribunals. We are pleased that the Ministry of Justice are reviewing this decision and we hope that the fees will be removed to make tribunals more accessible. In addition, we would like to see privacy measures introduced to tribunal hearings. We are aware of cases where someone living with HIV has felt unable to take an employment case to tribunal because they do not wish their HIV status to be widely disclosed. HIV remains a stigmatised condition and because of this many people feel unable to take a case which will involve the disclosure of their status.

22. We also have concerns about the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Although employment Equality Act Cases are outside the cuts to legal aid, it is rare for people to identify themselves that they have a discrimination case; they usually present to lawyers as having a problem at work. In addition, the cuts may deter people who may in fact be eligible for legal aid seeking help in the first place. Finally the impact of the wider cuts, mean that support organisations that offer advice, such as Citizen's Advice Bureau, are overwhelmed and it is much more difficult for people to get access to advice.

23. Of course it is vital that steps are taken to improve access to enforcement mechanisms and advice, but when reflecting on the impact of the Equality Act, it is also useful to recognise the power of the Act in changing behaviours without the need for individuals to go through the sometimes distressing enforcement process.

24. For example, NAT has recently advocated on behalf of an individual who disclosed his status to his employer and was immediately told he could no longer work in the warehouse as he posed a health and safety threat. We were able to show the employer that this was direct disability discrimination under the Act as there is no risk of HIV transmission associated with the work in the warehouse and so the discrimination could not be justified.

25. In a further example we intervened when someone living with HIV was refused cosmetic surgery even though there was no justifiable reason why they could not have the surgery. By using the Act we were able to secure treatment for the individual and a change in the company's policy so that in future people living with HIV will be able to access their services.

*xi. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?*

26. As highlighted in question three, information campaigns for both disabled people and those with responsibilities under the Act, would clearly improve the implementation of the Equality Act in respect of disability.

27. We would also, as underlined in question eight, propose that the EHRC is properly funded so they have the resources to exercise their regulatory and enforcement powers in relation to disability.

28. We would suggest that a review of the impact of changes to legal aid is carried out and steps taken to ensure that disabled people have access to the support and advice they need to access their rights.

29. The Government should as a matter of urgency lay the EHRC's Code of Practice on Employment before Parliament and work with the ERHC to ensure other codes are developed. Providing clarity can only help improve the implementation of the Act.

30. We would also repeat our call for the dual discrimination provisions to be commenced and the repeal of the third party harassment and tribunals decision making provisions to be reversed.

31. Finally, we believe that a change in the tone of discussion around equality legislation and measures to bring about a fairer society for disabled people would make a real difference to the implementation of the Act. Instead of a rhetoric of red tape and bureaucracy, it would be helpful for there to be open discussion about the difference and benefits the Act can bring and the improvements this will make for everyone in society.

*4 September 2015*

## National Association of Deafened People – Written Evidence (EQD0061)

1. The National Association of Deafened People (NADP) welcomes the opportunity to respond to the call for evidence by the House of Lords Select Committee on The Equality Act 2010 and Disability.
2. Hearing loss is one of the most common forms of disability and the vast majority of those with a hearing loss are post-lingually deafened. The NHS Action Plan on Hearing Loss - <http://www.england.nhs.uk/wp-content/uploads/2015/03/act-plan-hearing-loss-upd.pdf> - concludes that 'hearing loss affects over 10 million adults and 45,000 children in the UK. This equates to 1 in 6 of the population and has an enormous personal, social and economic impact'. NADP is a national organization which exists to support people who use spoken language for communication and are disabled due to severe/profound hearing loss - deafened people. Many of our members were born hearing and so will have experienced life as both a hearing and deafened person. Acquired deafness affects not only the individual but also their family, friends and colleagues. The skills, ability and human need to communicate on equal terms is at the heart of equality for deafened people, since profound deafness reduces and in many cases destroys the confidence to communicate. NADP offers support and advice to help deafened people to regain their confidence and independence and thus to enjoy the best quality of life. Our response will reflect the views and needs of our membership and therefore the effectiveness of the Equality Act 2010 for deafened people. NADP is run for and by deafened people, and this response is written directly by people who actually experience deafness.

### General

***Question 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?***

3. In our experience, the consolidated nature of the Equality Act 2010 has had the effect of diluting the strength of the Disability Discrimination Act. Employers and service providers seem to now be less aware of the needs and rights of disabled people but appear to be more aware of the needs and rights of the social groups in the other eight protected categories. Of course, disabled people may belong to more than one of those protected characteristics categories. Nonetheless, there are distinct differences between discrimination with, for example, a race, religious or sexual background (which is usually caused by the malign intent of the perpetrator) and discrimination against a disabled person (which is usually non-malign and is the result of the lack of physical access to a facility. This lack of access causes socio-economic inequality).
4. Cases of sex or racial discrimination appear to have a higher priority in corporate "equality" policies than disability. Furthermore, disability is often addressed in a few words within a corporate policy with little evidence that the policy is actually

implemented. For example, recruitment or corporate training videos are rarely subtitled.

### Reasonable adjustment

**Question 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?**

5. A recent survey of our members (all disabled people with a hearing loss) indicated that 83% were reasonably familiar with or had a basic understanding of the Act. 77% had a good understanding of the reasonable adjustment duties but, of those, the majority consider the law could be clearer. Our members' experiences indicate that the understanding of reasonable adjustment by employers, service providers and others varies dramatically.

*Comment - Our local Post Office has recently had a hearing loop fitted but it doesn't work. The postmaster said that the building belonged to the Co-op so it was not their responsibility to fit a loop*

*Comment - My employment experience was a result of around 5 years of delays in making reasonable adjustments which made it more difficult to claim due to the 6 month timescales. Whilst we had regular catch up meetings items remained outstanding from one meeting to the other whilst they were "working on it".*

*Comment - I couldn't begin to explain all the refused requests, subtle or very obvious. Many have sickened me and brought me to tears over my deafness. I have been avoided, left isolated and totally ignored by countless people once they knew I had no hearing.*

6. Part 12 of the Act (Disabled Persons – Transport) goes into some great detail as to what is required to offer access to transport. However the majority of the legislation relates to those who have mobility problems and there is scant recognition of sensory disabilities. Major barriers still exist on the public transport systems for people with hearing loss. This is because, in so many cases, audible announcements (e.g. on railway platforms or in public transport vehicles) are not supplemented by visual means. Even in cases where in-vision information has been provided we find that it is quite often improperly programmed or inadequately visible. Additionally, there remains some resistance to assistance (hearing) dogs on public transport.

*Comment - .On buses and trains my Hearing Dog and I have been pushed and shoved in all directions. My Hearing Dog is my lifeline but sadly there are many people who loathe dogs*

*Comment - On trains I often do not know the cause of a delay.*

7. People with hearing loss will always struggle with audible announcements or performances. So this is particularly relevant at cinemas, theatres and sports grounds. However, our members' experience of educational establishments is, on the whole, more favourable in that reasonable adjustments are understood and applied.

*Comment - I went to a New York Yankees baseball game in 2009. In the stadium there was a screen showing the text of what the commentator was saying so I was able to keep up with the game. In 2012 I was fortunate enough to go to the Olympic stadium in London. Despite all the big screens and technology there were no subtitles shown. I had no idea what was going on at times.*

**Question 4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

8. Our members overwhelmingly consider that the law should definitely be more explicit on what constitutes a reasonable adjustment. However, there is no single consensus in how this may be achieved. Many suggested that the law should be enhanced by practical examples of reasonable adjustment in a range of circumstances. One of our experienced correspondents was of the opinion that

*'the whole concept of reasonable adjustment is dubious as it supposes that discrimination may be reasonable, which should never be the case'*

Another suggested

*'Perhaps the easiest thing would be for a requirement that adjustments should be made that 'make it as near as possible for an individual who is disabled to achieve the same performance as those who are not disabled'*

9. The economic problems of the past few years have made it far too easy for service providers to refuse requests for reasonable adjustment on the grounds of cost. So there certainly needs to be a re-balancing where any adjustment is equally reasonable from the point of view of the disabled person as well as the provider. From the point of view of our members, it is absolutely imperative that appropriate communication support is given. For example, it is not appropriate to provide a sign language interpreter if the deafened person does not use sign language, and the vast majority do not. At our public meetings, our charity provides communication support in various forms; including Verbatim Speech to Text (using Palantypists or Stenographers) and Lipspeakers.
10. Overall it was felt that real examples of reasonable adjustments should be made publicly available so that service providers can then realise what is possible.



Consumers can then hold service providers to account by asking why they have not provided a similar adjustment to their competitors.

11. Similarly, where a government department such as the Equality and Human Rights Commission has disclosed specific examples of what Reasonable Adjustments could be made then companies not offering these Reasonable Adjustments should be made accountable.

## **Public Sector Equality Duty**

### **Question 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?**

12. Any assessment of the performance of those bodies bound by the Public Sector Equality Duty over the past five years has to bear in mind that many of those bodies have been under extreme economic pressure during the period and many such bodies have experienced a decimation of staff numbers.
13. Having said that, we are firmly of the opinion that such public sector bodies are the worst culprits for ignoring the requirements of the Equality Act. In our survey over 50% of respondents stated that either their GP or hospital had refused their request to make a reasonable adjustment.

*Comment -my Hospital has been petitioned many times about various adjustments which are needed to help hearing impaired people. They always declare their resolve to change their practices but in fact nothing happens at all. The situation is just the same as it was 5 years ago*

*Comment - Ironically, medical staff are the most ignorant of all things involving deafness. When I have tried to explain my profound deafness to them, they will shake their heads and say 'oh it doesn't matter'*

14. Many councils and health authorities etc. drew up Equality Policies in the early days of the Act. However, this exercise was primarily a 'tick box' exercise and has not contributed to the aims of the Act. Few properly communicated those policies to their own workforce.
15. Even the Courts have failed to recognise the workings of the Equality Act in the way they deal with potential claimants.

*Comment -When I went to my Employment Tribunal, there was no working loop on the front desk and I had to rely on someone with me to communicate with the staff. The waiting room was so noisy I found it very difficult understanding my barrister, despite having a STTR, and was very conscious that I may be speaking too loudly. When we asked for a quiet room, this was refused.*

## Oversight and enforcement

**Question 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?**

16. From the point of view of disabled people and deafened people in particular, the Equality and Human Rights Commission has not been particularly effective in dealing with claims. From very early on, small charities such as ours felt discouraged in seeking a ruling from the Commission. The Commission has not actively engaged with charities like ours and we feel very much left alone in seeking support for our members.
17. It would appear that the EHRC has relied on enforcement being the responsibility of an individual to pursue independently. The EHRC has a system of providing a complainant with a standard letter for presentation to a service provider who has not made an appropriate reasonable adjustment. Our experience is that the individual then receives no further assistance from the EHRC and thus is left to his or her own devices. From the responses to our survey it was clear that whilst individuals felt that they had a right to greater equality, few had the time, resources or perseverance to pursue a potential claim.

**Question 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?**

18. We are of the firm opinion that there is a need for an independent Disability Ombudsman. The role 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
  - Enforcing the provisions of the Act

**Question 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?***

19. Our members are wary of the implications and costs of making any claim whatsoever. Those that have made claims have had very unsatisfactory experiences. Many people appear not to want to make a fuss and simply want to get on with their lives. Taking an employer to an employment tribunal not only involves a fear of losing their job but also any potential chance of future employment. This risk easily outweighs any potential gain. The process itself is daunting let alone the time and expense involved in pursuing a claim. The costs involved in pursuing a claim via an employment tribunal have increased dramatically in recent years and despite the apparent exemptions available to those on certain benefits, that avenue is now closed to many disabled people. Ultimately there needs to be some more clearly defined stepping stones in the process to make it clearer to all involved exactly what is expected which should alleviate any need for legal intervention and representation. If the correct processes have been followed then the time and cost could be greatly reduced, and examples obtained which could be used to further the implementation of the Act.

*Comment - My discrimination/dismissal case was split into two with the disability elements in the later stages. So I didn't get a chance to have these heard. The legal teams argued the order based on priorities of law, which I wasn't party to. The bottom line was that my employer had access to a legal team whilst I did not*

*Comment – The idea of going to court is so appalling. Therefore, I have never made any claims – enough is enough!*

Recent changes to legal aid and the legal system as a whole have added further costs and barriers to the enforcement mechanisms and have the effect of deterring those who have experienced discrimination from seeking enforcement. Courts and tribunals themselves have been known to deny appropriate communication support to people with hearing loss!

20. There needs to be a simpler system which allows an independent view to be obtained of a particular request for a reasonable adjustment and where it is deemed to be a reasonable request for it to be dealt with by the independent body in a timely and professional manner so that the individual is able to continue working in an equivalent manner to their peers.

***11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?***

21. As suggested above, we would applaud the implementation of an independent and active Disability Ombudsman.

**N.b Questions 2, 6 and 7 are not answered as these are beyond the remit of our charity.**

*2 September 2015*

## **National Association of Disabled Staff Networks – Written Evidence (EQD0156)**

Dear Baroness Deech and Members of the Select Committee,

1. We submit this written evidence to the Select Committee on behalf of the National Association of Disabled Staff Networks (NADSN, <http://nadsn-uk.org>).
2. NADSN is an independent, self-determining, non-governmental organisation.
3. NADSN is an umbrella “super-network” that brings together disabled staff networks, groups and fora across the United Kingdom and beyond, focussing on institutes of higher and further education (i.e. universities, colleges, etc), but open to any interested organisation (public, private, social or voluntary). NADSN is a collective platform to share experiences and good practice, and to examine challenges and opportunities.
4. We use the words “disabled” and “disability” in their widest possible senses, and endorse the social model of disability.
5. We welcome the establishment and purpose of this Select Committee and appreciate the opportunity to contribute to its work.
6. We asked members of the Association at the 46 organisations across the UK involved in NADSN to provide their views and experiences of the areas that this Committee is interested in. The timing of this inquiry has been unfortunate for us as many colleagues at universities and colleges have been away on their summer holidays and are only just starting to return. This has meant that we have not received as many responses from members of NADSN as we would have otherwise. Nevertheless, we represent the responses we have received here:

### **The achievements of the Equality Act 2010 in harmonising disability discrimination law:**

7. The experiences of disabled colleagues since the introduction of the Equality Act 2010 have been mixed. For instance, there appear to be some improvements in the physical access to some public buildings, but little or no recognition by local councils of the need to keep transport routes, such as pavements, accessible to enable travel to and from places of work and recreation; pavements in major cities remain an obstacle course for disabled people manoeuvring their way around shop signs and shop furniture, disabled people face risks attempting to cross roads safely, trying to access dropped kerbs often blocked by vehicles and facing difficulties getting around major building projects that impact on our roads and pavements. This lack of joined up planning is reflected in a feeling that change is sporadic, slow, and inconsistent.
8. There is little or no information in the public realm informing disabled people of their rights and providing information about what they can expect. Where information exists, it is often online and requires a considerable amount of time to find. Unfortunately, staff working in public bodies are not proactive in sharing information with customers.
9. Although there is some evidence that public bodies, such as local councils, are thinking about the Equality Act 2010, there is disappointment about the overall

implementation of the Act. It is felt that the Equality Act 2010 is not yet embedded into UK culture.

**How effective the public sector equality duty has been in practice:**

10. Although information is required to be collected by public bodies (including universities and colleges) about their disabled staff, openness and collaboration in looking at the information gathered for future planning is not yet common practice. The opportunities disabled staff networks offer for real collaboration with employers often remains unrecognised and underutilised. As a result, planning for disabled staff in meeting employer's obligations and duties is often decided by management only. This leads to disabled staff being left feeling frustrated and ignored.

**Reasonable adjustments, and how well this concept is understood and implemented:**

11. The experiences of colleagues in the Association in relation to reasonable adjustments have been mainly negative.
12. A colleague with a brain injury and visual impairment required reasonable adjustments, i.e. a large-screen monitor and magnification software in the workplace. They informed their prospective higher education employer about their disabilities and the adjustments they required and accepted the job. Even though the employer had three months to organise the adjustments before the start of this employment, the adjustments were not organised. Using their own determination and persistence, our colleague contacted the Disability Advisor in the workplace. This resulted in the magnification software being installed online with a month free trial, obviously one month was not long enough for them to continue doing the job. Due to this, they had to leave. This example demonstrates how the onus can fall on the disabled employee to manage the organisation or realisation of their own adjustments, in addition to managing their impairments, and how this can lead to the disabled employee losing their job beyond their control.
13. A colleague with similar disabilities worked in a university library and had their reasonable adjustments organised by their employer. However, this colleague wasn't guaranteed access to the PC with the adjustments they required installed. Their colleagues in the library felt uncomfortable asking other staff to leave the PC available. This led to considerable stress and a period of absence due to ill health. On returning to work, our colleague was told that managers couldn't stop other staff from using the PC that had the necessary adjustments, but that they didn't have to work if they didn't have access to that PC! Understandably, this colleague felt very upset that their employer didn't understand disability, and in practice didn't offer the support and reasonable adjustments required. Ironically, a number of courses on disability equality are run at that university!
14. The view was also expressed that disabled people do not want non-disabled people to feel sorry for us. Disabled people want the necessary tools and conditions provided as reasonable adjustments so that we can do our jobs, get to work, pace activities, use a PC, etc. Disabled people experience too many non-disabled people treating them inappropriately, taking over and doing the work for them. Disabled people often find

- themselves discounted on the basis of assumed inability when opportunities to engage in new activities arise, rather than being asked if they would be interested in exploring with them how reasonable adjustments might be used to support them. One colleague mentioned that it felt ironic that the focus appears to be on the institution's public image, being perceived to understand disability equality by running disability-awareness courses, but in practice not actually understanding the practicalities of access at all and not providing reasonable adjustments to their disabled staff.
15. It is reasonable for university students to expect accessible teaching, but for disabled teaching staff it is difficult to get adjustments in place to access the resources to make it possible for them to teach!
  16. Reasonable adjustment rights and duties are not fully understood by disabled people and employers in higher education. In higher education, the development of services to improve the implementation of reasonable adjustments for students has grown but understanding reasonable adjustments for employees and managers has remained poor. "Reasonable" has been insufficiently defined, which allows for too little clarity over what is "reasonable". This leaves the workplace open to debates and discussions about what is or is not "reasonable". This can be very off-putting to disabled employees and prevent them from requesting reasonable adjustments in the first place.
  17. Managers are unsure where the knowledge and responsibility for the judgement of what constitutes "reasonable" lies within higher education institutions, or elsewhere (e.g. the government). Employees are unclear about what their rights are and who can help them with information and resources relevant to assessing reasonable adjustments in their employment. This environment leads to the situation that employees do not always feel comfortable making a request for fear of being viewed as a "problem".
  18. Even when there is full commitment to fulfilling the legal requirement to be "reasonable", the lack of definition as to what this means can work against cultural change. Since the law focusses on individuals, there has not been a cultural shift yet towards structurally embedding the Act in practice and into a day to day awareness. Hence, there is a lack of progress in the implementation of the anticipatory duties of the Act.
  19. The experiences of our colleagues is that there are discrepancies between how different employees are treated in the workplace. For example, in some cases full-time staff appear to receive better treatment in comparison to part-time staff. This is experienced across sectors, not just in higher education.
  20. Within higher education there is a strong and positive focus on students and much expertise in supporting disabled students. Unfortunately, this expertise is not applied to disabled staff. As a result the development of inclusive workplaces and learning spaces for employees has not yet emerged.#
  21. Further, the focus on students being required to declare a disability in order to access "reasonable adjustments" for their studies, ensures they access specialist departments where the knowledge about "reasonable adjustments" is held by specialists and experts. This is not available to disabled employees and, as such, acts as a block to wider cultural changes that would benefit disabled staff.
  22. The imbalance between support for disabled students and disabled staff results in a negative impact on those disabled students who look to transition into employment in

- higher education. Such students go through their education with good support, reasonable adjustments, etc. Then, as soon as they become members of staff in higher education, they find themselves without that same level of support.
23. PhD researchers have a particularly complex and confusing position, as they often are student and staff at the same time. This requires attention.
  24. There is a “tick box” culture. For example, lots of higher education institutions have disabled staff networks, but the institutions do not support these groups with adequate resources (financial or other forms). This results in the situation that network chairs and convenors often attend meetings and work on behalf of networks in their own time, using annual leave to attend conferences paid for with their own money. Employers are, on the one hand, keen to have access to disabled staff to consult in relation to their equality strategy action plans and to demonstrate that they are meeting their legal obligations. On the other hand, employers are not fully supporting disabled staff working for and representing the networks and the institutions.
  25. The lack of resources also leads to the situation that networks are good for disabled staff to provide and receive peer support but that it can be very difficult to get colleagues to engage with them. If disabled staff networks were to receive better resources, support and time to attend meetings etc. in the workplace, disabled staff networks could offer better support to disabled colleagues and be a forum of expertise for employers. For instance, when there are issues in the workplace related to disabilities and reasonable adjustments, networks can offer a useful channel for issues to be progressed, escalated and resolved internally by reporting them to Equality & Diversity Committees etc. Networks can also help disabled staff access training towards confidence building, developing leadership skills, create opportunities to meet with disabled colleagues from other sectors to challenge poor practice at work and share experiences of good practice, to mention just some.
  26. There have been positive experiences where employers/managers have been proactive in implementing “reasonable adjustments”. As well as the positive practical impact of being able to work, Association members also indicated that they found the practical implementations helped them to feel valued and seen as equal. Sadly, these experiences are outnumbered by the negative ones. Worse still, when things go wrong, disabled staff tend to feel unable to access tribunals, often exhausted from the process they leave, in addition to their existing disabilities.
  27. When considering the journey to work, there are mixed experiences with public transport. Although bus and taxi companies in major cities appear to be making progress, train providers remain far behind in showing an understanding of their responsibilities for implementing reasonable adjustments. For instance, the “priority seating” in train carriages might lack clear directions to passengers as to the purpose of these seats, apart from a sign requesting these seats are given up for people who need them. In effect this means that disabled passengers do not have access to seats at busy times as non-disabled passengers voluntarily decide to “give up the seat”. This can create a humiliating experience for a disabled person as they have to request the whole carriage or particular individuals to vacate a priority seat, which is particularly difficult for people with invisible disabilities as they are then judged by the non-disabled passenger as deserving the seat. This is an example in public transport that understands disabled people as second class citizens who are not actually given



priority, or are not expected to be travelling at peak times. Before arriving at work, disabled people already face many obstacles.

28. We hope the evidence above will contribute usefully to your inquiry and look forward to your report.

Many thanks in anticipation.

Yours sincerely,

Dr Hamied A Haroon & Ms Jacquie Nicholson  
for the Founding Steering Group  
National Association of Disabled Staff Networks (NADSN)

*11 September 2015*

## **National Association of Licensing and Enforcement Officers and Parliamentary and Health Service Ombudsman – Oral Evidence (QQ 147-156)**

Members present

Baroness Deech (Chair)  
Baroness Brinton  
Baroness Browning  
Baroness Campbell of Surbiton  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### **Examination of Witnesses**

**Marie-Claire Frankie**, licensing solicitor at Sheffield Council, representing the National Association of Licensing and Enforcement Officers, and **Mick Martin**, Managing Director and Deputy Ombudsman, Parliamentary and Health Service Ombudsman

**Q147 The Chairman:** Good afternoon. Thank you very much for coming. I should explain that this session is open to the public and a webcast of it will go out live and is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and that too will go on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check it for accuracy, and it would be very helpful if you could return it to us as soon as possible with any corrections.

If, after this evidence session, you wish to amplify or clarify any points you make or have any extra points to make, you are welcome to submit supplementary evidence to us because, as you appreciate, we have to be pretty speedy going through the evidence. I know that you may well feel, once you have left, “If only I said this or that”. If you feel that, please write to us afterwards and we will take that on board. If a bell goes, that means there is a vote and we will have to adjourn for about 10 minutes while Members go downstairs to vote.

Would you like to introduce yourselves to us briefly? Then we will go on to the first question. Each of our members will declare their relevant interests, if they have any, before they put a question. Perhaps you would like to introduce yourselves.

**Marie-Claire Frankie:** I am Marie-Claire Frankie. I am the licensing solicitor at Sheffield Council. 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 licensing-related.

**Mick Martin:** I am Mick Martin. I am Managing Director and Deputy Ombudsman at the Parliamentary and Health Service Ombudsman. We provide final decisions on complaints about public bodies.

**Q148 The Chairman:** Thank you. I do not have any relevant interests to declare, but I will just mention the interests of Lady Campbell; because they are so numerous, it will save time. She is a patron of Just Fair; a patron of the National Disability Archive; founder and member of Not Dead Yet UK; recipient of a social care personal budget, disability living allowance and Access to Work. She was a disability rights commissioner throughout the life of the Disability Rights Commission and she was a commissioner of the Equality and Human Rights Commission for three years.

My question to you is: what role does your organisation or its members play in enforcing the requirements of the Equality Act? How significant a part do you think licensing authorities and ombudsmen can and should play in enforcing the requirements of the Equality Act? How much can be done using existing powers? If additional powers are needed, could existing regulations be amended or would primary legislation be needed? That is to either or both of you.

**Marie-Claire Frankie:** NALEO as an organisation has no role in enforcement, but instead, through the training that we do with licensing officers and authorities, we try to create a culture of good practice and equality compliance, reminding officers of the public sector equality duty. I feel local licensing authorities do not have as big a role as they could. It is really down to the local policies, which have limited impact. If I give you an example, in Sheffield, we require all our taxi drivers—when I say taxi, I mean private hire and hackney carriage drivers—to do a BTEC before we allow them to be licensed. Part of that BTEC has an equality module and, as part of that, there is a disability module as well.

That is great for all the drivers in Sheffield, but the Deregulation Act that came in in October means that drivers from other authorities can come and drive in Sheffield. Drivers who think that the BTEC is too big a hurdle to jump over in Sheffield will go and get licensed in a neighbouring authority and still come and work in Sheffield, which means that our local policy is diluted somewhat, because we still cannot ensure that the standards are as high as we would like. We feel that the existing powers are limiting. They could be much wider reaching.

In relation to taxis, as you know, only a few of the elements are in force. The provision in force in the Act in relation to guide dogs is really only efficient in relation to private hire vehicles, and that is because of the wording saying that you have to pick up a guide dog once your vehicle is hired. If a person with a guide dog approaches a hackney carriage on the street, it has not been hired at the point at which he is refusing to take them. It is another hurdle. They would be committing a different offence, that being that it is an offence to refuse a fare. That is the offence that the hackney vehicle is committing in that instance, rather than the guide dog one specifically under the Equality Act.

There is another issue that has come about with the Equality Act. I hear of experiences from other members, but most of my knowledge is of Sheffield. 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. That was our by-law. If somebody came and said, “I have a back injury. I cannot do that”, we would only issue them with a private hire licence so they were not driving a wheelchair-accessible vehicle. Now, with the Equality Act, there is the exemption in place so, if a driver cannot load

wheelchairs into his hackney, he can go to his doctor and get an exemption, and we have to issue him with the hackney driver's licence that previously we would never have issued. He now has the legal right to drive a hackney with the exemption, 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.

**The Chairman:** Is there any reason to think that loophole is exploited?

**Marie-Claire Frankie:** I will email round members, if that is something you would like me to come back on, but we certainly have drivers who previously only had a private hire badge and now we issue them a joint licence, and they can drive both if they choose. I will survey members. Sorry, give me a moment while I write that down.

**Lord McColl of Dulwich:** Your city has made possible what you want, but other people come in from other authorities. How can we get at these other authorities?

**Marie-Claire Frankie:** The Deregulation Act has made that legal. If you are licensed as a hackney driver in Sheffield or any other authority, you can legally go and drive as a private hire vehicle anywhere else in the country. That is what the law says now.

**Q149 The Chairman:** Regulation has a bad name, but deregulation seems to have hit the disabled community particularly badly. Do you think more could be done, if people were willing, under existing regulations; or, assuming it is a good idea to use licensing, is there a need for primary legislation? How can we put some real drive behind this?

**Marie-Claire Frankie:** Primary legislation is always helpful, but there are amendments that could be made to existing legislation. Take the guide dog section in the Equality Act. In Sheffield, I have prosecuted a driver for failing to carry a guide dog. We went to court. He pleaded not guilty. He was found guilty, after an argument where I said it was on him to satisfy himself that the dog was a guide dog or an assistance dog, as it was. It was not what people see as your standard disability dog; it was a small Pomeranian. But 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. As is his right, he appealed to the magistrates' court. I do not know if you are aware of the Local Government (Miscellaneous Provisions) Act 1976; that is where the powers are to revoke and suspend licences. Under Section 61, you can revoke a licence for offences of dishonesty, indecency or violence; offences under the 76 Act or any taxi regulations; or for any other reasonable cause. We had to use the "any other reasonable cause" arm, 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 so that it covered convictions for dishonesty, indecency, violence or under the Equality Act would at least show magistrates that local authorities should take taxi licensing seriously, rather than it being under the catch-all, which is always harder to satisfy.

**The Chairman:** It must be better to make sure that people are going to observe the equality provisions before they start work, rather than taking their livelihood away from them, which is even more drastic.

**Marie-Claire Frankie:** Absolutely. It is very draconian step, but they have the training; they have passed the BTEC; they know what the position is. We took a hard line, which was fine.

**The Chairman:** Mr Martin, what do you think about enforcing powers? How can we beef this up?

**Mick Martin:** We think the ombudsman service has an important role in ensuring that organisations meet their requirements. The way we do that is by making sure, when we look at the complaints that come to us, that we are looking at all the legislation, all the policies, all the requirements that the organisation should have been adhering to when providing the public sector experience that the individual has come to us about. We find, very often, that that has not been the case.

We see our role as looking at each of those individual experiences on the merits as they come to us, investigating what should have happened, what did happen, looking for the gaps, which includes all the issues that would be covered by the Act. Our focus is not simply to identify if the organisation has failed to meet those obligations, but also to evaluate what learning and improvement is needed locally, so that not only does the individual who has come to us with the complaint experience the improvement, but thereafter the organisation demonstrates that they have changed their practice, so people who come afterwards get the appropriate treatment.

**The Chairman:** How do you feed that back and make sure they learn the lesson?

**Mick Martin:** We undertake the investigation and we, as I have hopefully indicated, focus on the individuals involved. We are very mindful that, in a public service environment, there are individuals on both sides. There are the people who have experienced the service, but there are also the people on the ground who have delivered the service. We work closely with both those sets of people and, at the end of that, reach a set of findings and recommendations via a report, which explains what we have found, what we think the issues are and, very importantly, what we think the local organisation should be doing about that to put it right.

We then seek the organisation's agreement to comply with our recommendations. We have a significantly high level of agreement to our recommendations and we have the recourse via Parliament when our recommendations are not adhered to. We then have a role in going back and following up with those organisations to ensure that action has been taken as promised.

**The Chairman:** It seems to me that the word "ombudsman" is used to cover a whole variety of people who can intervene: some who look just at the process and some who go further, as it seems to me you do, who suss out what is wrong and try to make sure that it can be righted. The word "ombudsman" covers a whole variety of interventions, does it not?

**Mick Martin:** Your observation is very accurate. If you take ombudsmen as a population, they all have different approaches to how they do their work. They have different focuses in terms of what they concentrate on. Our perspective on this I would divide into two. Our priority is always about making sure that we are looking to what has happened for the individual and, where necessary, getting justice for the individual who has come to us, but we believe the ombudsman's role is much more than that. It is also about pulling out the learning and insight that comes from the cases we are seeing, and engaging and working with public organisations to identify what can be done to improve services.

That is a difficult job to do, because of the demarcation we have to have between ourselves and the service providers, the system, so that we are able to maintain our independence and impartiality. That is a difficult balance. We err on the side of trying to gather as much

information as possible about not only what has happened but why it has happened, so we can then start to provide our insight and support for improvement.

We think that is the right dialogue to have. I would demarcate it from the other elements of the system. Whereas we are not the courts and therefore enforcing the law, and we are not commenting on, for example, government policy on how the law is provided, we are focused on learning, making sure people get a full explanation and making sure that, where there are problems, they are addressed.

**Q150 Lord McColl of Dulwich:** Who are the primary licensing authorities for improving the implementation of the Equality Act in practice? Is it primarily local authorities or are others involved?

**Marie-Claire Frankie:** I would say, yes, it is primarily local authorities responsible for licensing. DVSA regulates PSVs. In terms of enforcing, it is the licensing authorities with that power.

**Lord McColl of Dulwich:** How successful are they in practice? Do we have any figures?

**Marie-Claire Frankie:** No, we could not get figures. Most local authorities do not have much to enforce. We have the provision on the guide dogs for taxis, and most authorities have investigated or enforced on that. Again, when I am sending a circular around asking how many exemptions have been issued for hackney vehicles, would you like the question to be asked as to how many prosecutions there have been?

**Lord McColl of Dulwich:** That would be helpful. Thank you.

**Marie-Claire Frankie:** I can get numbers. In terms of improving implementation, the Department for Transport issues guidance. It could address the Equality Act in its guidance. If the Law Commission's taxi Bill moves further, there could be something in there requiring drivers to have equality training beforehand, rather than it just being local policy. To your question earlier of how we counter the Deregulation Act, if it is made a requirement that all drivers have to do it, that would be a way to get around it.

**Q151 Baroness Thomas of Winchester:** Could I ask about premises? We have only talked about taxis, but premises come into this too. So many premises are not accessible: pubs, cinemas and all sorts. Some of them are a bit, but not as much as they should be. Is there something you can do about that?

**Marie-Claire Frankie:** Accessibility is generally dealt with by planning, so it is pretty much all done and dusted before they get to applying for their licence. It is much easier for newer buildings, because the health and safety people will build in disabled ramps as a requirement. In terms of old buildings that are already licensed, it is very difficult and it is a planning matter.

**Baroness Thomas of Winchester:** The country is absolutely full of old premises. Is there nothing the licensing authority can do?

**Marie-Claire Frankie:** There is nothing, because at the moment, in the Licensing Act, there are the four licensing objectives. What could strengthen the licensing authority and give them the ability to enforce it is to make a fifth objective related to equality. It could be the promotion of equality, inclusion and diversity. That would then give the licensing authority power when they are out in the premises, as they are every day—they are out in premises; they are out looking at taxis—rather than them having to have a friendly word in somebody's ear.

It is not just accessibility; it is people who complain that they have been stopped coming in because of their sexuality, or large groups of males who have not been allowed into a venue

that is letting only females in. At the moment, all we can do is write to the premises and remind them of their duties under the Equality Act. We have no teeth. In relation to licensing of premises, the Equality Act is pretty much a blunt instrument as far as we are concerned.

**Baroness Campbell of Surbiton:** Does it work? How often does one of your letters result in change of practice, access or whatever? Do you keep a dossier?

**Marie-Claire Frankie:** No. For example, they turn up and the disabled toilet is locked. It would be an advisory word to the management, because we do not have the power to take anything further. Even though the licensing authority is a responsible authority, there is nothing specific in the Licensing Act under which it can chase them up.

**Baroness Campbell of Surbiton:** I understand that. What I would like to know is: when you have that friendly word or you write to them, what are the results? Do you know if that makes a difference or if you might as well not bother?

**Marie-Claire Frankie:** It would put that premises on the radar so, when officers went out, they would continue looking to check that the breach had been remedied or that it was unlocked. It is a little easier with taxi drivers. We used to find a lot who did not have their wheelchair ramps or, worse, had the ramps but had no idea how to use them.

**Baroness Campbell of Surbiton:** Do you take a record of your interventions?

**Marie-Claire Frankie:** Yes.

**Baroness Campbell of Surbiton:** Do you have a percentage of what has worked and what has fallen on deaf ears?

**Marie-Claire Frankie:** No.

**Lord McColl of Dulwich:** Supposing an inspector finds the thing locked, what is to prevent him unlocking it?

**Marie-Claire Frankie:** That would be part of the inquiry.

**Lord McColl of Dulwich:** You would do that.

**Marie-Claire Frankie:** Yes. Often—maybe not often; that is probably unfair on premises—sometimes they will unlock it and it is full of toilet rolls or dry mix for the drinks, so it is clear that the intention is not that it be used for a disabled toilet.

**Q152 Baroness Browning:** I should declare my interest as a vice-president of the National Autistic Society and the Alzheimer's Society, and as a patron of Research Autism. Do you think the licensing authorities and ombudsmen should be taking greater account of court cases that are brought under the Equality Act, and, for example, warning service providers that their trading licence is at risk? Once it has been determined in court and becomes case law, presumably that gives you more teeth in a wider area. How do you think people can keep up to date, and how do you yourselves keep up to date, with what is coming out of the courts?

**Mick Martin:** It is a very important part of our investigative work to make sure we reflect the legal environment and the precedents coming out of court cases when evaluating whether an organisation has or has not complied with the requirements that we would expect. I would go a bit sideways and say that it is about evaluating whether or not things happened as they should do, but it is also about making sure we are doing that in accordance with what other professional bodies, in addition to the law, require. For example, the General Medical Council and the General Dental Council are also important places where we keep up with precedent.

Where we find examples of poor practice and point them out, all three of those approaches are available to us to progress. If we feel it is appropriate to refer it for more legal action, for

example, we have a small legal department that ensures we keep abreast of legal developments. We have relationships with all the professional bodies.

To give you a real life example, because it is really important to bring it alive through examples, a recent case that we looked into involved a gentleman who was autistic. He had trouble with lights and being in places where there were lots of people. He asked his GP surgery if they would allow him to wait in his car prior to the doctor being ready to see him. He also asked, because he had trouble building relationships with new people, if it was possible for him to see the same general practitioner, even if that meant postponing his appointments. The general practitioner denied him both of those things.

We found, of course, that the general practitioner was at fault, but we also followed up to make sure that they not only fixed it for him but they changed their practice and trained two of the practice partners to make sure that, if not just those events but a very broad set of events happened in the future, they would behave very differently. We have the recourse to the professional bodies if we do not feel compliance is forthcoming. The powers of the ombudsman have such wide discretion that we can pursue that quite hard, if we need to.

**Baroness Browning:** On the licensing side, once a court case has been determined, can you use that as a lever in the licensing process to say, “Look, under case X, this is what was determined and you are doing exactly the same thing”? Can you make the licence conditional upon that or warn them that they really ought to do it because they are in legal danger?

**Marie-Claire Frankie:** We would be able to do nothing in relation to licensed premises or Licensing Act 2003 matters. The only position in which we could warn people that their licences are at risk is in relation to taxis. If we found, specifically again, that they did not pick up a guide dog, we would have to take the individual prosecution. Sheffield advertises, as a matter of course. We have a newsletter, which goes out to all our drivers—it used to be quarterly; it is now twice a year—detailing any successful prosecutions, what they were doing and reminding drivers of what they should do and that their licences could be at risk if they did not take guide dogs, for example.

In relation to premises, the way we get equality messages across is that we require premises to be members of what is called Pubwatch. There are local meetings in local areas. All the premises from a specific postcode will have monthly meetings and, as part of that, the equality duties are spoken to by licensing officers who attend. 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.

**Q153 Baroness Campbell of Surbiton:** Mr Martin, I would like to explore with you the possibility of a disability ombudsman. Shall we start off with this: do you think there is a need for a disability ombudsman?

**Mick Martin:** The overwhelming point is that it is essential that all individuals have access to justice, through whatever mechanisms we come up with. We would take the starting-point view that the landscape of ombudsmen is already very crowded but, more importantly, very confusing for the public who might want to utilise it. Therefore, we have a big push on awareness and access to ombudsmen, which is a really important part of the jigsaw puzzle. Our push is in the opposite direction from creating individual ombudsmen for particular things, and I would suggest two reasons for that.



The first reason, which is the most important, is that 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 disabilities Act. We think it is important to deal with those issues in the round, from the point of view of the service that has been experienced.

To bring that alive for you, 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 provided because that person had disabilities that were not catered for by the healthcare provider. That is in the context of the care that was provided. Therefore, breaking up the different types of things that people are experiencing is quite hard to do.

The second area is that, 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 subject-specialist ombudsmen. We have found, in the work we have done trying to get to hard-to-reach groups, that their propensity to complain is very low. Their access to advocacy and other areas of support is slight. Therefore, we think the emphasis should be on making the route to support simpler and much clearer, and that is not aided by having different ombudsmen for different things.

**Baroness Campbell of Surbiton:** You would say no, in terms of a disability ombudsman, on balance?

**Mick Martin:** The existing system seems to us to have three components, one of which is enforcing the law via the courts; the second is the ability to challenge policy. The ombudsman route is about having a really simple, joined-up service for the citizen whereby, whichever set of issues they have had with the public organisation, they are able to easily access and easily respond.

It might be worth giving the context of that. About 34% of people who come to use our service are people with a disability. That is partly because people with disability use public services more fully, but it places a real emphasis, in our work, on making sure we understand those needs, in terms of both the service they have had from a public body but also how we can best provide the service and how flexible we can be to the needs. I would suggest that the organisation doing the ombudsman work has more flexibility to respond to people's needs if it is a larger body covering a larger number of areas.

**Baroness Campbell of Surbiton:** Yes, I see that. Do you think disabled people know enough about what a more generic ombudsman does? Do you think, if there was a disability ombudsman, they might identify more with that, so there would be more activity between disabled people and the ombudsman; or are you confident that disabled people use your services in a way that is primarily affected by the fact that they are a disabled person? Should there be some kind of disability enforcement or arbitration?

**Mick Martin:** I would say there is a lot more work to do—a lot more work that we can do; a lot more work that hopefully a single public sector ombudsman will do—to raise awareness of what ombudsman services provide and how to access them simply. I would put that in the context of a broader issue, which is that, in our view, the constraint on all citizens, particularly those with disability, is in terms of encouraging them to complain and to raise issues in the first place.

The right place to place emphasis initially is to make complaining a much more prevalent thing when something has gone wrong. The barriers to that are that it is hard to do, it takes

too long and many of the people who should be complaining, often people with disability, do not do that because they do not believe anything will change as a consequence. The agenda for ombudsmen in responding to that is large in that context, because that helps every citizen, but it particularly helps people with disabilities.

**Q154 The Chairman:** Ms Frankie, can I clarify one thing? Going back to licensing premises, were you saying to us that Sheffield, for example, can give or withhold licences for premises, but you cannot withhold a licence as a lever to make the licence holder adjust the premises as necessary for disabled people? You cannot use that as a lever; is that what you were saying?

**Marie-Claire Frankie:** As I have said, we have no teeth in relation to licensed premises. 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.

For old and existing premises that transferred over before the Licensing Act, there is not anything that we can go back and revoke licences on or anything that we can add conditions on. 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, there would be a mechanism to get it before a committee, to enable the local authority and the licensing authority to do something.

**The Chairman:** If we were able to wave a magic wand and add a condition, to which statute would it be added?

**Marie-Claire Frankie:** If it was to the Licensing Act 2003, currently there are four objectives. The licensing authority is a responsible authority under the Act. You have the police, who are the leaders in crime, and in safeguarding children. If the magic wand created that fifth objective, 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 have the mechanism there to add conditions to it or, in extreme cases, to revoke the licence.

**The Chairman:** That has made it clear. Thank you.

**Baroness Thomas of Winchester:** Is that primary legislation?

**Marie-Claire Frankie:** It is, yes, the Licensing Act 2003.

**The Chairman:** That is why you need a magic wand.

**Q155 Baroness Brinton:** Mr Martin, earlier you referred to individual enforcement through the courts. Some witnesses have suggested to us that complaints to licensing authorities and casework-style enforcement, such as provided by the ombudsman, would provide a more accessible route to enforcement than reliance on individual cases going through the courts. Do you agree and, if so, what characteristics of the models make them more accessible. If you do not agree, what makes them unsuitable?

**Mick Martin:** I would say, initially, I agree, but it is important to keep demarcating the different roles that are here. It is not the role of ombudsmen to enforce legislation. It is the role of ombudsmen to identify where things have gone wrong for citizens and make sure they get justice in doing so. That is a demarcation.

The reason why I support it is because the real area of value for this process is about learning and improvement. One of the most satisfying things for an ombudsman service is when we are able to join the person or people who are providing the service with the person

who has experienced the service. We have lots of examples where, when we have shared with the organisation and the people within the organisation how people have experienced that service, how someone with disability has been disadvantaged, how they have been poorly treated, not as a consequence of people behaving badly but because the systems were not designed properly and people were not thinking about the right way of providing their service, that has added real value.

In order for that to be successful, the attitude of that dialogue has to not be confrontational; it has to be about engaging and learning. Ombudsmen have a really important role to play in that. That is about getting justice for individuals, but doing that in the context of the fact that most people who come to the ombudsman do not want to allocate blame. They do not want anyone punished. They want to have a firm understanding of what happened in their case. They want to be heard by the organisation that has treated them in that way. They want people to understand what it means and how it felt.

That is such an important area. The access to that form of judgment so people can recognise what has happened, understand what the remedy is and then move on is a crucially important part of what this whole composite answer requires.

**Baroness Campbell of Surbiton:** What is your success rate? Again, do you keep a dossier of successes and failures, because there must be a few failures where that just does not happen?

**Mick Martin:** Yes, absolutely. I will break down some information for you. We investigate formally about 4,000 complaints a year and we find, in about 1,500 cases, that there are some issues that need to be addressed by the service provider. As an ombudsman, it is really important to stress that, in doing our work, we are also able to provide assurance to the citizen that they had the service they should have expected, that the organisation did comply with the policies, practices and legislation. It is really important, for our role as an independent and impartial body, that we are as focused on assuring people that the service provider was good as we are at looking to find fault.

Nevertheless, for every one of those 1,500 cases where we have found fault, we have produced a report; it has findings and recommendations; it has specific agreement from the organisation to those findings and recommendations. We track compliance with our recommendations and follow up on every occasion when that is not the case.

**Baroness Brinton:** Ms Frankie, do you want to add anything to that?

**Marie-Claire Frankie:** From a licensing perspective I would agree that going through the licensing service would make enforcing the Equality Act much more accessible for people. There is the core process, the gathering of evidence and the costs associated with that. The licensing service has the infrastructure to deal with it. It has legal services there, which can take matters to court. But we can only investigate complaints that we have the powers to investigate under the Act and that we have the powers to enforce, which leaves for us the element of taxis for the sections that are in force.

We spent a long time, in the taxi prosecution that we did on the failure to pick up a guide dog, with the complainant's mother. She explained that she thought the Equality Act was going to be great for her, because, when she was phoning for a taxi for her son, who has quite complex needs, it meant she did not have to tell the operator that he was going to travel with an assistance dog. No drivers, once they had seen the dog on the data head when taking on the job, would pick him up. She thought, "This is great. I do not have to declare that I have a dog and drivers still have to go and pick him up".

But, because of the nature of his needs and his visual impairments, it has instead ended up worse, because he will stand there and not be picked up. The nature of his needs means that he cannot tell if the taxi has driven past him. He cannot report the number of the taxi that has not picked him up. All the driver does is press “no pick-up” on his data head and the complainant is in a position where he cannot do anything about it. On this particular occasion, where we were able to prosecute on behalf of this lady and her son, it was only because she was with him that she was able to get the information required in that instance. That is a taxi offence that we can enforce and prosecute for, and we are prepared to do it. We get so many other complaints where there is little we can do. There was one just the other week of a lady who had ordered a taxi. She was in a wheelchair but was happy for her wheelchair to go into the boot of the private hire vehicle. The private hire vehicle turned up and the boot was too small for her wheelchair to fit in, so the taxi company sent her another one but charged an extra £5 for sending a larger vehicle. When we took it back up with the operator, they said, yes, that is their policy. If a larger vehicle happened to turn up in the first instance, then there would have been no extra charge, but, specifically because a larger vehicle was required, there is this additional £5. At the moment, it is legal for them to do that.

We have local music venues about which disabled people contact us, saying that they made themselves known when they got there or when they bought their tickets, and the venue charged them to set up a small disabled viewing platform so they could see the stage. That has been an additional charge for them. Again, these are complaints that we get, but we have no way of doing anything with them. As local authorities and licensing authorities, we would like to be able to do something, and at the moment we cannot.

**Q156 The Chairman:** Coming back to Mr Martin for a moment and being interested in the ombudsman’s service, you said you were dealing with 4,000 complaints a year. Off the top of your head—you may not know the answer—how many staff do you have and do you have any idea what your annual budget is? I am just thinking about an ombudsman’s service and what it might cost the taxpayer.

**Mick Martin:** To give you the scale of that, we have about 400 employees and our annual budget is, I think, £32 million a year. We operate in locations in London and Manchester and we have employees who provide primarily three operational services. First, importantly, we have a role in trying to reconnect people who contact us back into the local service provider, because we recognise that local resolution and local learning is by far the best outcome. Secondly, we have people who are looking into the cases—they look into about 7,000 a year—to see whether or not we think there is merit in the case, but also to see if we can deliver an early resolution. Then we have 4,000-plus formal investigations a year, where we are letting the organisation know that we are investigating their activity: we provide our investigative service and, at the end of that, we produce a report with our findings and recommendations.

**The Chairman:** I am just beginning to wonder what a disability ombudsman service might cost if it ever came into being. That is why I asked you. Ms Frankie, bearing in mind these very sad stories that you have been telling us, if you could have more powers, what would you like? Again, take out the magic wand. You have already mentioned an extra power in—

**Marie-Claire Frankie:** The Local Government (Miscellaneous Provisions) Act 1976.

**The Chairman:** Yes. Is there anything else that would give you the clout you clearly need?

**Marie-Claire Frankie:** We just need the powers to enforce and the powers to take action against the licensed premises. Licensing is self-financing, so it does not come out of taxpayers' money. The worst-case scenario is that licence fees go up, as they should, because you are checking compliance with the law of the people who are benefiting from it.

**The Chairman:** That extra condition in the Licensing Act would give you the power in every sphere to say, "We are not going to license you unless you can assure us that the premises are fit for disability use".

**Marie-Claire Frankie:** The Licensing Act is set up so the presumption in the very first instance is that the licence is granted, unless there are objections with evidence. It would be very difficult to have a premise and say, "You are not going to use the toilet correctly". But, when there is the evidence to show that they were in breach of equality-related matters, there is the provision to bring the licence back for review, and that is in the Licensing Act and in the Gambling Act, so covering all gambling premises.

**Baroness Pitkeathley:** You say licensing is self-funding. Can you give us a figure about what the licences cost to the people who apply?

**Marie-Claire Frankie:** There is not just one figure. It is impossible to do that. The Licensing Act figures are centrally set, so, if licensing authorities were going to be given additional powers, that would probably have to be addressed, or they would have to be locally set. They would still have to be accountable, so, if there was a deficit or credit at the end of the year, it would roll forward, because you cannot make a profit from it. But the Licensing Act fees are centrally set, depending on the size of the building, how many people it can fit and that type of thing.

**The Chairman:** Thank you both very much. We appreciate your concern for access to justice. That was very interesting. Thank you very much indeed for your time. If you think of anything else, please write in.

*1 December 2015*

## **The National Deaf Children's Society – Written Evidence (EQD0053)**

### **Introduction**

The National Deaf Children's Society (NDCS) is the leading charity dedicated to creating a world without barriers for every deaf child. There are over 45,000 deaf children in the UK. We welcome the opportunity to respond to the Committee's call for evidence on the Equality Act 2010 and Disability. Our response is informed by our work to support families in appeals against decisions that disadvantage deaf children.

NDCS uses the Equality Act in our work across Great Britain, including in the devolved administrations. Largely for reasons of space, our response focuses on how the Equality Act is used in England though many of the issues we identify apply equally in Scotland and Wales.

### *General*

#### **1. Has the Equality Act achieved the aim of strengthening and harmonising disability discrimination law? What has been the effect of disability now being one of the nine protected characteristics?**

- 1.1 We believe that the Equality Act has been positive in harmonising and strengthening legislation. One key strength is the new duty on schools and local authorities to provide auxiliary aids to deaf children.
- 1.2 One possible negative effect has been in relation to the broad requirement for public bodies to set 'equality objectives'. Public bodies are only required to set one objective and to review this every four years; there is no requirement that the objective cover disability equality. This means that, over a four year period, a public body may only have an equality objective relating to, for example, gender equality, without any specific focus on disability equality.

#### **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

- 2.1 The lack of read-across to the UN Convention on the Rights of Persons with a Disability is one key gap. Many of the young people and families we work with are confused that the UK is a signatory to the Convention but that their rights under the Convention cannot be directly enforced within the UK.
- 2.2 Another gap is in education. Local authorities are required to produce accessibility strategies to promote equality in education. However, many schools in England have become academies and so are independent of local authorities. As far as NDCS is aware, there are no similar duties on academy chains to produce accessibility strategies.

**3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?**

- 3.1 No. Among families, we find that there is a poor understanding of their rights under the Equality Act. A survey of NDCS members in 2014 found that only 8% had received any training or information about deaf children's rights in relation to discrimination. We recommend that more be done by the Government and the Equality and Human Rights Commission to raise awareness.
- 3.2 In education, Tribunals have the power to hear cases under Equality Act legislation. However, we understand that very few cases are actually brought to the Tribunal, which again suggests a poor awareness among families of their rights under the Equality Act.
- 3.3 We find that there is also a poor understanding among public bodies of their duties. In the aforementioned survey, 35% of families reported that their local authority or school had failed to provide any information about the provision of auxiliary aids and services. 64% of families in England and Wales had never seen or were aware of the existence of an accessibility plan at the school.
- 3.4 In health, NDCS's My Life, My Health campaign heard from deaf young people of widespread failures to ensure access to health services. Examples include systems where appointments can only be booked by telephone and sign language interpreters not being provided when requested.
- 3.5 One specific issue and concern relates to the trend for services to be sub-contracted to private bodies. In our experience, we find that private bodies have little knowledge or awareness of the Equality Act. Specifications by public bodies rarely seem to be state that the private body delivering the service must have a good awareness of the Equality Act and their obligations under it.

*Reasonable adjustment*

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

- 4.1 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. There is also a risk that any 'standardisation' or minimum legal requirements would then lead to a situation that public sector providers only provide the bare minimum required, even if it might not be unreasonable for them to provide more support.

4.2 This notwithstanding, NDCS would agree that further clarification should be provided to bodies around their legal requirements when it comes to consider how to reach a decision on what is or isn't a reasonable adjustment. We would also recommend that more be done to publicise existing examples of case law or Tribunal decisions to help services and the public consider how to reach a decision on what a reasonable adjustment looks like.

### *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**

5.1 The duty has been effective in a number of cases that we have worked on. Some of the positive outcomes that we have achieved through citing the duty include:

- A local authority (Stoke on Trent) which reversed an earlier decision to reduce the number of Teachers of the Deaf after being reminded that it not demonstrated that it had regard for the impact this would have on deaf children.
- The Department for Work and Pensions agreed to look at its decision-making process for Disability Living Allowance (DLA) benefits after we suggested that deaf children were being disadvantaged by a general failure to collect evidence from specialists in deafness for DLA claims from parents of deaf children.

5.2 However, we feel that the duty has not been as effective as it could have been. Some of the possible reasons for this are touched upon elsewhere in our response. They include: lack of awareness of what the duty involves; costs involved; and the adversarial nature of making claims.

5.3 We do not always feel that the Government leads by example in considering the public sector equality duty. For example:

- We do not feel that the Department for Work and Pensions (DWP) considered its public sector equality duty when introducing the new Personal Independence Payment (PIP) benefit for disabled adults over the age of 16. This is reflected in the fact that the claim process largely relies on being able to use a telephone. An email option was introduced at a later point and is not, we feel, widely publicised. An online claim form has yet to be introduced, even though the benefit has now been fully rolled out. In addition, where the telephone claim process is used, claims are backdated to the first point of contact. However, where an application is made by email or post, claims are backdated to when DWP receive the requested information by post, even where a disability prevents someone from making a telephone application. However, DWP do not accept that this might amount to indirect discrimination.



- In recent years, the Department for Education have made a number of changes to the curriculum including a move away from modular exams and coursework and a move towards longer examinations. There appears to have been no substantive consideration of the impact this might have on disabled pupils. For example, deafness and delays in developing communication and language can sometimes cause issues with working memory which means that deaf young people may struggle to demonstrate their abilities in long examinations.
- Separately, governments in England and Wales are considering reducing the support provided to disabled students via Disabled Students Allowance. This is being justified on the basis that universities are already subject to a duty to make reasonable adjustments. There seems to be an implication that this absolves the Departments of considering their own public sector equality duties in making such a significant change. 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.

5.4 We have similar concerns about inspection bodies such as Ofsted and the equivalent education inspection bodies in the nations, and other inspection bodies such as the Care Quality Commission. For example, the Special Educational Needs and Disability Act enables Ofsted in England to monitor and inspect the adequacy of accessibility plans and strategies. As far as we are aware this is rarely done which itself raises questions about the extent to which inspection bodies comply with the public sector equality duty in their own work. Furthermore, the most recent annual report from Ofsted contained only a very brief reference to children with disabilities or special educational needs. Similar concerns apply in other parts of the UK.

5.5 We recommend that more guidance is made available on what it means to have “due regard” for the impact of a decision, under the public sector equality duty. It is established that a public body does not always have to produce an equality impact assessment. However, it is less clear that what a public body **does** have to do to demonstrate that it has had due regard.

**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?**

6.1 No response.

*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?**

7.1 Possibly. We feel that the knowledge of the Equality Act varies from department to department and among civil servants. It is also unclear to what extent the Minister for Disabled Persons has responsibility for championing the Equality Act 2010 within government and ensuring that all government departments, including those in the nations, achieve best practice in applying the public sector equality duty. As set out earlier, the Department for Work and Pensions, in which the Minister is based, does not always appear to have a good understanding of the public sector equality duty in relation to its own work. This can make it more difficult for NDCS to, for example, challenge other bodies to ensure that deaf young people are able to contact them using a range of mediums, including email, text messages and online forms, when the Department seem reluctant to offer this in relation to a benefit claimed only by disabled people.

**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?**

8.1 We feel that the Commission has had mixed success. The clear guidance produced by the Commission on how the Equality Act should apply to different bodies has been helpful. In addition, cases that the Commission has pursued has also helped to develop good case law, which has wider benefits.

8.2 However, the Commission is limited by the fact that it no longer gives public advice on how to apply the Equality Act 2010. Although the EHRC Helpline was replaced by the Equality Advisory Support Service (EASS), this is an entirely separate body to the EHRC. Having direct contact with the public gave the EHRC the benefit of picking up on trends in cases which could be responded to through casework with a wider public interest or guidance to statutory bodies. EASS has also limited impact as it does not give legal advice. We also note that the number of cases that the Commission now pursues is much lower than it was before 2010. We feel that the impact of cuts to the Commission's budget has had the practical effect of silencing the Commission.

8.3 The failure to give all of the Commission's guidance statutory enforcement status has also caused confusion to bodies and, in some cases, has resulted in guidance simply being ignored or overlooked. The guidance for employers is extremely useful and it is clear to employers that this is guidance which must be followed as it has statutory enforcement in the Employment Tribunal. However, this is not the same for the guidance for schools, which are often unaware of the Commission's guidance.

8.4 We are aware of one case where a school only became aware of the guidance during the course of Tribunal proceedings. In this case, NDCS represented a 15 year old deaf pupil

who had been chosen by his school to join a school ski trip. However, he was told by the school that he would not be allowed to attend unless his parents paid for a sign language interpreter to go with him. This case was taken to the Special Educational Needs and Disability Tribunal who ruled that the school should pay for the interpreter as their duty to make reasonable adjustments and that the school should have undertaken equality awareness training. It would have been far more useful and may have avoided proceedings had the school been aware of and taken heed of EHRC guidance beforehand.

**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?**

9.1 Yes. We believe that Ofsted and equivalent bodies in Scotland and Wales should do more to consider whether an education provider or local authority is compliant with its duties under the Equality Act as part of its ongoing inspections. Ofsted, for example, already has a range of powers in this area but it does not seem as if they are exercised to any great degree. We recommend inspection bodies review and change its approach to inspection in light of this.

9.2 We note that the relevant Select Committees and their equivalents across Great Britain rarely seem to scrutinise the work of the departments they shadow in terms of the Department's compliance with the public sector equality duty. We recommend that consideration be given to asking each committee to hold one session a year on to what extent the Department has successfully taken steps to promote equality and eliminate discrimination.

**10. Are the current enforcement mechanisms available to private individuals accessible for people with disabilities, employers and providers of goods, facilities and services?**

10.1 In practical terms, changes to legal aid mean that it is harder for private individuals to challenge badly made decisions and ensure that the law is enforced. Whilst children are still eligible for legal aid in many areas, it can still be challenging, complicated and time-consuming to apply for and receive funding. We also find that the decision on legal aid can be arbitrary. We are aware of cases whereby a family has been rejected on their first application for legal aid and then accepted on their second, without any change to their circumstances. We recommend that action be taken to improve and streamline the legal aid application process.

10.2 It can be difficult for people to obtain legal advice on a discrimination claim. The technicalities around submitting a claim (such as understanding what type of discrimination you may have suffered) and knowing where to take a claim can be very difficult for a lay person to understand. For example, a claim for failure to make reasonable adjustments in education in England may be against a school or local authority, or in some cases both. Claims against schools are heard by the Special

Educational Needs and Disability Tribunal which has no jurisdiction over local authorities. Claims against local authorities must be taken through the County Court. In some cases, families face the potential in having to lodge more than one claim for the same issue.

- 10.3 Most charities do not have the benefit of legal casework departments. Although individuals can contact the EASS, this advice and support is limited as it does not give legal advice. The Civil Legal Advice Gateway for legal help in discrimination is also problematic and inaccessible. There is a lack of face to face support whilst the paperwork and documentation involved can militate against the most vulnerable potential litigants being able to get past the initial assessment stage. Individuals are therefore left either trying to obtain funding, paying for legal advice or working their way through the complexities of a challenge themselves.
- 10.4 Another concern is the length of time that it can take for some claims to be heard and for a resolution, particularly outside of education where parents have recourse to Tribunals. We recommend that the inquiry consider if the County or Sheriff Courts could be able to hear claims to help ensure there is quicker relief and remedy.
- 10.5 We also feel that the powers of the Courts need to be strengthened in some areas so that they can order public bodies to take action to remedy a failure to meet their duties under the Equality Act 2010. We understand, for example, that where a court would find a university had failed to make reasonable adjustments, the Court would have no power to direct the university to then make the necessary reasonable adjustments.
- 10.6 We are aware that many families may not attempt to challenge a decision, fearing that there will be negative consequences for themselves or the child, especially if they are unsuccessful. We recommend that steps are taken to make the system less adversarial. In particular, we would welcome a formal mediation service being introduced (as opposed to the current informal service offered by EASS) that families can pursue in advance of any claim. Mediation has been introduced in England to appeals relating to the statutory assessment process for Education, Health and Care plans under the Children and Families Act 2014, and we believed that may provide a model for wider claims under the Equality Act 2010.

## **11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

- 11.1 Yes. As well as a duty to set an equality objective, NDCS feels that public bodies should also be required to set a mandatory objective in relation to disability. We also feel that a four year review period is too long, creating a risk that any objectives set would quickly be forgotten or that a situation where the objective is clearly not being met would be allowed to continue for too long.

11.2 Separately, NDCS notes that while public bodies have had to have due regard to the impact of their decisions during policy formation, there is no duty to review the impact of a decision once it has been made and implemented. This removes any obligation for the public body to consider if their decisions have unintended consequences or have been more severe than originally anticipated.

11.3 One specific issue in which we recommend clarification be issued relates to regulation 4 of the Equality Act (Disability) Regulations 2010. The regulations exclude some conditions from the Equality Act including, for example, a tendency to physical violence. We are concerned that the courts and tribunal are inappropriately applying the legislation in cases coming before them by not properly considering if a child's disability and how others meet (or fail to meet) those needs may be a trigger for physical violence and a manifestation of an underlying protected characteristic. This might include a child who is frustrated at not being able to hear or understand what is being said within the classroom. We do not agree that it was Parliament's intention to separate out the excluded conditions where they are manifestations of a protected disability and recommend that regulation 4 be amended.

*2 September 2015*

## **Newcastle Society for Blind People – Written Evidence (EQD0100)**

This submission has been largely compiled through Newcastle Society for Blind People's Vintage Empowerment project <http://nsbp.webs.com/vintage.htm> which is aimed at people over 55. Within this submission there is an emphasis on the needs of this age group but many of the issues raised pertain to all visually impaired (VI) adults. Examples have been drawn from the following:

- Visually Impaired colleagues at the society
- Our Net and Natter making the most of the internet group <http://nsbp.webs.com/netandnatter.htm>
- Individual members' feedback
- Vision To Work partnership <http://nsbp.webs.com/visiontowork.htm> which NSBP chairs
- North East Action On Transport group which NSBP co-chairs <http://nsbp.webs.com/whatweareabout.htm>

### **Effect of disability now being one of nine protected characteristics**

It has been useful that the protected characteristics are effective where a person meet more than one of the characteristics. This is especially so in encouraging common aims to be identified and partnership working for VI and Older People that has for example locally led to an emerging initiative Good Communities . However, everybody we talked to all said that :

- They felt that disability is now subsumed – especially to race and gender
- Having Disability in its title gave the DDA a sense of ownership and authority that the Equality Act does not have
- Disability training is now only one small part of equality and diversity training
- This is compounded by training budgets are being cut because of austerity measures
- This in turn gives less opportunity for disabled people to lead training and gain employment
- Being part of the Equality Act means that disability access considerations don't get necessary identified across government policy. **Example** Although predating the Equality Act , the ban on smoking in public places is an obvious example. This has led cafes and bars to having pavement tables affecting VI people in two ways - the obstruction of the tables themselves and the impact they have on everyone else's space meaning there is more competition for remaining space. Busy city streets are therefore much more congested than they were.

The above points are compounded by scrounger rhetoric from certain sections of the media leading to

- Greater ignorance of what it means to be disabled
- Greater embarrassment and how to behave appropriately towards disabled people and , especially for VI people , when to offer help

From a VI point of view a lack of awareness can lead to or perpetuate a view that

- All people are either Blind or they are sighted and there are no points between
- Most VI will be familiar with and or have a preference for the use of Braille whereas the number of people who use Braille is only c 4% of VI people

**Examples of VI ignorance if you don't have greater awareness and training:**

**Example from Vision to Work:** Most VI people looking for a job will not be seen by Disability Employment Advisors. In 2013 there were only c 21 visually impaired people being seen by DEAs across the whole of the North East. We have estimated there may be about 1, 600 VI people of working age in Newcastle alone. Most of these people therefore will be in the ESA category and so DWP colleagues who are not Disability Employment Advisers will be dealing with them. We know of instances where VI people have not had their VI identified because it didn't occur to people to ask. This has meant that the appropriate help was not being given.

**Example: Work:** A VI colleague in a previous job was challenged by her employer who said he thought that if she was VI why then could she do certain tasks? She tried to explain how an impairment affects vision can depend on a number of factors but he remained unconvinced. Moreover she felt bullied-she thought colleagues and her employer considered having disability training to be a waste of time. This was a contributing factor to her leaving the employment.

**Reasonable adjustments questions**

Reasonable adjustments are still seen as

- Something that is optional
- Something that can just be replaced by doing something for a disabled person

There is still a woeful lack of understanding that these are people's rights and are meant to promote and enable independence i.e. people being perceived for what they CAN do not what they cannot

**Example: Work:** Employers try to use the vagueness associated with what is an affordable reasonable adjustment to avoid having to make them. A VI colleague has argued the following from a previous job experience:

- Finding a job is very hard because employers can't understand hidden disability
- They have a narrow view of what would be reasonable adjustments e.g. not changing signage
- Employers think that making such adjustments would cost too much
- There is still too much ignorance by employers of access to work and its linkage to reasonable adjustments
- The onus is on the person to highlight the conditions and use of Access to Work

**Example from Vision to Work**

Barriers in the recruitment process that need clearer reasonable adjustments being defined

- Giving VI people sufficient time to apply - this is pertinent in online postings of vacancies with short deadlines
- Recruitment packs in inaccessible formats
- No specialist software to access internet at job centres
- VI awareness in interviews

We would therefore argue that the following needs to happen

- Define what an affordable reasonable adjustment is.
- Define what is accessible - An example that has caused much frustration in the NEAT group is accessibility on public transport legislation limited to getting people on and off vehicles NOT adjustments for people DURING the journey. This of course gives bus companies the right to say a reasonable adjustment for VI people is just to shout out when a stop is approached or by introducing a smart [phone app which cannot be used by all VI people. This is not just about older people not being au fait with technology as the waiting lists for our VI tablet class illustrates. We have an increasing number of members in their 80s who use tablet PCs but **not** smartphones .They would not dream of using their tablets in public spaces as this would heighten their vulnerability – therefore an app solution is simply not acceptable

Sadly it means that bus companies who are doing the right thing and considering AV for all new vehicles e.g. Go North East and Arriva are not on a level playing field with other bus companies who see AV as expensive partial solution.

There needs to be national standards in key areas of accessibility regarding transport

- Audio Visual announcements NEAT has taken the RTIG guidance and developed this
- Accessible timetables standards - NEAT are going to look at best practice in accessible bus timetables.

### **Accessible information**

#### **What is an accessible website?**

Accessibility of websites - people are confused by what this means

- accessibility software friendly e.g. screen reader friendly that doesn't have read endless code or links out but does read description tags and allows screen reader to move in the way that the human eye would read
- Or being accessible without the assumption of people having specialist software e.g. using Browse Aloud/Recite Me, Stylesheets that allow anybody to use the website.

There is an argument that says

- If you are a VI or pan disability organisation you need everything because people will be coming to you for help BEFORE they have made choices about the best specialist software or particular configurations of built in accessibility features to assist them. Indeed, this might be why they are seeking your help.



- However, it can be argued that any with digital by default any portal site e.g. a Council should also do this because paying you still have to pay your Council Tax etc. in the meantime.

We think there is a case for national accessibility standards. The NHS accessible information standard introduced in June is a key new tool in making sure accessible information is available for health and social care users. It does beg a number of questions though:

- Why is there no new money to help this happen locally?
- Why isn't all of this happening anyway as a result of the Equality Act?
- Why isn't it being applied to all government departments?
- Why are Government departments not setting high quality standards?

**Two summer 2015 examples of this:**

One of our members asked for information from a government department - he was not given this information in the appropriate format and he appealed and was awarded compensation. The department was the Care Quality Commission.

The second relates to the Care Act – a fundamental piece of legislation for VI people. We looked at the <https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets> you will note there is no facility on this page to request versions in accessible formats. The factsheets are in PDF format which is incompatible with screen readers. We converted the PDFs and increased them to Arial 20 pt. These are now on our website <http://nsbp.webs.com/careact.htm> However, on principle we decided to test the system and ask for an audio version of Care Act factsheets on CD or a USB stick that we could then copy for members thus saving the DH time and money. So in March we used the DH general e mail address and had a reply after two weeks that this was nothing to do with the person we had sent the e mail to but they had forwarded it to the appropriate department. We waited for a few weeks then e mailed the person in question. We were told that they were very sorry but that the CD would be coming out to us. Except that our Empowerment Officer had deliberately applied as an individual and had not given his address. He phoned the Department in June and a very rude receptionist tried to fob him off but eventually took the address to which to send the CD to. We are still waiting for the CD to arrive.

**Example: DWP**

An older example of information being provided for people in the wrong format

We have a member who is totally blind and on benefits. When benefit changes were happening information was being sent to her to assess her eligibility and fitness for work. This information was being sent to her to in regular size print despite having requested braille on numerous occasions over previous years. The lady had no one nearby who could read her mail for her. She was threatened with sanctioning by text message (which she could not read). A colleague made a case for her and eventually a tribunal was arranged. As the lady is totally blind this was daunting, she did not know or understand the process nor know for certain what she had to do.

The current DWP review of accessible formats in conjunction with the RNIB is commendable but it makes what we feel is an erroneous assumption that VI people will be identified as recorded as such as part of the process – see our work issues identified above.

**Example: Work:** Within retail it is useful to remember that barriers to accessibility that one perceives for VI customers can also apply to prospective employees e.g. shop prices in small print.

Government departments could set an example in the case of PDFs which might be good for some but not for people using screen readers e.g. Dolphin software which will simply freeze. A non-editable Word 97 – 2003 version should be a **standard** option to download.

### **Oversight and enforcement questions**

There are two major points here

- Offenders will pay a small fine or compensation to people because it's cheaper and easier than rectifying the problem and therefore encouraging a culture of proper service for disabled people. Instead this pay off simply reinforces the perception of disabled people as "problems" This makes no contribution to long term culture change -in fact it slows down change.
- People feel alone in having to take action themselves and often do not take action any further because they feel this will not effect lasting positive change

**Example: Access.** A VI lady who went with friends to restaurant in Newcastle. She needs to visit the toilet - the standard toilets were upstairs so she and a friend enquired about the location of the disabled loo. They were told that the restaurant didn't have one. The lady and her friend insisted that they should have one under the Equality Act. After an argy bargy with a number of staff the manager finally arrived and admitted that there was a disabled toilet. However it was unmarked, had no handle, was filled with cleaning materials and toilet supplies and had tables placed in front of it at which people were eating. Unfortunately, despite being a very confident person, the VI lady felt that it was pointless taking a complaint any further.

### **The EHRC and its role**

We respect and admire our local EHRC. However, we would point out :

- None of the examples we have cited thus far are being gathered together into a coherent whole where the state of compliance can be gleaned fully
- Anecdotally , people do not think automatically of the EHRC as a supporting organisation
- The EHRC have had resources cut anyway

### **VI people are not being seen as part of the solution**

Using VI groups as partners to monitor compliance and develop solutions should be standard practice. In guidance around the Equality Act the willingness of VI people to act positively and be engaged should be highlighted. We have an example of this through our Net and Natter who are trying to develop a digital accessibility standard for Newcastle based websites - we use people's experiences of the websites to test and recommend improvements for accessibility. So far we have engaged our major local theatre, the local housing ALMO Your Homes Newcastle and we have also tried supermarkets with less success.

We would also stress that austerity measures have restricted consultation opportunities for many statutory organisations but again we would stress that it is not sufficient to engage pan disability organisations only - if you want a wide VI perspective ask an organisation that only deals with VI people.

To summarise our proposed enhancements to the Equality Act

- Define minimum training requirements to support successful implementation
- National public awareness campaign
- National accessible information standards linked to digital by default process in particular
- Better definitions for reasonable adjustments
- Redefinition of accessibility to include all aspects of a journey made accessible not just access and egress

*3 September 2015*

## **NHS Centre for Equality and Human Rights – Written Evidence (EQD0104)**

This response is made by the NHS Centre for Equality and Human Rights (NHS CEHR). We support NHS bodies in Wales to improve access to services and employment opportunities and meet their statutory equality and human rights obligations. As well as providing expert advice and guidance, the Centre engages in a range of projects that look to improve patient access and voice within the Service. NHS CEHR is also a source of support to Health Boards and Trusts in undertaking Equality Impact Assessments (EIA) to ensure that individuals and groups protected by equality legislation are not treated unfavourably by changes being planned to policy and service development and delivery.

### **General Section: Questions 3 and 4: ‘Reasonable Adjustment’**

Our experience of working with Health Boards and NHS Trusts in Wales suggests that there is generally a lower level of awareness of the broader application of the legal duty to carry out reasonable adjustments. One example of this is our work to support the implementation of the ‘Standards on Accessible Communication and Information for People with Sensory Loss’. The statutory requirement to meet the different communication needs of people with sensory loss is not *always* recognised by service providers as a responsibility they have under the Disability duties of the Equality Act.

Also, in the context of access to employment, there is a low level of awareness amongst public sector employers of the scope to use reasonable adjustments and positive action to enable disabled people to have equal access to the workplace. This has been evidenced by our work over the last 5 years to introduce supported internships for people with learning disabilities. ‘Project Enable’ aims to provide work placements for people with learning disabilities which will lead to paid employment with the host employer. Employers can be reluctant to use the positive action provisions, fail to recognise how their recruitment processes are inaccessible to people with learning disabilities and other groups of disabled people and consequently, the detrimental impact on disabled people.

There is generally a low level of awareness amongst employers of the support available through Access to Work and very little evidence of the support being used in different ways, for example, to provide a support worker for someone with sight loss.

Published and anecdotal research evidence also suggests that the support available at Job Centres and from Access to Work could be improved particularly in relation to the awareness and understanding of the different needs of disabled people.

People with learning disabilities have told us of their experience of negative attitudes from staff at job centres and a general lack of awareness of their need to have a supported route into employment and what this may require for different people.

Recent research published by Action on Hearing Loss Cymru also highlights ‘the need to improve support and awareness about sensory loss at Job Centres and Access to Work’. (*Able, ready to work ... and deaf: The real stories of deaf people across Wales who despite everything can’t find work, 2015*). This research suggests an ‘excessive preoccupation with

health and safety concerns', a lack of 'appropriate support specific to their hearing loss' and negative attitudes towards the 'burdensome' cost of employing someone who is deaf.

The Joseph Rowntree Foundation's report 'Monitoring Poverty and Social Exclusion in Wales (2013) says:

'Around 235,000 working-age adults in Wales were disable and not in work; just over a third of them wanted paid work. Overall, 217,000 people in Wales lacked but wanted to work in 2012.'

There a clear disconnect between people's expectations of work and the legal obligations on employers to make reasonable adjustments and not discriminate on grounds of disability.

*4 September 2015*

**NHS England, Department of Health, Care Quality Commission – Oral Evidence (QQ 123-130)**

[Transcript to be found under Care Quality Commission](#)

## North East Action on Transport – Supplementary Written Evidence (EQD0180)

### Introduction

This proposed supplementary submission is from North East Action on Transport. Our main points which were made as part of Newcastle Society for Blind People's submission were made within the original deadline. This supplementary submission is a direct response to points made at the 3 November Transport evidence session.

- 1 The submission alluded to debate about
  - The cost of installing audio visual (AV ) technology both at the time of manufacture and retro fitting
  - A mandatory AV requirement that could limit us to existing technology and thus future technologies that may be more effective and cheaper would be discouraged.
  - The current proposed app based alternatives to AV and how these are regarded by the VI community

We would accept that saying we just want current AV technology as mandatory could indeed be limiting. However, just introducing a variety of apps as alternatives will do nobody any good and we think there was a missed opportunity for the VI **and Deaf communities** to say what should be in place rather than just accept the current status quo. We would therefore like to suggest

- A set of minimum standards ( or specification if you prefer ) should be mandatory
- These standards will equate to the perceived benefits of hard wired AV systems now
- But they can be delivered by **any** technology

- 2 The standards should comprise

- Delivery of on board information should not be dependent on a person owning an internet enabled device
- There should be consistency in message across the UK. The amount of information should be kept to a minimum so as not to confuse passengers i.e.
  - The name of the next stop
  - The destination.
  - Messages should be presented in the same order
- Consistency of data sources should be used e.g. names of stops across the system so that if for example a journey has been planned with an app at home then the same terminology will be used on the AV on a bus
- Messages should have clear and natural sounding diction and consistent volume that responds to environmental changes

- The speed at which the announcement is spoken is at normal speaking speed to aid intelligibility
- Messages should be delivered in sufficient time for an older person with VI assumed to have additional mobility difficulties time to get up and leave the bus
- The voice used on any journey should be the same one for **all** of that journey
- The delivery technology should not enable others to identify people as having a sensory loss This is a weakness of the All Aboard winner for example Not all people have a cane or a dog .Not all VI people want to be identified for various reasons e.g. fear of hate crime
- The delivery technology should be tested for reliability regularly
- Changes to delivery technology **MUST** require consultation with a range of VI people - in terms of nature of VI and age

These standards are based on our own guide to AV good practice which builds on RTIG guidance. <http://nsbp.webs.com/resourcesandreports.htm>

2 The Confederation of Passenger Transport CEO argued that Most people use smartphones now and that the RNIB advised him of this.

We would point out

- The majority of VI people do **not** use smartphones.
- The majority of VI people are over 65. This does not automatically mean older VI people are the ones not using this technology .Older VI people may embrace portable technology but there is much more interest - certainly in the North East in tablets. Indeed there are waiting lists for specialist classes .There is an emerging trend where VI people like tablets because they have sufficiently sized screens for those with residual sight whilst they keep simpler Doro like phones because they still have more accessible and simple buttons. Many people maybe also be opting for larger i.e. 9 inch plus tablets. We therefore don't want any technology that requires people to take tablets out with them.

*24 November 2015*



## **Nuffield Council on Bioethics – Written Evidence (EQD0012)**

The Nuffield Council on Bioethics is an independent body that examines and reports on ethical issues in biology and medicine. We welcome the opportunity to respond to the Committee’s Call for Evidence on the impact on people with disabilities of the Equality Act 2010.

In 2009, the Council published a report titled *Dementia: ethical issues* (available online: <http://nuffieldbioethics.org/wp-content/uploads/2014/07/Dementia-report-Oct-09.pdf>). One of the conclusions of this report was that, as a society, we need to do more to enable people with dementia to live well. Indeed, since the publication of our report, we note the increased recognition of a need for a ‘dementia friendly society’ in the UK.

Our own research (para 4.30) suggests that some service providers may not be aware of the fact that the Equality Act (the Disability Discrimination Act at the time at which our report was published) extends to people with dementia, and even if they do, they are unlikely to have sufficient knowledge of dementia to make appropriate adjustments. We propose that service provision for people with dementia may be improved through a higher level of awareness and promotion of good practice.

We would therefore like to respond to the following question raised by the Committee’s Call for Evidence:

*“Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?”*

We suggest that service providers need to be given a more explicit steer on the kind of reasonable adjustments that can be made for people with dementia. Research on building ‘dementia friendly’ environments is available from organisations such as the University of Stirling’s Dementia Services Development Centre, and there is growing interest in the importance of environmental design in specialist dementia care environments.

However, practical guidance on what reasonable adjustments ordinary services such as shops, leisure services and restaurants could be expected to make for people with dementia is not readily available. Relatively minor adjustments, such as clearer signage, strong lighting and non-slip, non-reflective flooring, as well as an increase in staff awareness and understanding of dementia, could do much to make services more accessible to people with dementia.

We further suggest that a more explicit exploration of the reasonable adjustments that service providers might make for people with dementia might be added to the Act’s Code of

Practice. As it currently stands, the Code lacks detail, stating: “*people with dementia, mental health conditions or mobility impairments may face different types of barriers.*” We suggest that this should include specific examples of good practice that service providers can access.

In addition, to reinforce the Code of Practice, the Committee may also consider adding clearer references in the Act itself.

We would like to thank the Committee for issuing the Call for Evidence, and look forward to reading its conclusions.

*20 July 2015*

## **Nuneaton and Bedworth Borough Council – Written Evidence (EQD0007)**

1. I would say yes, in that it is all in the same place. I believe disability issues have always been important, its just the case that the other protected characteristics have been brought up to the same importance.
2. Not that I am aware of
3. I would say not entirely because of various reasons. My main reasons for this would be 1) time to understand and 2) not had to deal with disability issues as such
4. Yes definitely! Things need to be right first time for disabled people rather than having to go through court process. Maybe someone earlier down the line to say to an organisation i.e. you are in the wrong rather than approach of 'its for a judge to decide...'
5. Excellent. Easy for people to understand, easier to train people. Its fairly clear what is expected of us as an authority.
6. Don't know
7. Don't know
8. With the reduction in their service & funding, the EHRC are having to pick their battles which isn't covering everything. We look for more advice and guidance from the EHRC which sadly isn't coming these days...
9. Possibly, but would like to see proposals for how this would work
10. Don't know
11. I would ask for some clear, to the point guidance as to what is expected of us as an authority for disability issues.

*13 July 2015*

Nick O'Brien and Neil Crowther – Oral Evidence (QQ 157-165)

**Nick O'Brien and Neil Crowther – Oral Evidence (QQ 157-165)**

[Transcript to be found under Neil Crowther](#)

## **Dr Nick O'Brien – Supplementary Written Evidence (EQD0188)**

I am grateful to the Committee for the opportunity to give oral evidence on 1 December 2015. I would like to add briefly to the observations I made then about the possibility of establishing a Disability Ombudsman.

As I mentioned in my oral evidence, I personally have reservations about a Disability Ombudsman. Instead, an alternative approach strikes me as desirable: first, to increase the confidence of the existing ombudsmen, both public and private, in acknowledging the promotion and protection of disability rights (in fact, equality entitlements more generally) as an integral part of their remit; and secondly, to raise the awareness of disabled people and their advisers of the availability of ombudsmen as a resource in connection with complaints that involve a disability-rights aspect.

I would like to make three further points:

### **Integration of mandates**

1. The tendency in the ombudsman world, both domestically and internationally, is for the most part towards the integration of existing mandates rather than the creation of specialist ombudsmen. Such an imperative has led in the private sector to the creation in the UK of a single Financial Ombudsman Service, and more recently to integrated public service ombudsmen in Scotland, Wales and now Northern Ireland. The House of Commons Public Administration Select Committee in its 2014 reports on complaints about public services and about the future of the UK Parliamentary Ombudsman and Health Service Ombudsman for England recommended that the Government consider establishing a single public service ombudsman for England, to incorporate the existing mandates of the health service, local government and housing ombudsmen. It is understood that the Cabinet Office has looked kindly on this recommendation and is contemplating primary legislation to achieve the requisite integration of mandate. If so, such a development not only reinforces the argument against a separate Disability Ombudsman on grounds of logistics and practicality but also creates an imminent legislative opportunity for reinforcing within a single public service ombudsman institution its inherent disability-rights remit.

### **The Northern Ireland example**

2. Existing public service ombudsmen in the UK have in recent years spoken more explicitly about their inherent jurisdiction to address human rights (including equality) considerations disclosed by the complaints made to them about public authorities. The Northern Ireland Ombudsman in particular has worked closely with the Northern Ireland Human Rights Commission to 'operationalise' that engagement with human rights (including equality) in its investigation of, and adjudication on, complaints. The work in Northern Ireland might therefore serve as an informative local model for 'mainstreaming' human rights and equality considerations, not least disability-rights considerations, into the daily work of UK ombudsman institutions.

### **The Welsh Commissioners for Children, and for Older People**

3. If the Committee were minded to recommend the establishment of a disability-specific ombudsman-type institution, it might want to consider, instead of a Disability Ombudsman as such, an institution modelled, for example, on the various Commissioners in Wales for, respectively, Children and Older People. Such Commissioners, although having an individual focus insofar as they may assist complainants, are nevertheless required to look beyond individual redress to the wider common good to the extent that their assistance is limited to cases in which the matter at issue has some more general relevance to the rights, welfare or interests of the specified protected group. This Commissioner-type model provides therefore an alternative to the more explicitly ombudsman-type model as a way of striking a balance between individual protection and broader promotion of rights. It is a model also that can be accommodated within an integrated model of administrative justice more generally, without impinging directly on the remit of existing institutions, whether the civil courts, ombudsmen, regulators and inspectorates, or tribunals.

*7 December 2015*

Ofsted, Independent Parental Special Educational Advice (IPSEA), Department for Education  
– Oral Evidence (QQ 113-122)

**Ofsted, Independent Parental Special Educational Advice (IPSEA), Department  
for Education – Oral Evidence (QQ 113-122)**

[Transcript to be found under Department for Education](#)

## **Ofsted – Supplementary Written Evidence (EQD0187)**

On Tuesday 17 November HMI Lesley Cox gave oral evidence about pupils with disabilities and special educational needs. The committee requested clarification on a number of points.

### **Number of schools judged to have serious weaknesses or be in special measures**

There are 307 schools in special measures and 72 with serious weaknesses, as of 30 September 2015.

### **SEND consultation**

Ofsted is currently consulting on a new inspection framework that will focus on how effectively local areas are working together to meet their responsibilities for disabled children and young people, and those who have special educational needs. This includes children and young people both with and without statements or education, health and care plans.

The proposed inspection will evaluate the effectiveness of the local area as a whole in working together to identify children and young people early and appropriately, and in meeting these needs to improve outcomes. Inspections under this framework will identify what each local area does well and what they need to develop further, highlighting good practice where it is found.

The inspection will look at the work of the local authority, clinical commissioning groups and NHS England (for specialist services), early years settings, schools and the further education sector.

The formal consultation includes a number of activities to ensure we gather a wide range of views. For example, we have worked closely with many partner organisations to promote the consultation, particularly to parents and young people. As well as the standard consultation document a version has been written for young people and we are delighted that at present we have received 825 responses in total.

Adults: 548 of whom 351 (68.5 per cent) are parents.

Young people: 277

The responses to date have been overwhelmingly positive.

We have also held a parent carer forum webinar to share the detail of the framework and to respond to parent questions. This was recorded for further dissemination. A face to face conference consultation event which includes parents will be held on 11 December with a further public webinar is scheduled for the 9 December. Early in the New Year we plan to work with the Council for Disabled Children to run a face to face discussion group with young people.

We have carried out five pilot inspections in Kent, Calderdale, Bromley, East Riding, and Hampshire to test and develop the proposed approach for these inspections.



Feedback received from the pilots has been positive with all areas feeling that they gained from being part of the process. On each of the pilot inspections parents were able to access a webinar during the week and a number were also invited to meet inspectors at the providers visited. Parent/Carer forums were invited to meet with inspectors to discuss how their local area involved parents. This also explored their satisfaction with their level of involvement in setting the strategic direction for the area, and in the co-production of their child's plan.

*2 December 2015*

## **Emma Ogden – Written Evidence (EQD0033)**

From the easy read document:

### **Question 3 Do people know about the sorts of changes that should be made to treat disabled people equally?**

People are not aware of how important it is to make adjustments eg I worked for a retail high street shop and informed them of my disability (arthritis in my ankle and chronic bad back pain) when they employed me. The GP advised that I should have a 15 minute break within my 4 hour shift which my employer agreed for a short period of time if I worked 15 minutes later to make up for it. After a few weeks my employer stopped the break. I asked for a chair to be available to take the weight off my feet from time to time, but this request was refused. I was taking diuretics and needed to use the toilet frequently which I informed my employer. They said I should only use the toilet at the start and end of my shift due to staffing. Having to ask was undignified and being refused caused anxiety and resulted in me having an accident. My sick notes clearly stated my medical condition and the adjustments needed. The sick notes were pinned to the wall in the admin office, so I had no privacy.

They so unsupportive that I resigned.

### **How has this worked in transport, taxis, education and using sports grounds?**

My disability is not obvious and I find I need to tell bus drivers and ask them to lower the bus, which makes me anxious and embarrassed. If the bus was lowered for everybody, every time its stops for a passenger, I wouldn't need to draw attention to myself. It means a lot when bus drivers remember to lower the bus on the return journey as I do not need to draw attention to my needs.

**4. Should the law be made clearer about changes that should be made?** Definitely – more clarity needed

### **5. Have public bodies done what they should do to make sure people with disabilities are treated equally and fairly?**

In my experience – yes – I have a wet room installed by my landlord, and grab rails and mobility aids installed by the County Council. I have level access to my front door.

### **Checking what is happening**

I don't really know much about this and it is difficult to comment. I would really like to see more information about how this is dealt with.

Equality Spot checks would be good and should be carried out on retail outlets and offices by social services or EHRC.

### **10. If people think they have been treated unfairly they can go to courts and tribunals. How well have disabled people been able to use these?**

I didn't know where to get help to complain about the way I was treated.

**11. Are there any other ways we could make the equality act work better?**

Mandatory posters in staff rooms regarding adjustments for people with disabilities.

*26 August 2015*

## **Oxfordshire Transport & Access Group – Written Evidence (EQD0038)**

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’

### **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?**

OXTRAG members have experienced a major downgrade in the overall interest in inclusion issues since 2010. Harmonising protected characteristics has had the effect of ‘watering down’ previous legislation (DDA) & expected outcomes or standards of service delivery / focus. This effect may be due to extensive local government funding cuts, false impressions created by 2012 Paralympics (thinking that all people with disabilities can overcome disadvantage) or political attitude. It has become a deal more difficult to see services continuing to evolve, anticipate and improve as if eyes are now ‘off the equality ball’. Some individuals have had limited success when challenging poor customer service but have been restrained from shouting of this success. In OXTRAG’s experience, disability interests have been ‘watered down’ considerably. The bar on ‘substantial disadvantage has been raised.

Cuts in public authority budgets ensured that equality posts were the first to be downgraded then discarded. Budgets to voluntary organisations have been cut so the support to address equality issues in both sectors has been lost. Without specialist knowledge and comprehensive Disability Awareness Training & CPD’s LG officers now make decisions that can disadvantage disabled people (through no intention or malice just too many things to consider). There is no proactive action, coordinated effort or responsibility on disability issues in many local authorities now. Although some/ limited legal cases have been won.

### **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

Yes. The key difficulty is the fact that only a very persuasive & perseverant disabled person can take a case (which can lead to a ‘David and Goliath’ experience/ being ‘outgunned’ in court).

Solicitors won't touch an Equality Act case (thanks to cuts in legal aid). As a result some service providers routinely ride roughshod over disabled persons rights & try to get away with it as so few people can/will take action.

Members of OXTRAG have taken cases of disability discrimination to service providers and courts with limited success. Of seven cases where obvious disability discrimination was evident and acknowledged vocally, none have been successful in setting a legal precedent since 2011. (Partly because people have been 'bought off' and partly due to the Doug Paulley case). Judges have sided with legal teams/Barristers rather than use the Equality Act to support a case.

**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?**

Some disabled people and service providers have an understanding and willingness to evolve, anticipate and develop services and facilities by updating provisions, criteria or practices. These however are very few and greatly reduced in number and interest since the loss of local authority Access Officers or Disability Equality Advisers to proactively promote inclusion and assist developments.

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.

Where customer representative groups & champions have taken-up the work left by equality advisers they tend to find great difficulty in moving issues forward.(Although there are a few examples of good/improving practice in Oxon- for example pushchair spaces in addition to wheelchair spaces on buses).

Inclusive services however could have been better supported by LA's proactive work in moving passengers from door to door transport to buses by the use of 'travel with confidence' training and 'buddy schemes' but short sightedness and financial cuts have led to ongoing difficulties in priority use of wheelchair bays on buses and too few accessible taxis (especially at busy/school run times)

Large organisations have not addressed inclusion issues properly - choosing to 'buy challenges off' on court steps than address known shortfalls (for example National Express have on occasions banned disabled peoples travel rather than address known shortfalls on new coaches/make on coach changes- for example expect a local man to carry a seat belt extension himself rather than put longer seat belt extensions on all coaches).

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

Yes, legislation/ supportive documents should be more explicit about the need to evolve, anticipate and develop inclusive facilities (to premises for example) or services via their provisions, criteria or practices (*PCP*). Very few willingly provide information or auxiliary aids (as demonstrated by the seat belt extension!) Reasonable adjustments are often not made in practice.

**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?**

Not really since 2010 due to the LA cuts and political/attitudinal changes. There has been no informed focus on the need to eliminate discrimination, advance equality or foster good relations as a result of lost posts and cuts.

Service providers can still make it impossible or unreasonably difficult for a disabled person to use an aspect of their service for a reason related to impairment or their universally-applied procedures have a disproportionate impact on you because of your impairment

**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?**

In Oxfordshire the authority has refused to adopt some best practice on the basis that 'they cannot afford it'. For example, Oxon refused to adopt an Equality Impact Assessment on highways issues (as used in Scotland)

<http://www.livingstreets.org.uk/sites/default/files/content/library/Reports/Living%20Streets%20Equality%20Report.pdf>

They have been encouraged however to resurrect a Vulnerable Road Users Audit tool for designers and have circulated OXTAG information e.g. Developers Guidance sheet.

In Frideswide Square Oxford– development seems to have overlooked OXTRAG & others inclusion feedback. In The Plain roundabout development work/ suggestions made by OXTRAG were used however (but not acknowledge for their usefulness). Unfortunately 'The council has developed a 'we know best' attitude towards service users. They should be doing what we want and not using us merely for box ticking exercises, which is the most we seem to get at the moment'. Quote from Oxfordshire Unlimited.

**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?**

OXTRAG have had difficulty in getting any action on inclusion issues via MPs [NAME REDACTED], Members of the Lords [NAME REDACTED], via national organisations: Transport for All, TFL, National Express & DFT with requests for example to update/improve Public Service Vehicle Accessibility Regulations.

**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?**

People's perception of the Human Rights cases have been scorned in the press and on TV. Unfortunately the Equality Act has been put 'in the same bag' as far as public is concerned. People either think everything has been addressed or that these Acts are abused so discount them as positive motivators for collective good.

**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?**

Loss of the DRC then EHRC and its proactive work has led many disabled people to feel unsupported. The use of a phone line manned by inexperienced staff via a completely independent agent has compounded this feeling of 'side-lining' disability issues.

[Equality Advisory and Support Service \(EASS\)](#). EASS was commissioned by Government in 2012 to replace the EHRC Helpline, which is now closed.

**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?** Absolutely not! The need for an individual to take a case and manage it against the might of large organisations is a big disadvantage under this legislation. The need for legal presidents via a limited number of cases has made challenge and championing difficult..

**10. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

Yes bring back a proper support mechanism.

*31 August 2015*

Parliamentary and Health Service Ombudsman and National Association of Licensing and Enforcement Officers – Oral Evidence (QQ 147-156)

**Parliamentary and Health Service Ombudsman and National Association of Licensing and Enforcement Officers – Oral Evidence (QQ 147-156)**

[Transcript to be found under National Association of Licensing and Enforcement Officers](#)



## Doug Paulley – Written Evidence (EQD0097)

### Abstract

1. Overall, the Equality Act has a positive influence; however the impact of the Act is severely limited by the fact that it is unenforceable by all but a tiny fraction of disabled people. Further, the perception of the Act by non-disabled people is problematic. Major reform of the Act is required to make it fit for purpose. However, the Government must not resile from its current protections.

### Recommendations

2. To combat the misperception of “*equality*” as equality of *treatment* rather than equality of *outcome*, to afford disabled people access to enforcement options and to improve taxi accessibility:
  - a. Separate the Disability strand into a separate Disability Access Act.
  - b. Implement the prospective clauses relating to taxis.
  - c. Extend qualified one-way cost shifting to cases issued under the Act.
  - d. Implement a law-enforcing Ombudsman and Tribunal system.
  - e. Permit disabled peoples’ organisations to take representative cases.

### My Experience

3. I am a wheelchair user living in a care home for people with physical impairments.
4. I have direct and vicarious experience of the barriers disabled people face when attempting to enjoy the same opportunities and experiences as non-disabled people. I make this submission on my own behalf, but I have similar opinions and approaches to other disabled people. I contend that the provisions and enforcement of the Act should be informed by the Social Model of Disability.<sup>349</sup>
5. I am a disability rights activist through legal action. I have taken 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.<sup>350</sup> I do not have experience in discrimination in employment.
6. I am unable to discuss any current court cases to which I am a party<sup>351</sup>. Some of the opinion I give below is therefore less well-evidenced than it might otherwise have been.

### Juxtaposition with other protected characteristics

7. I believe the Act has diluted the efficacy of disability discrimination legislation.
8. Disability is the only protected characteristic afforded a positive duty under the Act, through its duties to make reasonable adjustments and to provide auxiliary aids and

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<sup>349</sup> <http://bit.ly/social-model> - Trailblazers’ introduction to the Social Model

<sup>350</sup> <http://bit.ly/paulleycases> - Google Spreadsheet of some of my cases

<sup>351</sup> Call for Evidence: “You should be careful not to comment on individual cases currently before a court of law”

adaptations. I believe the inclusion of disability with characteristics which do not attract a positive duty dilutes its impact.

9. The name is problematic. Members of the public often assume that “*equality*” means equality of **treatment** rather than equality of **outcome**.
10. This misunderstanding results in uncomfortable confrontations. Non-disabled people sometimes object to being asked to inconvenience themselves to enable disabled people to use a service. The risk of confrontation often leads to disabled people being afraid or unable to use services. For example, 13% of disabled people describe “*anxiety*” or “*lack of confidence*” as a barrier to transport.<sup>352</sup>
11. One such situation is caused by parents’ use of the wheelchair space on buses to accommodate baby buggies. Disabled blogger “*Tourettes Hero*” describes a confrontation<sup>353</sup>:

*Last week Leftwing Idiot and I were waiting for a bus in the pouring rain. When the bus arrived there were two [pushchairs in the wheelchair space], one was empty and one had a toddler sitting happily inside. The driver lowered the ramp, enabling us to board and begin negotiations. The owner of the empty buggy was upstairs so Leftwing Idiot moved it and I squeezed in.*

*Moments later the owner came downstairs holding her baby and shouting at him not to touch the buggy. It felt really tense, but fortunately the situation calmed down when Leftwing Idiot made it clear that he was happy to help. In the end both parents were friendly but they also blamed the bus driver for letting me board.*

Parents with pushchairs in the wheelchair space blamed the bus driver for inconveniencing them by allowing a wheelchair user (waiting in the rain) to board, causing competition for the space.

12. Some members of the public perceive the Equality Act as creating an obligation to treat all people equally, with a “*fair*” “*first come first served*” approach.<sup>354</sup> A (non-disabled) parent once complained to me that a train company did not allow her to book the wheelchair space for her pushchair. She couldn’t see that whilst she could fold her buggy and travel without use of the space (with some difficulty), wheelchair users cannot travel unless they have access to that space.
13. This disparity in outcomes was recognised during Parliamentary debate prior to the DDA:

*(Parliament) recognised that where the disability was relevant to the treatment that a person received, then consistent treatment was the last thing that they*

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<sup>352</sup> Office of National Statistics’ Life Opportunities Survey

<sup>353</sup> <http://bit.ly/OnTheBuses> - Tourettes hero blog post

<sup>354</sup> <http://www.kingqueen.org.uk/4th-class/> - Example from my blog

*needed. It was different treatment which eliminated the effects of the disability that was required.*<sup>355</sup>

14. 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.
15. A separate "Disability Access Act" would emphasise the different approach required from that of other protected characteristics in order to achieve equality of outcome. The "positive" duties to make reasonable adjustments and to provide auxiliary aids could be separated into this Act.
- 16. A separate "Disability Access Act" should be implemented to mitigate misperceptions of equality.**

### **Gaps in the Law**

17. The duty not to discriminate has limited applicability to disability-specific services due to reliance on a non-disabled comparator. If I stay in a hotel which has a poorly adapted bathroom thus preventing me using it, I could take legal action using the comparator of a non-disabled guest. As I need care, I often stay in care homes for holidays instead of in hotels; but I couldn't bring a case for poor adaptation of the bathroom as care homes exclusively provide services to disabled people, so there's no direct non-disabled service user to use as a comparator.
18. The delay in implementing the sections of the Act relating to taxis<sup>356</sup> has resulted in disabled people continuing to experience significant barriers in using taxis. 58% of all UK taxis are wheelchair accessible<sup>357</sup>, but this varies considerably by region. 100% of London taxis are wheelchair accessible<sup>358</sup>, 51% of Leeds taxis<sup>359</sup>, 4% of Inverness taxis (13 in total)<sup>360</sup> and 0% of Wetherby taxis (my home town).
19. Leeds Council books a large proportion of the city's accessible taxis to transport disabled pupils to and from school. The Council has not considered the impact on other disabled people attempting to book taxis at these times, despite the Council's obligations under the public sector equality duty.
20. Transport firms are not required to ensure all buses are accessible until 2017; coaches and trains until 2020.<sup>361</sup> The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002, which *inter*

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<sup>355</sup> <http://bit.ly/consistenttreatment> - Barrister Catherine Casserley's presentation in Northern Ireland.

<sup>356</sup> Prospective sections 160, 162 and 164 of the Equality Act

<sup>357</sup> Department for Transport, Taxi and Private Hire Vehicle Statistics: England and Wales 2013

<sup>358</sup> <http://bit.ly/londontaxis> - Government page on London taxis

<sup>359</sup> <http://bit.ly/leedstaxis> - Freedom of Information response on accessibility of taxis in Leeds

<sup>360</sup> <http://bit.ly/invernesstaxis> - Freedom of Information response on accessibility of taxis in Inverness

<sup>361</sup> <http://bit.ly/psvarguidance> & <http://bit.ly/railaccess> - Government transport accessibility guidance

*alia* place a criminal obligation on bus drivers to operate ramps, have never been enforced.<sup>362</sup> One could infer disabled people were only recently invented.

**21. Implementing the prospective sections would improve disabled peoples’ transport experiences.**

**Oversight and Enforcement**

22. Nearly all disabled people have little to no prospect of enforcing their rights under the Equality Act.

**Barriers faced by Disabled People**

23. Disabled people are tasked with enforcing their own rights under the Act. Yet they experience such significant barriers in every element of their lives<sup>363</sup> that they have little chance of doing so.

24. I am unusual in that I’m intellectual, academically able, with a good education, some life experience and a rights-based mindset. My ability to take limited discrimination cases without representation is an exception: nearly all disabled people are not able to do so (through no fault of their own). Despite my Guide,<sup>364</sup> I am not aware of many others taking such legal action as a Litigant in Person.

25. I am not able to take complicated cases as a Litigant in Person, such as “my” case establishing the right to discounted event tickets for carers.<sup>365</sup> I rely on representation for many cases.

26. Many disabled people are unaware that their treatment is discriminatory or unacceptable. Sadly, current or historical institutionalisation, internalised oppression or limited life experience due to other people’s low expectations for disabled peoples’ lives often preclude such awareness.

*When people from targeted groups internalize myths and misinformation, it can cause them to feel (often unconsciously) that in some way they are inherently not as worthy, capable, intelligent, beautiful, good, etc. as people outside their group. They turn the experience of oppression or discrimination inward. They begin to feel that the stereotypes and misinformation that society communicates are true and they act as if they were true.*<sup>366</sup>

27. The State’s historical failure to invest in disabled peoples’ education means many are not literate. In 2011, just under half of UK disabled people had never accessed the Internet.<sup>367</sup> Disabled people are 3½ times more likely to struggle with written English than non-disabled people. Just under one third of disabled people have no formal

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<sup>362</sup> <http://bit.ly/driverregs> - Freedom of Information request on enforcement of the driver regulations

<sup>363</sup> Office of National Statistics’ Life Opportunities Survey

<sup>364</sup> <http://kingqueen.org.uk/dart> - My “Disability Attitude Re-adjustment Tool”

<sup>365</sup> <http://bit.ly/carerstickets> - industry magazine’s coverage of my case against SMG Europe Limited

<sup>366</sup> <http://bit.ly/internalisedoppression> - Kansas University community toolkit

<sup>367</sup> OFCOM UK Adults Media Literacy Report 2011

qualifications; this is three times the proportion in the general population.<sup>368</sup> This has a catastrophic effect on disabled peoples' ability to seek representation.

28. Cuts in state social care provision, including the Independent Living Fund, are having a profound impact on disabled peoples' access to services.<sup>369</sup> People left in their own effluent due to lack of personal assistance<sup>370</sup> may not consider fighting discrimination to be a priority. Ability to enforce rights under the Act is profoundly affected by inability to access other elements of society.
29. Disabled people who recognise that they have been discriminated against and seek legal representation struggle due to the paucity of lawyers working in this area. I am only aware of two solicitors' firms who take disability discrimination cases in the provision of services.<sup>371</sup>

### **Funding Disability Discrimination Cases**

30. Disabled people who are unable to represent themselves rely on representation. They can only get their representation costs paid if the case is allocated to the Fast Track or Multi Track and they win.
31. Most disabled people have significantly lower incomes than non-disabled people. Nearly half the UK disabled population are economically inactive; they are four times more likely to be so than non-disabled people, and substantially more likely to live in poverty. More than half of disabled people have no savings.<sup>372</sup> Most disabled people are thus not able to absorb costs.
32. Since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), applications for funding for legal representation are determined on a case-by-case basis. There have been very few successful applications for funding for "services" discrimination cases, partly because the potential damages recoverable are rarely sufficient to merit the fast- or multi-track.<sup>373</sup>
33. There are few lawyers with experience in disability discrimination cases that are prepared to take cases on a conditional fee basis, partly as case law in this area is limited and cases are unpredictable.
34. Lord Justice Jackson made "After the Event" (ATE) insurance premiums non-recoverable.<sup>374</sup> Qualified one-way cost-shifting, as extended to mitigate the effects of LASPO on personal injury cases, has not been extended to cases under the Equality Act.<sup>375</sup> This makes costs protection impossible.
35. Claimants bringing actions under the Equality Act risk ruination. Damages in disability discrimination cases are generally in the lower Vento band, which is capped at

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<sup>368</sup> Kings Fund, Future trends report: Disease and Disability

<sup>369</sup> <http://bit.ly/newstatesmanilf> - New Statesman article on the closure of the Independent Living Fund

<sup>370</sup> <http://bit.ly/dpacreport> - DPAC (Disabled People Against Cuts) report on the closure of the ILF

<sup>371</sup> Leigh Day, and campaigning solicitors Unity Law.

<sup>372</sup> Royal National Institute of Blind People, 2012, Statistical Bulletin: Key information and statistics

<sup>373</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, schedule 1

<sup>374</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, s46.

<sup>375</sup> Civil Procedure Rules s44.13(1)

£6,600.<sup>376</sup> ATE premiums are significantly higher than these potential damages. Claimants therefore face a substantial loss if they take out ATE insurance and win the case; or liability for costs should they lose without insurance.

36. In one of my cases the defendant submitted a Precedent H costs calculation of £48,000, months before the final hearing. ATE insurance premiums are a substantial proportion of the potential costs. Unity Law's "Equal Justice" report quotes a successful case on disability discrimination in education - damages were £7,000 and the insurance premium £12,000; in another, damages were £6,000 and insurance premium £8,922. An example of discrimination in retail: damages were £2,000 and the premium £5,000. Under today's rules these claimants would lose significant sums even if they won.<sup>377</sup>
37. Lord Justice Jackson surely did not intend that cases under the Equality Act would "slip through the gap" between the abolition of recoverability of ATE insurance premiums and non-implementation of qualified one-way cost shifting. The fact that this situation has been left extant for so long is a clear indicator of the other barriers to justice experienced by disabled people.
38. The costs protection gap has had a disastrous effect on those few disability discrimination cases that would otherwise have reached the Courts. It risks making Equality Act caseloads unworkable for those few legal representatives who currently work in this area.
- 39. Qualified one-way cost shifting should be extended to discrimination cases.**

#### **Accessibility of the Court System**

40. There have been notably few court cases brought for disability discrimination in services. Figures are not available as the Government has apparently failed to fulfil its promise to gather information on "services" disability discrimination cases,<sup>378</sup> as shown in their response to my information request.<sup>379</sup>
41. The Government must not assume that the low number of disability discrimination cases indicates the incidence of disability discrimination is low. I experience so many incidents that I have to triage which to challenge or I would spend my whole life fighting the discrimination I have experienced.
42. Parliament has previously received representations on the usability of the Court system to enforce disabled peoples' rights, when discussing the Equality Bill in 2009.<sup>380</sup> It noted the tiny number of such cases and posited that this was due to the system's complexity, costs and risks.

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<sup>376</sup> <http://bit.ly/presguide> "Remedy" p14 - Presidential Guidance in General Case Management

<sup>377</sup> <http://bit.ly/equaljustice2014> - Unity Law's "Equal Justice" report

<sup>378</sup> Government Response to the Third Report from the Work and Pensions Committee, Session 2008-09 s89

<sup>379</sup> <http://bit.ly/statsrequest> - Freedom of Information request to the MOJ for stats on disability discrimination cases

<sup>380</sup> Work and Pensions Committee - The Equality Bill: how disability equality fits within a single Equality Act

*“Cloisters [Chambers] point out that in any event, relying upon individuals to bring about systemic change through individual litigation places a heavy burden upon disabled people who, in many instances, experience discrimination on a daily basis which it would be time consuming and exhausting to challenge on each and every occasion.”* <sup>381</sup>

43. In my experience, this is as true now (six years on) as it was then.
44. The Court Service is not accessible. A substantial proportion of those few disabled people who attempt to use the Court Service experience significant barriers. They cite difficulty making contact by phone (45%), unhelpful or inexperienced staff (40%), lack of help with communication (23%), and lack of accessible information (18%) amongst other barriers.<sup>382</sup>
45. The Court Service has no effective means of ascertaining, recording or communicating parties’ access needs. They often do not provide the reasonable adjustments and auxiliary aids listed in their publicity. Its staff are often unaware of the Court Service’s advertised access facilities.
46. The Government previously argued that the Small Claims track is accessible, and that it would be sufficient to ensure all judges were trained in equality. The Select Committee responded:

*A number of submissions highlighted the complexity of county court rules and potential liability for significant costs as barriers to those seeking to pursue goods, facilities and services claims through county courts. We welcome the Government's pledge that all judges will go through training in discrimination law over the next three years. However, we do not think this alone will address the reasons why so few goods, facilities and services cases are brought to court. We recommend that the Government introduces an equality tribunal with the single Equality Act...* <sup>383</sup>

47. My experiences have sadly verified the concerns expressed in this forecast. Many judges have limited, if any, experience in disability discrimination cases in the provision of services and are therefore not fully au-fait with the Act. Judges have openly expressed this to me during hearings.
48. Parliament’s intent in mandating the use of assessors was to circumvent issues caused by judges’ limited knowledge and experience of Equality Act cases. Ironically, most judges are unaware of their duty to appoint an assessor.<sup>384</sup> The Court Service is similarly not able to provide them. The Judge in my case against the Court Service had to order me (a Litigant in Person) to find and fund an assessor.

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<sup>381</sup> The Equality Bill: how disability equality fits within a single Equality Act s264

<sup>382</sup> Office for Disability Issues, 2011, ODI Life Opportunities Survey Wave One results

<sup>383</sup> The Equality Bill: how disability equality fits within a single Equality Act s265

<sup>384</sup> Equality Act 2010 s114(7)



49. 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.

#### **Alternative enforcement mechanisms**

50. There is a profound need for overhaul of the Equality Act's enforcement mechanisms; to afford disabled people easier and lower key access to justice.

51. When considering alternative mechanisms, it is imperative to codify that failure to adhere to the Equality Act is unlawful and not just a "customer service" issue (a common misperception.)

52. Organisations run by disabled people should be entitled to take representative legal action against service providers on behalf of their members. Legal Aid funding should be made available for this.

53. The suggested right to take representative action should not be extended to organisations run by non-disabled people, due to many such organisations' disempowering actions and approaches.<sup>385</sup>

54. The Government should appoint an Access Commissioner with powers to make and enforce decisions (analogous to the Information Commissioner's role in the Information Governance arena.)

55. The ambit of Equality Tribunals should be extended to services cases, as originally suggested to the Work and Pensions Select Committee by many experts and organisations.

56. The Equality Mediation Service offered a useful, low-key mechanism by which parties could reach agreement outside of the formal Court system.<sup>386</sup> Its demise is a sad loss. It should be reinstated.

57. The Small Claims Mediation Service presents barriers. Its staff give the impression they have never previously encountered disabled people. I successfully sued them for failure to make reasonable adjustments.<sup>387</sup> They do not form a usable replacement for the Equality Mediation Service.

58. Whilst the Act is flawed, it is all we have. Parliament must not resile from its current provisions.<sup>388</sup>

**59. Disabled peoples' user led organisations should be able to take cases under the Act.**

**60. Appointing a legal rights Ombudsman and a Tribunal System would improve access to justice.**

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<sup>385</sup> <http://bit.ly/lcdreview> - Leonard Cheshire vs. The Disabled People's Movement: A Review - Dr. Laurence Clark

<sup>386</sup> <http://bit.ly/disabilityconciliation> - Example case explaining the benefits of the Disability Conciliation Service.

<sup>387</sup> <http://bit.ly/hmctscase> - Disability News Service coverage of case

<sup>388</sup> <http://bit.ly/trailblazersblog> - Trailblazers (Muscular Dystrophy Campaign) blog article on the Equality Act



*3 September 2015*

Doug Paulley and Jonathan Fogerty – Oral Evidence (QQ 97-104)

**Doug Paulley and Jonathan Fogerty – Oral Evidence (QQ 97-104)**

[Transcript to be found under Jonathan Fogerty](#)

## **Doug Paulley – Supplementary Written Evidence (EQD0176)**

### **Consulting User Led Organisations on the efficacy of the EASS**

1. When I suggested to the Committee that they may wish to pose the question about problems with the Equality Advisory Support Service (EASS) to other service users and disabled peoples' organisations, I did not intend any disrespect or any assumption that the Committee would avoid consulting with User Led Organisations / Disabled Peoples' Organisations. I am aware that the Committee has visited user led organisations - if I remember correctly, one of these was at a resource centre south of the river a few weeks ago - and I have the utmost confidence in the Committee's mechanisms and integrity.
2. I did not express myself very well; I simply meant that I would recommend that the Committee may find it of more use asking other disabled people the specific question about the concerns or difficulties expressed about the Equality Advice and Support Service, as both witnesses in the hearing are unusual in being aware of our rights and mechanisms for enforcement and thus don't have the same level of need of the EASS's services as people who do not have that experience and knowledge.

### **My introduction to asserting my rights in court**

3. My legal action under the Disability Discrimination Act and its successor started in 2002 as a direct result of the disability helpline provided at that time by the Disability Rights Commission (DRC), and by the DRC's publication on how to take cases under the Disability Discrimination Act. I had been discriminated against by the organisers of a local half marathon, and had telephoned the DRC's helpline for assistance and advocacy to sort the issue.
4. 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.
5. If I was "starting out" now, I think things would be very different: the EASS would not act as advocates. They may not make a referral to the Equality and Human Rights Commission (EHRC) for a decision on whether to provide support to the case using their power under S28 of the Equality Act 2006. Further, there is now no recourse to the Disability Conciliation Service or its replacement Equality Mediation Service, and the EHRC / EASS does not (to the best of my knowledge) have an equivalent publication explaining how an aggrieved person may enforce their rights through the Equality Act and the County Court system.
6. I have attempted to redress this in some small way through my own amateur publication, but ultimately it is clear that if I were starting now as a disabled person I would not have the opportunity to enforce my rights in the same way as I was given 13+ years ago. Things have definitely gone backwards.

### **Recognition of practitioners who litigate despite the risks**

7. As noted, there are very few lawyers working in the tricky area of disability discrimination in the provision of goods and services. I can only think of four solicitors and

two barristers who do so. I am very lucky to work with the excellent campaigning law firm, Unity Law. Without them, the Firstbus case would not have happened, neither would other cases including those mentioned today on LGB peoples' right to a life free of harassment. They have taken on cases in these notoriously capricious areas at great personal and communal risk. I think they deserve substantial credit for successful legal action under the Equality Act. We noted that there have been very few cases, particularly in the field of provision of goods and services; and without Unity Law going out on a limb for disabled people, there would undoubtedly have been fewer still.

### **Duty to assess service providers**

8. I made the case in the Select Committee that disabled people should be able to refer their issues to the EHRC or to an ombudsman with the assurance that their issues would be formally assessed, similar to the rights under S50 of the Freedom of Information Act and similar under the Data Protection Act. I think this is crucial if an Ombudsman or the EHRC is to be effective; as the EHRC are reticent in voluntary employment of their statutory powers. I would add that I believe that the EHRC should be accountable for the decisions they make as a result of their prospective compulsory assessments; ultimately backed up by complainants' rights to take the EHRC's decision on such matters to Judicial Review. This could also be extended to mandatory inspections.

9. Premises that sell food are required to submit to assessments by Food Hygiene inspectors on a regular basis, and can be required to improve under threat of being shut down. This is entirely right and proper as the effects on the populace of poorly performing food establishments could have significant consequences for the populace's health and well-being. One could make similar claims about the effects that poor access to goods and services could have, and indeed does have, on disabled peoples' lives.

10. I would suggest a system of compulsory statutory accessibility inspections of businesses and other service providers, with similar powers (or even duties) of enforcement. This feels like somewhat of an extreme or an outlandish proposal, but I think this is a result of the complacency in which we currently regard our obligations towards disabled people rather than being inherently "wrong" about my suggestion per se: it says something about how much we value disabled peoples' quality of life.

### **Travel Home**

11. I experienced difficulties on the Underground as the lift at Westminster Underground Station to the Jubilee Platform was out of order. There were no signs indicating it was out of use, there were not any signs as to how to circumvent this lift and the TFL website doesn't indicate any problems with access to the Jubilee Line. There were no staff in the staffing booth, nor were there any points to enable people to summon assistance, and mobile phone reception was limited. We were eventually spotted by a member of staff, I suspect through CCTV, and informed we had to leave the station and re-enter from a separate access. I am now issuing against London Underground for discrimination, and this seemed ironic.

*11 November 2015*

## **Damian G. Pavillard – Written Evidence (EQD0168)**

SUBMISSION FOR CHANGES TO THE EQUALITY RIGHTS ACT AS IT RELATES TO PERSONS WITH ASSISTANCE DOGS.

May I introduce myself? My name is Damian Pavillard, I am a former Airline Executive, 78 years old, and I am profoundly deaf. I have had ear problems since 1943 at the age of six. Now, I wear a digital hearing aid in my right ear and have a titanium bolt screwed into the left side of my skull, to which is attached a BAHA, (Bone Adhering Hearing Aid). I have been the recipient of a Hearing Dog since September 1996. My first dog "Biggles", died in December 2007. I have now had "Ash", (a "Yorkiedoodle" cross) since August 2010. (Please see his picture and award certificate –ITEMS 1 and 1a enclosed) [NOT PUBLISHED].

During the past nineteen years since becoming the recipient of my First Hearing Dog, I have been discriminated against and refused entry into cafes, hotels, restaurants and taxis on **16 separate occasions**, because of my being accompanied by my Hearing Dogs. (Please see this listing -ITEM 2 enclosed) [NOT PUBLISHED].

Up until October 2010, we had the Disability Discrimination Act 1995, supported by the Disability Rights Commission which operated a very efficient and helpful Conciliation Service, which I used successfully on a couple of occasions. Unfortunately, within just five months of taking office in May 2010, Parliament abolished The Disability Discrimination Act and disbanded the Disability Rights Commission together with its Conciliation Service, replacing them with The Equality Act and Equality and Human Rights Commission, which **does not operate a conciliation service**. The change was quite obviously brought about as a cost saving exercise by the last Parliament, whose avowed intention was, "To work towards a more caring, fairer and just society for Britain". Clearly, those of us with Assistance Dogs across Britain are not regarded as being cost effective. A "more caring, fairer and just society" and any protection from discrimination for us and our Assistance Dogs, is virtually non-existent under this Act as it currently stands. In fact our situation has worsened rather than improved.

One can only wonder what understanding the "Legal Eagles" in the Ministry of Justice in Westminster who write our laws, actually have of the diverse workings of the human mind. For a law to work effectively, it needs to be totally unequivocal by actually saying what it means and meaning what it says. There must be no room left for misunderstandings, or diverse interpretations. The 2010 Equality Rights Act is a case in point. It makes reference to so called "service providers" and persons with Assistance Dogs. I quote; "Service Providers are required to make **reasonable adjustments** to enable persons with Assistance Dogs to utilise their premises".

The ambiguity arises in the question as to what is a **reasonable adjustment!** This is the crux of the problem, for what may be deemed reasonable to one person, is not necessarily going to be reasonable to another. I cite a case in point, which occurred in the summer of 2012. A deaf lady with a Hearing Dog took herself off on a coach tour holiday somewhere in England. The day of the tour arrived and all those involved assembled at the pick-up point. The coach duly arrived and they were welcomed cordially on board by the coach crew, including the lady and her Hearing Dog and off they went.

Everything was fine until they got to the hotel where they were due to spend three nights and two days while they took in local day tours of that area. Before going to their rooms for a brief rest and a wash, they agreed to meet in the bar for a pre dinner drink and then to go as a group, into the restaurant for their meal. Then the trouble started. The restaurant staff and the hotel management flatly refused to allow the lady and her Hearing Dog into the

restaurant. So she had to have her breakfasts and dinners in her room, segregated from the rest of the group throughout the stay, due to this policy.

Now, the hotel would probably argue that they had allowed her and her dog everywhere on the premises except for the restaurant and that she had had proper hospitality. She would argue that she had paid the same tour and hotel costs as all the other members of the group, therefore she should have been treated equally.

The overriding point here is this. If a normal able-bodied person with no disabilities, or impairments and who does not need an Assistance Dog, is able to go freely into any bar, bus, cafe, hotel, pub, restaurant, train or taxi **without any restriction**, then so too should a person who, because of their physical state, is a recipient of an Assistance Dog. This is **equality**, anything less than this, **is most definitely not**.

It is for reasons such as these, throughout the United Kingdom, these incidents and inequalities should be made a **criminal offence** under the law. So that **when necessary**, any recipient who becomes a victim to this type of discrimination because of their Assistance Dog, may have absolute the right to contact the local Police and so instigate a formal complaint against the offending individual, or organisation and thereby making these increasing and shameful incidents, a thing of the past.

Now before people throw up their hands in protest and exclaim, "We cannot put more pressure on our Police, as they are being reduced in numbers and have enough on their plates as it is". If I may, I would point out that, currently there are less than seven thousand recipients of Assistance Dogs across the U.K. The majority of these are Guide Dogs, around 4,500 of them and around 900 Hearing Dogs, plus those of the other six categories making up the balance. The current incidence of access refusals across the U.K. equates to around 30 refusals for Guide Dogs per month and around 12 for Hearing Dogs per month. I have no figures for the rest. But even one such incident **is one too many**.

Also, if the local Police were called to an access refusal, the chances of such an incident ever getting to court would be fairly rare. Most people across the U.K. are respectful of our Police and in the majority of cases the mere appearance of a Police Officer, would have the effect of calming the situation down and allowing reason and common sense to prevail. On the rare occasion that this might not work and the matter goes to court, a few well publicised and successful prosecutions with substantial fines, would stop this sort of discrimination in its tracks. In April/May 2013 I wrote to Chief Constable House of Police Scotland to ask that if called, a local Police Officer would attend a case of refused access. I was advised that as this was not a criminal matter, it was not therefore enforceable by Police Scotland. (See - ITEM 3 enclosed) [NOT PUBLISHED].

However, it is of no use just to change the law if such changes are not properly notified. The saying that "Ignorance under the law is no excuse", is to totally miss the point! If people do not know that such discrimination **is a criminal offence**, nothing is going to change. This can be typically seen across the United States, where discrimination against persons who are recipients of Service Dogs (as they are called over there), **is a criminal offence under Federal Law**. Unfortunately, neither the Federal Government nor many State Governments have publicised this fact, so such discrimination is very prevalent there. Each individual State Governments however, fixes its own penalties and these differ from State to State.

In Florida for example, discrimination and access refusal to a person with a Service Dog can result in a fine of US\$200 and a jail term of up to six weeks. In Wisconsin, the penalty is anything from US\$100 up to US\$750 and/or up to thirty days in jail, dependent on the level

of discrimination. In Pennsylvania, there can be a fine of up to US\$1,000 and/or up to six weeks in jail.

I would not advocate imprisonment here in the U.K. I would however suggest a fine of £5,000 which, following deduction of Court costs, the remainder would be passed on to the Charity which trained the recipients Assistance Dog against whom access was refused. Additionally, the offender would be required to carry out 100 hours of Community Service. If possible, in assisting the Charity which trained the recipient's dog. This would be followed by a warning, that if the offence was repeated, then the service provider's trading license would be revoked, **permanently**, plus a doubled fine of £10,000.

However, changing the law is useless if people are not made aware of the change, as the problems will simply continue. If your Select Committee **does** advocate that discrimination of this nature be made a **criminal offence**, then the matter must be properly publicised. If I may, I would suggest that the Communities and Local Government Minister, The Rt. Hon. Greg Clark MP, be asked to write to all Councils and Area Authorities across the U.K. instructing them to add a footnote on all future trading licenses, advising that any proven case of discrimination against persons who are recipients of Assistance Dogs, had been made a criminal offence and would result in a warning on a first offence, followed by the permanent revoking of their trading license if they infringed again. Where a Court hears a case and finds a service provider guilty of access refusal, it should be required that it write to the local Council/Area Authority Licensing Department to give the name of "service provider" and the ruling, so that they can then issue a warning when they renew that service provider's trading license and then to revoke it permanently if that same provider repeats the offence a second time.

Unfortunately, it seems that there are some Judges and Magistrates, who have stated that to allow an Assistance Dog into a place where food is sold, served, or eaten, is "a reasonable adjustment". As a result there are a number of eateries, hotels and restaurants across the U.K. where the premises consist of different areas. One being a standard restaurant provided with chairs and tables of a normal height and where the food is served at the tables, in a calm quiet atmosphere. Additionally, within the same complex might also include lounge, or saloon bars. These are usually provided with low armchairs and coffee style tables, of which the seats and the table tops are about fifteen to eighteen inches above the level of the floor. Usually, the decibel of ambient sound in these areas is high because of customer numbers. Also, there are often Fruit Machines and/or Juke Boxes, or piped music and children running about with possibly either a game of Darts or Pool in progress, all of which contributes to the high volume of noise.

Clearly, such areas are not suitable for Paraplegics who are confined to a wheelchair, or to people like me who are profoundly deaf. If we were just to turn up we would probably be allowed into the restaurant as a matter of course but bring an Assistance Dog into the equation and the reaction is invariably, "We do not allow dogs in the restaurant". So we are confined to the Lounge/Saloon bar with all the noise and miniscule chairs and tables. I have never observed such places to provide eating trays which can be clipped to the arms of a wheelchair. How such service providers can expect a Paraplegic to virtually double themselves over to get food from a plate, eighteen inches above floor level and into their mouth and down into their stomach, is unimaginable. All purely because they are accompanied by their Assistance Dog and have been refused access to the restaurant!" It is an absolute disgrace.

Another point, when people with normal hearing are in a noisy environment, their brains can trigger off an ability to reduce the volume of extraneous sound to the background of their audio range, and thereby focus on the sounds closest to them. That is the voices of the persons with whom they are sitting close to.

Deaf people with artificial hearing devices cannot do this. The devices simply increase the volume of all sound across a given area, up to a preset level of decibels. In an environment with a multitude of sounds, this becomes extremely uncomfortable and it is impossible to hear and communicate properly with the persons one is with, or to converse with any sort of ease. Usually however, in a restaurant area in which the ambient noise is normally considerably less, one can. However, because of such restricted access imposed by many "service providers", what was supposed to be an enjoyable time over a meal with friends, or family, becomes an ordeal which only brings relief when it is over. It is felt that Judges and Magistrates who have expressed their opinions that allowing an Assistance Dog into premises where food is sold, served, or eaten is "a reasonable adjustment", fly in the face of the U.K. Environmental Health Institutes statement that: "There is no valid reason to deny any Access to Assistance Dogs, as their risk to hygiene is minimal".

Many "service providers" will come up with all sorts of excuses as to why they cannot accept a dog into the premises, by quoting such reasons as European Hygiene Regulations, or dog allergies etc. Assistance Dogs U.K., the blanket organisation for all the UK's dog training charities, has issued all recipients with an Identification Book which includes the following: A photo ID of the dog and its recipient. The contact details of the Charity which trained the dog, the dog's recipient's contacts, details of the dog's training, any hygiene risks and information on allergies, and health and safety. Also, it advises and creates awareness among the general public, to promote various behavioural and legislative changes to ensure the freedom and independence and rights of all its Assistance Dog recipients. This ID Book should be available at all times to be shown it to any "service providers", as required. Unfortunately, many "service providers refuse even to read it, or at best give it a cursory glance and handing it back, while standing by their original refusal of access, regardless. (See - ITEM 4 enclosed) [NOT PUBLISHED].

There are many Chinese and Asian run restaurants whose owners/operators have a fear of losing their Trader's License because of a failure to meet the necessary hygiene standards. They mistakenly use this as grounds for access refusal. Also across the U.K. there are quite a number of Muslims who own/operate, or drive for taxi companies and who frequently refuse to pick up a fare, if that person is accompanied by an Assistance Dog, claiming that it is against their religious beliefs. However, this is very variable and seems based upon the individual teachings of the resident Imam in their local mosques. I was informed that some Muslims regard a black dog, which mine is, to be an embodiment of the devil! I have been given to understand that, as yet anyway, [NAME REDACTED] the Secretary General of the Muslim Council of Britain, has not given any advice to Muslims across Britain as to their duties in the treatment of those of us who are recipients of Assistance Dogs. Perhaps a request from this Select Committee might have the desired result?

I would point out, that we have had no choice in the disabilities, impairments, or inabilities, with which we are burdened. We are fortunate in the numbers of people who give so much of their spare time across the U.K. to raise money for the various charities. Also there are those who work for no pay, in socialising puppies in their own homes, for the various charities prior to their commencing their training as an Assistance Dog. All the financing for the training and ongoing support over eleven to twelve years of an Assistance Dog's working



life, costs a charity in the region of £60,000 per dog. This all comes from the private sector through fund raising, donations and legacies. There is no Government funding at all. The galling thing about all this is, while the Prime Minister and many Parliamentarians keep intoning the mantra about the desire "To create a more caring, fairer and just society for Britain", it is simply not happening for us. In fact on 16 March 2012, the Prime Minister attended a special reception to mark the 30th Anniversary of Hearing Dogs for Deaf People at Heyford Park which is in his West Oxfordshire Constituency. At this reception, he was introduced to the then Access and Inclusion Manager for Assistance Dogs U.K. Mr. Philip Biggs, an ex Police Officer who is a Hearing Dog recipient himself. When the Prime Minister heard this title, his immediate response was, "Tell me, where are the problems? To which Mr. Biggs replied that they were still rooted in service and transport provision and getting worse not better. Then his "Praetorian Guard" moved him on. So a golden opportunity was missed. (See - ITEM 5 enclosed) [NOT PUBLISHED].

On two separate occasions I have sent correspondence on these matters of discrimination to Her Majesty the Queen. While I knew that she would not reply, I do know that she reads all correspondence and on both occasions I had a letter from the Senior Secretary in the Buckingham Palace Correspondence Unit, stating that Her Majesty thanked me for my letters and as per her request they were being passed on to the Prime Minister in Downing Street. I have also written myself to the Prime Minister on this same problem. But I have never had any response, apart from letters issued by some nameless person with an indecipherable signature in the Downing Street Correspondence Unit and which simply confirmed that the letters via Her Majesty and directly from myself had been received, but nothing more.

So where do we stand with our "More caring, fairer and more just society? Somehow I do not think that the will is there both within Parliament and with "service providers". We hand out Assistance Dogs UK stickers for them to display on windows, doors and windscreens, which indicate to those of us with Assistance Dogs, that we and our dogs will be welcome in that premises, be it bar, cafe, hotel, restaurant or taxi etc. But very few of them ever display these stickers one of which I enclose together with a listing of the Registered Assistance Dogs charities within the UK. (see - ITEM 6 and 6a enclosed) [NOT PUBLISHED].

In conclusion, I would make this point. The Identification Book with which we Recipients and our Assistance Dogs are issued, should be for us **"a permanent and cast iron guarantee"**, that we will be accorded full access to all establishments and areas therein, together with unrestricted admission onto all modes of transport, public or otherwise, throughout the entire United Kingdom. That any changes to the current Equality Act, be made **permanent and should never become "devolved"** to the Northern Ireland, Scottish and Welsh Parliaments, thus totally banning such discrimination across the nation, for good. There are many people all around the UK giving vast amounts of their time, working hard to provide Assistance Dogs to as many people as possible, in order to improve the quality of our lives. Lives, which are now being destroyed in minutes by an increasing nationwide core of irresponsible, selfish, thoughtless and uncaring "service providers".

I confirm that I am prepared to come before your Select Committee, to go anywhere, to speak or meet with anyone, or to attend any venue, if it will help to hasten and stop this totally disgraceful and unwarranted discrimination and access refusal, against those of us who are recipients of Assistance Dogs.

I hereby rest my case.

I am your Ladyship,

Damian G. Pavillard – Written Evidence (EQD0168)

Yours sincerely  
Damian G. Pavillard

*28 August 2015*

## **Gwynneth Pedler – Written Evidence (EQD0078)**

1. My name is Gwynneth Pedler and I am giving written evidence as an individual - an expert by experience having been relying on a wheelchair or mobility scooter for 12 years.
2. Until 18 months ago I lived in Oxfordshire where I was Chair of Oxford City Access Forum, Chair of Oxfordshire Transport and Access group (OXTRAG), Deputy Chair of Oxfordshire Unlimited, a Disabled People's Organisation (DPO); the government encouraged every council in England and Wales to set one up. The aim was to have direct contact with disabled people who have direct experience of the unnecessary barriers they face in their everyday lives. I was also a member of Bus Users (UK), The Access Association, Transport for All (Oxfordshire), Disability Rights UK (DRUK) and was a columnist for The Oxford Mail, writing on Disability issues. Now living in London, I am still active on issues that hinder disabled people from access to transport, shops, restaurants and services. I am President of OXTRAG, an active member and campaigner of Transport for All and still retain my membership of DRUK and The Access Association.
3. My evidence is largely about "how it is" for disabled people; not more jargon or fine words which have not succeeded in improving the world for disabled people or making an inclusive society.

### **INTRODUCTION**

4. In my view, the Equality Act (2010) which absorbed the Disability Discrimination Act (1995/2005) has not done any favours to disabled people. In 1995, there were expectations that our lives would be transformed by the DDA; thanks to Dame Jane Campbell and her followers for the work they did to make this possible. Twenty years on and the mood is one of stagnation at best and the feeling that we are losing ground is quite high. There has been a shift in attitudes and acceptance of disabled people but it is far from perfect. Many councils still use the medical or charity model (which regards disabled people as victims of circumstance who are deserving of pity) rather than the social model. This does not make for an inclusive society. Inclusive services can open up people's opportunities and make society fairer. It isn't disabled people who are out of step. It is society.
5. There may be a number of reasons for this. Public hostility to disabled people and harassment of them has recently increased as a result of the Government's approach to disability benefits; and there have been substantial cuts to local authority funding previously used to help empower disabled people. However, in my view the

situation has not been helped by including disability in the Equality Act because dedicated Access Officers have been replaced by generic Equality Officers (or no-one at all) many of whom have no understanding of disability discrimination or what is required to truly empower and engage disabled people in daily life.

6. Businesses are often not making reasonable adjustments. Some of them grudgingly do so if an individual has the knowledge and courage to challenge them but disabled people can expect daily to meet barriers and many of them end up giving up in despair. There is no willingness to make life accessible and too many local authorities, including my own, have little interest in the issue. The law is too weak and nothing happens to local authorities or businesses who just ignore even the weak rules there are. Stronger duties are required and effective enforcement mechanisms involving disabled people themselves – the true experts.

## **SUMMARY**

7. The evidence below covers the following issues:

- A. Gaps in the law

Paragraphs 8 to 16 highlight the need for change in 4 areas:

- (a) Ensuring wheelchairs have priority in wheelchair spaces (paras 9 and 10)
- (b) Extending access duties to all coaches (para 11)
- (c) Requiring local authorities to appoint dedicated access officers (paras 12 to 15)
- (d) Strengthening public sector duties and requiring regular reports on progress (para 16)

- B. Reasonable adjustments

Paras 17 to 29 set out my experience of reasonable adjustments which illustrates the lack of understanding of what is required on the part of both businesses and local authorities. Without dedicated access officers to support disabled people, there will be little progress.

- C. The Public Sector Equality Duty

Paras 30 to 36 illustrate how some local authorities are doing very little to minimise the discrimination faced by disabled people – for example by allowing advertising boards to litter pavements and not dealing with pavement parking. Much stronger reporting requirements and proper enforcement are required.

- D. Oversight and Enforcement

Paras 37 to 39 stress the need for effective monitoring and enforcement – involving disabled people but not leaving them to struggle alone.

## **QUESTION 2: GAPS IN THE LAW**

8. What seem to me the most important gaps in the law are set out in the following paragraphs.

### Priority for wheelchairs in wheelchair spaces on buses

9. As the recent Court of Appeal case made clear, the law doesn't specify that wheelchairs have priority in the wheelchair space on buses, so we find ourselves outnumbered by others who claim it as their right. In my opinion bus companies discriminate against wheelchair/scooter users by insisting on only one wheelchair on a bus but any number of buggies, strict rules about size of wheelchairs but no such restriction on sizes of buggies some of which are wider, higher and longer than my scooter. Bus companies have Conditions of Carriage so why not use them and specify one unfolded buggy and a restriction on size and certainly priority for wheelchairs. (We come to the word enforcement again). Or, as was done in Oxfordshire, one allocated space for buggies and one for wheelchairs. I experienced an incident a number of years ago when waiting in the dark and rain for my bus which ran hourly. The bus was empty except for a young mother with a pushchair who was occupying the wheelchair space and refused to fold the pushchair saying "I moved for you the other day and I am not moving today". I followed advice given by EHRC but met a barrier with the bus companies who said it wasn't law so they couldn't enforce it.
10. The position is very different on the Underground and Rail services. All these services state it is priority by law for this space to be used by wheelchair users and people move willingly if required. The law should be strengthened so that disabled people are not faced with the possibility of conflict on bus services. I have not experienced any difficulty on train or underground nor have I heard of any cases elsewhere but conflict is a daily occurrence on buses. Cause for complaint but all one receives from bus companies is an apology and a promise to speak to their staff. Twenty years on and the position is the same. The EHRC does not have the resources to take up every case because there would be hundreds every week. The law needs to be changed to give absolute priority to wheelchairs.

### Bring all coaches within the scope of the Act

11. Disabled people enjoy holidays the same as everyone else but the hurdles on the way are numerous. First, the cost of travel which affects everyone as train fares are high but there is always the choice of coach. Or is there? For disabled people - no. For some reason coaches not running scheduled services - private hire coaches - were not included in the need to be accessible in line with every other service which means they effectively exclude disabled people. No freedom to choose which was promised to us. Saga and National Trust offer very interesting holidays but inform me that their coaches are inaccessible and, in my experience, they show no interest in using those that are. Local groups have day trips but again use coach transport that is

inaccessible. Where is the freedom to join in activities with your local community? Large tour companies offer great value for money, especially abroad, but not for disabled people as coaches are inaccessible. National Express have lifts, by law, as they run scheduled services. It sounds great until you actually try to use them. My scooter will not fit into the wheelchair space but they will let me use the lift to access the steps; good so far. However I must take my scooter to pieces and walk to the coach and they will lift it into the hold. On arrival I must then put it together. This means that in practice scooter users like me cannot use National Express. If I use my electric wheelchair it may be possible to access the wheelchair space. Worryingly however National Express has recently introduced modesty boards (apparently intended to prevent other passengers from seeing up ladies skirts) at the front of wheelchair spaces, making them smaller. This means that some wheelchairs that could previously access the space can no longer do so. Surely changes that adversely affect disabled people are illegal?

#### A duty to appoint an access officer

12. It should be mandatory for every local authority to appoint an access officer whose job it will be to ensure that the public sector equality duty is being met in relation to disabled people. Without this expertise, no progress will be made. The demise of Access Officers has been a backward step for disabled people. Fully trained, knowledgeable, well informed and supportive they fell; our allies were gone. 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. The brief of Equality Officers is too wide, the depth of knowledge is too shallow and the special needs of disabled people has been lost in all their other responsibilities. Councils are getting away with poor practice to the detriment of disabled people who struggle with badly designed highways that go under the guise of improvements.
  
13. Impact assessments are no longer regarded as relevant. The view seems to be taken that every change has an impact on someone so why not disabled people. For instance a road scheme that takes away traffic lights at a busy junction so that traffic moves faster and keeps drivers happy but relies on eye contact with the driver when a pedestrian wants to cross the road immediately disadvantages those with low vision or mobility difficulties resulting in that junction becoming a no go area for them. Would drivers abandon that junction? Would it have an impact on them? Disability groups campaigned tirelessly on this issue but were overruled. RNIB and Guide Dogs have produced some very good films that illustrate difficulties encountered by these policies. See for example the film on Shared Spaces which can be accessed at the following link: <http://www.youtube.com/embed/NOObDPOSm-g?wmode=opaque>

14. Firms of so called Access Officers are passing buildings or renovations as accessible when they clearly aren't if we take the word for what it is meant to mean. Some examples are reception desks where wheelchair users can't be seen by the receptionist; no internal automatic doors on public buildings (it seems as if buildings are regarded as accessible if just the front door opens). Worst of all, in my opinion, is a disabled toilet that is not wide enough to turn a wheelchair let alone space for a transfer board on either side with the toilet seat too low and no grab rails. Now, with building regulations even more lax, the independence we were promised is shrinking.
15. Quite definitely, disabled people are less likely to have their needs met now than before 2010. Unqualified people are now responsible for meeting the very specific needs that enable people to gain independence, have freedom of choice and live fulfilling lives.

Stronger duties on local authorities to improve the lives of disabled people and to report progress regularly to Government and to disabled people and their groups

16. See the section on the public sector equality duty for more details

**QUESTIONS 3 AND 4: REASONABLE ADJUSTMENTS**

17. This is a key issue. It is not enough to accept people, treat them with respect and acknowledge the diversity of people, disabled people need more if they are to have freedom of choice. In the case of reasonable adjustments, my experience and that of others is that service providers and others do not understand what is required. They certainly don't take a proactive approach but wait to be challenged. Unfortunately very few have been challenged and the effect is usually an improvement for the person involved which doesn't act as a deterrent to others who continue to disregard the law.
18. Here are some of my recent experiences.
19. A political party's fund raising dinner was planned to take place at a local restaurant until the thorny issue of accessibility raised its head. Enquiries were made at the restaurant about a ramp for wheelchair users. The proprietor said no and neither was he going to get one but proposed the reasonable adjustment of carrying any disabled person into the restaurant. Surely not reasonable as without specialist training it could be dangerous for both himself and the disabled person and also exclude anyone who was not able to get out of what could be a heavy electric wheelchair. And how about dignity and respect? In the restaurant owner's mind, and that of those who planned the event, who by their very occupation should know better, of no importance. The political party's next event was, I am pleased to say, held in an accessible venue but if no challenge had been made this would probably not have happened.
20. I recently campaigned to get my local Café [NAME REDACTED] to supply a ramp mentioning, among other things, reasonable adjustments. Within a few weeks it

came but getting in the door is tricky as they have tables and chairs and a menu on the narrow pavement outside. So far I haven't made an issue of that.

21. Local authorities are often no better. My Blue Badge came up recently for renewal and as I had been issued with one (about 10 years ago my first one) in another council I was told I must be assessed again. I asked where I needed to go but was told they couldn't say yet but if I didn't keep the appointment I would go to the bottom of the list. When the appointment arrived, to get there I needed to take 2 buses and the overground and, of course the same return journey home and to keep the appointment I needed to set off at 8.30am. My request for transport was refused. I am elderly and use a mobility scooter for anything outside my house but it didn't seem to matter. Within one short bus ride there is an NHS Rehabilitation Centre so where was the reasonable adjustment? Or even an understanding of it or, it would seem, a willingness to take circumstances into account.
22. Restaurants offer reading glasses if you ask for a large print menu. Is this a reasonable adjustment even though it doesn't solve the problem? Is the offer from the waiter to read the menu to you a reasonable adjustment? How many people only read down the menu once? Some restaurants have the menu in Braille as well as large print and it isn't all large chains so it can be done if you have the will.
23. Finding a hotel is another problem that has to be solved. Rooms are often on the ground floor at the back overlooking the kitchen or car park where noisy activity takes place early in the morning and late at night. Only two steps is deemed accessible, showers are in the bath. I arrived at a hotel in London that I had been assured was accessible several years ago to find a long flight of stone steps at the entrance. No means of letting the staff know I was there as there was no bell at the bottom of the steps. Eventually another guest came along, alerted the staff and I was carried in (with a loss of dignity). According to the proprietor, having a lift inside the hotel made it accessible. The room was too small for using a wheelchair, the bathroom inadequate and unsafe. Arriving at the breakfast room I was met by a flight of stairs. After a protest they brought my breakfast upstairs but I still had to negotiate the flight of stone steps outside. Is this an area where councils should play a part? Information offices are found in most towns so a register of all hotels/rooms/bed and breakfast accommodation that are accessible could be made available. Where are the Access Officers to give professional advice? Gone, due to the Equality Act. At every turn it is obvious that the Equality Act worsened our quality of life, freedom of choice, independence and security. It pervades our whole life.
24. Taking a look at public transport is a little more encouraging but far, far from perfect and again it varies from company to company. There have been some backward steps like the design of Boris buses which are not at all disabled-friendly. Disability groups lobbied hard about this at the design stage but to no avail. It would be



helpful if there were a single design for the wheelchair space (approved by disabled people themselves) – in London each one seems to be different.

25. Rail companies have spaces for wheelchairs, ramps, disabled help lines and staff to assist you; that is on paper. Rather like the DDA and EA. We are encouraged to book ahead if we need assistance, although in London many stations are operating a “Turn up and Go Policy” due to heavy campaigning by Transport for All. The system sounds good if it works but when it doesn’t, disabled people find themselves in difficulties. Even advance booking doesn’t guarantee that assistance will be there (as Dame Tanni Grey-Thompson has reported on more than one occasion). Holding a confirmation of your booking isn’t worth the paper it is written on. As more stations become unstaffed, the problems will only increase.
26. Last week despite booking assistance I was met by an assistant who told me he wouldn’t let me on the train because it was too crowded. Possibly direct discrimination on grounds of disability? I was at the terminus; the train hadn’t arrived; nor were there any passengers on the platform. Where was his problem? But he was adamant. I am not a shrinking violet and will stand my ground but many disabled people, especially if they are elderly, do not stand up for their rights. Seeking out a more qualified person I boarded the train and completed my booked journey. Solution: more disability awareness training needed at that station. It is a company requirement but probably lost among the other protected characteristics.
27. One of the problems with rail services is the number of different companies we have to deal with. All have different policies which causes confusion and deters less robust disabled people from travelling, thus taking away their freedom and independence. For instance, I am not allowed to take my scooter on some lines. Others require me to get a permit while others have no such requirement. Most trains allow you to book the wheelchair space (only two on each train) but some don’t which presents a problem if you have connections to make. Every company has a different disabled telephone number to call when you need to book or for advice. Even station staff get confused. On one journey I made a successful journey to my destination but the staff refused to put me on the train to come home as they said they didn’t allow scooters. An immediate call to the disabled help line got me on the train but not all passengers would know this number and it should not have to be their responsibility to do so. When I contacted the company the following day their excuse was that scooters are too big for the space and block the aisles. In my case, not only was my scooter in the space but my friend’s walker plus both of our cases. What was blocking the aisles were suitcases belonging to other passengers. So where is equality? Should suitcases be banned or limited in size?
28. The law requires “reasonable adjustments” to be made but what does that term mean, especially now that, under the Equality Act, the disadvantage suffered has not

just to exist but to be “substantial” – another opportunity for loopholes. To give just one example. If my local bookshop has a step that is too high for my wheelchair am I at a substantial disadvantage by them not supplying a ramp so that I can browse like others or is asking me to request a specific book and then bringing it out to me enough “reasonable adjustment”? Perhaps I should go down in the pouring rain, protected by my cape, and challenge them to bring books outside. But would a refusal to bring the books to me outside be discriminating against me? And of course this is going on all the time all over the country. What is really needed is a change in attitude especially by councils who can effect change by setting an example of good practice.

29. “Reasonable adjustments” is too subjective a term – fine and encouraging words but what do they really mean? Much stronger guidance and statutory duties are required. Could there not be a presumption of access being provided with the service provider having to show why it was impossible? Access officers were again invaluable here in initiating local audits and negotiating with businesses on behalf of local people or providing them with advice on request. That has gone, as explained above.

#### **QUESTIONS 5 AND 6: THE PUBLIC SECTOR EQUALITY DUTY**

30. The public sector equality duty had the stated aims of minimising the disadvantages faced by disabled people and increasing their participation. It has not succeeded in these aims at least in some parts of the country where local authorities just treat it as a paper exercise. There are some good local authorities - such as North Norfolk which I visited recently - and other appalling ones like my own where a local councillor recently told me that dropped kerbs – essential to be able to go out safely – were not a priority! To venture out is a hazard, as I know from experience. My world has got smaller as I gradually count areas as no go areas. The next time I fall off my scooter into those roads may be my last! Other disabled people who have heard of my experiences have been deterred from going out at all.
31. The Government issues guidelines but that is what they are and if the Councils decide to follow them well and good but many councils are seeing them as just that and not enforcing standards that are suggested as good practice. The Act is supposed to be about enforcing things not just educating the public.
32. There needs to be a duty to report progress to Government. How many authorities were part of the Accessible Britain Challenge? Was it left to councils to give reports or were there some site visits? Did the criteria expect input from disabled people? Some places I have visited (North Norfolk) would certainly qualify for an award but others I wonder if they even know the word accessible. Here again is the high probability of a post code lottery. Stronger statutory duties are required; so often councils are given “guidance” on good practice so disabled people may be lucky

enough to live where there is a council, not only aware of the need to be inclusive, but actively working towards it and by carrying out impact assessments using living experiences and advice from disabled people. Theory is a start but without outcomes it is a useless tool.

33. Two examples:-

- (a) Advertising boards that litter the pavements making it hazardous for wheelchair users and those with poor sight to access them in safety. Soon, because of accidents resulting in loss of confidence, the freedom to access their local community is lost. I recently carried out an audit in my local high street and found difficulty in accessing the pavement safely. In some cases, several A-boards were outside a single shop making the pavement too narrow for my scooter. I had to ask another pedestrian to move some. The Public Highways Act makes it unlawful to obstruct the highway and is a punishable offence. Seems clear to me but when my daughter recently challenged a restaurant about their board, she was told that the local authority issued licences that give shops permission to display them! Something that is probably unlawful and certainly not in accordance with that authority's public sector duty under the EA. On the other hand, I know of two councils in the capital that have a zero tolerance on A Boards and will issue £100 fines if their use continues after several warnings have been given. Where is equality? Once again it comes down to a post code lottery.
- (b) Pavement parking is a nightmare for disabled people and makes some of their local roads a no go area. Some enlightened councils have zero tolerance on this issue (post code lottery again), others operate a closed eye policy despite protests from disability groups. Some councils are allowing cars to park up to a white line installed by the council which in theory sounds good but in practice cars exceed the line leaving a space less than the minimum 1.5 metres needed to allow a wheelchair to turn if necessary. I recently measured gaps next to cars parked on the pavement outside my local shops as 68cms and 76cms and, on one occasion, I had to wait 30 minutes for a driver to come back and move the car so that I could get by. Challenging the car drivers led to rudeness and verbal abuse. When the council is approached they say it is too difficult to enforce and they can't afford to pay for extra staff. It sounds as if a lump of metal deserves more consideration than a human being.

34. Many Councils, parish, district, county and borough, have failed in their duty to have due regard to the wellbeing of disabled people forcing many, not from choice, to stay at home or accept transport to clubs or events along with other disabled people. This leads to segregation. No chance of meeting a cross section of the community in which they live. In many cases cuts have led to volunteers or voluntary groups taking on former council transport responsibilities – but they often use their own cars, very few of which are accessible to wheelchairs.

35. Another area where local authorities are failing is dropped kerbs. A lack of or badly installed dropped kerbs makes for a dangerous environment; since moving to London I have had two serious falls from my scooter due to dangerous dropped kerbs. There is a lack of joined up thinking in some cases with a dropped kerb on one side but not the other nor one in sight (as is the case for example outside the Royal Albert Hall). Riding my scooter recently up Charing Cross Road alongside all the busy traffic was quite unnerving but the pavement was not wide enough to turn round and go back so there was no alternative. Maybe in times of austerity it is unrealistic to expect every small road to have dropped kerbs but surely it is not expecting too much to have them on major routes. It is important to keep in our minds that it is now 20 years on from the DDA so there has been plenty of time for councils to make the changes needed in accordance with the clear DfT guidance.
36. There needs to be effective consultation with disabled people and site visits for road schemes for example to develop proper understanding of the issues. Not just tick boxes on the computer. For example, the transport group in Oxford (OXTRAG) held a number of sessions where engineers from the council's transport department spent several hours walking around the city using various pieces of equipment such as crutches, scooters, manual wheelchairs, glasses that distorted vision and electric wheelchairs, accompanied by disabled people, to get a better understanding of the issues.

#### **QUESTIONS 8, 9 and 10 – OVERSIGHT AND ENFORCEMENT**

37. Can the law really ensure that disabled people are treated equally? If so why are we, 20 years later, still encountering discrimination, councils blatantly ignoring their duties and services still not accessible? Are we, disabled people, expected to do this alone? Is this another barrier set to discourage us from making the DDA a reality? Were disabled people beginning to challenge seriously so the Equality Act was needed to slow us down?
38. Under the existing public sector duty local authorities are required to encourage people from protected groups to participate in public life. A year ago I noticed that I was virtually the only disabled person at my community council meeting. I offered to do a short presentation at a future meeting about the issues affecting disabled people and how to involve them. This offer has never been taken up. This is symptomatic of the way in which councils ignore their duties.
39. For ordinary people like me (and there are thousands of them) it doesn't seem as if the government is on our side. How many of us have the resources or energy to fight firms, councils or shops in court. Doug Paulley is a hero in many disabled people's books and deserves a knighthood; others have got it for less. On the same issue of wheelchair spaces, I tried going down the path of my M.P and the Transport Select Committee but achieved nothing. I was promised a Private members bill or maybe I just assumed from the conversation that I was. False expectations. I was not brave

enough to go down the path that Doug took. The prospect is daunting but I am now putting my hopes on the government seeing the light and seriously making the DDA (forget the Equality Act) mean something even under another name but I will have to bite the bullet if they let us down again.

40. One of the most effective ways of getting good enforcement is to have an active local group of disabled people with local authority support. I frequently reported abuse of the wheelchair space to the EHRC going back to 2006 when buses on some routes in Oxford became accessible but even following their advice I still found abuse. More success was with the transport group in Oxford who, through campaigning, formed good relations with the two major bus companies. Representatives from the bus companies attended every committee meeting where we shared our concerns and worked towards positive outcomes. There was great celebration on both sides when the two major bus companies designed their fleet with two spaces; one clearly marked on the floor with a wheelchair sign the other with a buggy sign. Other bus companies followed suit. I have heard that this has happened in other areas but it is not universal.
41. It is unfair for the government to expect disabled people on their own to fight the battle for equality when even living is a battle. Drive, energy and determination are absolute musts if you want to challenge big companies (they buy you off) or councils (they plead no money or not many people need it; how do they know?). The best and most effective way forward is enforcement so that those councils who have little understanding of or interest in their duties have to comply. Anything that can be proposed would at least be a step in the right direction; after all we have been waiting for 20 years for fairness, choice, independence and equality. There have been so many complaints to councils, MPs and Select Committees without achieving these. Now is the time for this committee to act on our behalf. The disabled young people deserve to be treated equally; to experience a world with no barriers, hoops to jump through or hurdles to leap over. Disabled people have ambitions, desires and dreams like everyone else. Don't let pass this opportunity for making their dreams a possibility not the nightmare that so many disabled people have to cope with at present.
42. This is a thumb-nail sketch which I hope has helped you understand how it is for those of us who are wanting independence, freedom of choice and equality as promised to us 20 years ago.

*3 September 2015*

## **Gwynneth Pedler – Supplementary Written Evidence (EQD0182)**

### **WHAT MORE CAN BE DONE**

**A change in the law with immediate effect that makes the wheelchair space exactly what is was meant to be.**

**Legalising mobility scooters again with immediate effect**

**Heavy penalties for those transport providers that do not conform**

Our rights on accessible transport, which includes being able to get on the bus not just having a dedicated space that complacent bus companies allow everyone else to use, have been ignored for 20 years. There are plenty of ways of ensuring this such as that used by Oxford Bus Company and Stagecoach Oxford who, after concerted campaigning by the Disability group in Oxford (OXTRAG) changed the layout of the bus to include two clearly marked spaces, use their Conditions of Carriage, only allow one unfolded pushchair on board, limit the size of pushchairs in the same way as scooters are limited. I have been told by bus companies that buses are for all passengers not just disabled people and this includes the wheelchair space.

**Change the law so that disabled people can be supported by other individuals or organisations when they have been discriminated against.**

**Advice Centres in every borough so that disabled people can discuss their issues and get advice from professionals before embarking on legal action**

The present system means that only strong minded people will face giants like bus/train companies when bringing a court action. I consider myself strong minded but even I, having sent my letter before action, are feeling intimidated by the behaviour of the bus company whose lawyers have dismissed my claims as being invalid. The bus driver left me standing at a bus stop at 11.30 at night saying scooters aren't allowed on the bus despite me showing a TfL card that gave me permission. This has had an impact on my family who insist on being with me if I am out late at night and also on me as it has taken away my independence. TFA have many members who have instances of discrimination but are too uncertain about their rights or frightened to pursue not only because of who

**More pro-active enforcement by councils who are still neglecting their obligations under the Public Sector Equality Duty. Devolving powers to councils is a backward step and gives them the opportunity to ignore the needs of disabled people who need a safe environment in order to keep their independence.**

Dropped kerbs are missing or inconsistent having one on one side but no corresponding one on the other, pavements are littered with advertising boards, hedges are overgrown, accessible bus stops are made inaccessible by cars, vans and lorries who use them as parking spaces, shops and restaurants are not reminded about their duty to make their premises accessible and the general public are not being made aware of the need to have an inclusive society. It has become a post code lottery. It is unfair to expect disabled people to tackle discrimination on their own but it is what the government and councils expect of us and this needs immediate redress.

**Government and Councils should be taking more action to ensure that disabled people are able to travel safely and comfortably in taxis**

It is not only the number of taxis (this was mentioned in my oral evidence) but the design. The majority of PHV are not accessible to wheelchairs so disabled people are forced to use the more expensive black cabs.

At present the following are of concern:

The position in the taxi; facing sideways is not safe as it means no seat belt can be used and grab rails are not close enough.

Ramps too short making gradient too steep

Roofs too low for tall people who use large wheelchairs

Doors not wide enough.

I recently went to test a new design for a London taxi; the sooner it is on the streets the better. Turning space inside was marvellous, seat belts could be used and grab rails were within reach.

**Could we stop having more words and concentrate on actions.**

**Could the DfT revise its outdated policies after discussion with disabled people; the present regulations are so out of date and not in line with modern thinking. All staff that draft regulations that affect disabled people lives and independence should have Disability Awareness Training.**

**Could we not have to wait another 20 years before action.**

### Photographic evidence

Page 3 Paragraph 7. Point a (+paras 9 & 10) Gaps in Law



Campaigning by local transport group resulted in redesign of buses to make separate space for buggies.



Page 7 Paragraph 13 Impacts Assessments

The first two are notices on a train and bus which clearly state it is a priority or required by law. The third is on some buses and is a weaker message. It should really be a standard notice that states it is the law.

Page 9 Paragraph 20 Café Rouge



Recently pointing out to my local Café Rouge that reasonable adjustments needed to be made, within 3 weeks they had purchased a portable ramp to allow access. Other local shops have declined to make any adjustments.

Page 12 Paragraph 27



This is a selection of travel cards that I am expected to carry at any one time. It would surely be easier for all concerned if a national travel permit were issued to disabled people who use mobility aids.

Page 13 Paragraph 30 Dropped Kerbs



It is a traffic offence to park over a dropped kerb, even if you have a blue badge (they should know better). Where are the Enforcement Officers?

Page 14 Paragraph 33 Point - Advertising Boards



Page 15 Paragraph 33 Point b Pavement Parking

Accessing shopping areas are like tackling a slalom course. A Boards block pavements often leaving little room for disabled people. The second photo illustrated how difficult it is for visually impaired people to negotiate the pavements. Visually impaired people use the boundary of the building or the kerb to manoeuvre using their tapping cane and can fall over A Boards.





Inconsiderate drivers and lack of enforcement. Where can I go? Into the road and take my life in my hands, but no dropped kerbs to get around the car anyway.

Page 16 Paragraph 36  
Training in recognising difficulties



These pictures illustrate training sessions for Oxfordshire Local Authority staff from Highways, Planning etc. Given by disabled people to ensure that decisions were taken in their field that do not impinge on accessibility. With the demise of access officers these sessions no longer take place, despite staff saying how useful they found them.



Page 17 Paragraph 37  
Public Sector Equality Duty



It is illegal for vehicles to park in bus stops – where are the enforcement officers? If a bus cannot pull into the kerb the driver cannot deploy the ramp so the wheelchair cannot board the bus.

Other issues that impinge on the ability for disabled people to move about with freedom and equality of choice.



Lack of training and consideration by refuse collectors who block pavements.



Not only dangerous for visually impaired people, but this type of obstruction blocks the access for a wheelchair to the bus.

*26 November 2015*

## **People First (Self Advocacy) – Written Evidence (EQD0134)**

People First (Self Advocacy) is a national run and led by people with learning difficulties. As a user-led membership organisation, we aim to influence policy and practice at national and local level. Our work allows people with learning difficulties to address issues including equality of opportunity, social exclusion, human and civil rights, discrimination, empowerment, independence and training and employment.

Our Director Andrew Lee will also be giving evidence to the Committee in October, providing information from himself and our members and member groups.

The information in this response has been informed directly by a piece of research that People First has done around the impact of cuts and changes to services and benefits on the lives of people with learning difficulties.

The CIAN project was a user led, user controlled pilot research project carried out by People First (Self Advocacy) and People's Choice at Barnet Centre for Independent Living. The research was carried out between January 2014 and September 2014. We carried out 35 in depth interviews with people with learning difficulties. We also carried out 3 focus groups, and 19 people took part. Four service managers were also interviewed to get an overview from their perspective, gaining insight into the experience of carers.

### **1. Has the Act brought together all the other laws on discrimination and made them stronger? Before the Equality Act there was a separate law on disability. Have things improved or not because disability is now only one of nine groups in the law?**

Public Sector Equality Duties were very important under the Disability Discrimination Act. Under the Equality Act, these have been weakened. This is because local authorities no longer have to produce Disability Equality Schemes and within these schemes, local authorities had to show how it would carry out an impact assessment and how it had worked with disabled people to put together the scheme. Now local authorities under the Equality Act, only have to have one equality objective every four years across all protected groups, so disability may have no objectives over a 4 year period.

The impact of the weakening of the Public Sector Equality Duty is becoming extremely clear now as a result of massive cuts to local authority funding and how and where they are deciding to make budget cuts. Our research showed that one of the key problems for people with learning difficulties has been the cuts to support, increased service charges and changes to services and the combined impact of this and cuts and changes to national benefit entitlement. Neither at a local or national level is this being

measured, and worse of all, with the weakening of the Equality Duty, there is no legal requirement to do so.

Only 6.6% of people with learning difficulties are in some kind of paid work and most of the people in paid work, work part time,<sup>389</sup> much lower than the 46.3% of people in paid work and 76.4% of non-disabled people in paid work<sup>390</sup>. This means that people with learning difficulties are likely to be receiving some form of local authority or government support and this is why the lack of impact assessments and the weakening of Public Sector Equality Duties is so dangerous for this, already marginalised group.

## 2. Are there gaps in the law on treating disabled people equally?

**Lack of accessible information about local authority assessments, support and reviews as well as information about national benefits:** Recently the NHS introduced Accessibility Standards, a good step towards improving access to health. However, people with learning difficulties continue to be excluded from taking full part in assessment and review procedures at a local authority and national government department level. They continue to receive information in inaccessible formats about their benefit and support entitlements and assessment procedures, which is shocking considering that this information, is being sent to people for the exact reason that they are disabled people and face barriers and have access needs. **All communication with people with learning difficulties should be done in a way that meets their access needs.**

**Equal access to health:** Research shows that as a group, people with learning difficulties have poor health, for reasons such as not having the right housing<sup>391</sup>, not having a job and living in poverty<sup>392</sup>. However when needing to use the NHS, as a result of staff not being able to communicate with people with learning difficulties, it has been labelled as 'unsafe'.<sup>393</sup>

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<sup>389</sup> <http://www.learningdisabilities.org.uk/help-information/Learning-Disability-Statistics-/187693/>

<sup>390</sup> <https://www.gov.uk/government/publications/disability-facts-and-figures/disability-facts-and-figures#employment>

<sup>391</sup> The Confidential Inquiry into premature deaths of people with intellectual disabilities in the UK: a population-based study, by Dr Pauline Heslop, Ph, Peter S Blair, PhD, Prof Peter Fleming, FRCP, Matthew Hoghton, MRCGP, Anna Marriott, MSc, Lesley Russ, RNMH, The Lancet 2014.

<sup>392</sup> Health Inequalities and people with learning disabilities in the UK, Improving Health and Lives, the Learning Disabilities Observatory, Eric Emerson and Susannah Baines, 2010.

<sup>393</sup> <https://www.mencap.org.uk/sites/default/files/documents/Death%20by%20Indifference%20-%2074%20Deaths%20and%20counting.pdf>

**Equal access to education:** many children with learning difficulties do not go to mainstream schools, it is a postcode lottery and the number of children with moderate learning difficulties excluded from mainstream education ranges from 1% to 25% in different local authorities. As well as this permanent exclusions from school are more common for children with learning difficulties.<sup>394</sup> In higher education people with learning difficulties were four times more likely to be enrolled on ‘preparation for independent living’ or employment learning programmes rather than on mainstream accredited courses.<sup>395</sup>

**Disability hate crime:** this has been a problem for a long time and in research done by Mencap, it found that nearly 90% of people with learning difficulties had experienced hate crime in the previous 12 months.<sup>396</sup> Reporting of hate crime is also very low as a result of communication barriers, not being believed or people not wanting to report these crimes as a result of past experiences with the police.

**Equal opportunities in work:** Getting a job is difficult; the biggest barrier is people thinking that people with learning difficulties cannot work<sup>397</sup>, when actually 65% of people with learning difficulties would like a paid job<sup>398</sup>. Those that are in employment were found to be treated unfairly, facing bigger barriers in the work place. **Access to Work**, which supports many Disabled people in work, is currently changing its approach to support. The current approach, is to support as many disabled people as possible, however this is being done without increasing the Access to Work budget.<sup>399</sup> In fact, last year’s budget was underspent by £3 million. This means that many people with learning difficulties are currently having their funding for Access to Work support cut, as a result of needing “high value” support packages. This has not been directly stated by the Department for Work and Pensions; however this has been experienced by People First (Self Advocacy) staff, as well as staff from other local self-advocacy groups. Two members of staff with learning difficulties at People First (Self Advocacy), who have had a reassessment, and who have been receiving support for over 10 years, with no change in their impairments, have had to fight for months to maintain the same level of support (up to 4 months), one having their support reduced to 20% of the previous amount. This approach to funding Access to Work claims is directly excluding people with learning difficulties, who need ‘high value’ support packages to gain access to meaningful employment. It shows a lack of understanding of the support needs of people with learning difficulties in the work place, a group that is already highly discriminated against in employment.

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<sup>394</sup> [https://www.improvinghealthandlives.org.uk/securefiles/150618\\_2200//IHAL2013-10%20People%20with%20Learning%20Disabilities%20in%20England%202012v3.pdf](https://www.improvinghealthandlives.org.uk/securefiles/150618_2200//IHAL2013-10%20People%20with%20Learning%20Disabilities%20in%20England%202012v3.pdf)

<sup>395</sup> ALLFIE - Children and Families Bill’s Proposed Amendments for consideration at Committee stage (March-April 2013)

<sup>396</sup> <https://www.mencap.org.uk/blog/four-things-you-probably-didnt-know-about-disability-hate-crime>

<sup>397</sup> [http://www.ndti.org.uk/uploads/files/3.The\\_cost\\_effectiveness\\_of\\_Employment\\_Support\\_for\\_People\\_with\\_Disabilities,\\_NDTi,\\_March\\_2014\\_final.pdf](http://www.ndti.org.uk/uploads/files/3.The_cost_effectiveness_of_Employment_Support_for_People_with_Disabilities,_NDTi,_March_2014_final.pdf)

<sup>398</sup> Valuing Employment Now, HM Government, 2009

<sup>399</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-03-12/HCWS372/>

**3. Do people know about the sorts of changes that should be made to treat disabled people equally?**

Reasonable adjustments such as independent support and accessible information are not being made in assessment processes, when government departments and when local authorities communicate with people with learning difficulties. This had led to people not being able to take part and have choice and control over the decisions that affect their lives.

Eighty percent of people interviewed who had experienced cuts in support and services felt that either important information had been missed or that they could not get their voices heard. People felt that they were not given the chance to understand what was happening as a result of not having accessible information and support to say what they thought, be included in the decision making process, or ensure they were listened to.

The research showed very clearly that people did not have enough information about the planned cuts and changes nor the impact that they would have. 30% of people interviewed had some general information about cuts and changes. The majority of individuals however did not have any information about cuts and changes to benefits and services. There seemed to be a culture whereby it was assumed that people with learning difficulties did not need this information and this seems to be paralleled by the way that assessments and reviews are carried out. People are going into national benefit and local authority assessments without the information that they need and the support to communicate their needs.

However although many people felt that they had not been listened to and information had been missed, at no point did anyone mention equality duties or the Equality Act. Although this may exist in local authorities, people with learning difficulties are not aware of their rights at a local level, or how to use their rights to achieve equality.

**4. Should the law be made clearer about the changes that should be made?**

**If yes, can you say how?**

Yes, especially around reasonable adjustments to meet a person’s access needs. This should be a legal requirement for both local authorities and government departments.

- 5. Have public bodies (like the government and councils) done what they should do to make sure people are being treated equally and fairly?**

**Is there anything you have seen that shows they have done or not done this work?**

Answered in Question 1

- 6. England, Wales and Scotland have done this in different ways. Is there anything you have seen that shows they have done this work better or worse in the different countries?**

No comment

- 7. Lots of people in government deal with the law on equality. How well do they work together?**

No comment

- 8. How good has the Equality and Human Rights Commission been? Have they helped disabled people to be treated more fairly?**

The move from the Disability Rights Commission to the Disability Committee within the Equality and Human Rights Commission led to a loss of confidence by disabled people in the work carried out. This was as a result of poor engagement and a lack of ability to focus on the core barriers faced by disabled people as a result of fitting into the wider commissions strategy, as well as insufficient engagement with disabled people.

However there has been good work done, especially when the Equality and Human Rights Commission had the funds to take on test cases to set a precedent. The Equality and Human Rights Commission had a budget cut for the year 2014-2015 of 62% compared to 2007<sup>400</sup>. As a result of this the Helpline for legal advice on discrimination cases was closed. Many of the legal cases received through the old helpline then went on to be test cases used by the Commission to set a precedent which will no longer happen.

Then you add to this the fact that there have been cuts to Legal Aid support for benefit and welfare cases at a time when the government is carrying out the biggest welfare

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<sup>400</sup> <http://www.theguardian.com/society/2012/oct/26/budget-cuts-rights-watchdog-un-status>

reform in 60 years. Support has been completely taken away in the area of welfare. However, 58% of the people that use legal aid for welfare benefit cases are disabled people. This means that it is now almost impossible for disabled people to access justice and there is no longer a body that has the capacity and resources to protect people's rights under the Equality Act.

**9. Could other organisations that check things (like the Care Quality Commission checking services) do more to make sure disabled people are treated equally?**

No comment

**10. If people think they are being treated unfairly they can go to courts or tribunals.**

**How well have disabled people been able to use these?**

Answered in Question 8

**11. Are there any other ways we could make the Equality Act 2010 work better?**

- Bring back Disability Equality Schemes and strengthen the Public Sector Equality Duty and Specific Duties.
- Reverse cuts to the EHRC budget and Legal Aid
- Carry out a cumulative impact assessment including the impact on all impairment groups of changes to benefits, local authority support and services and any increases in service charges.
- All written information and communication from national government departments and the local authority should be in an accessible format depending on the access needs of each person

*4 September 2015*



## People First (Self Advocacy) – Oral Evidence (QQ 60-65)

### Members present

Baroness Deech (Chairman)  
Baroness Brinton  
Baroness Browning  
Lord Faulkner of Worcester  
Lord Foster of Bishop Auckland  
Lord Harrison  
Baroness Jenkin of Kennington  
Lord McColl of Dulwich  
Lord Northbrook  
Baroness Pitkeathley  
Baroness Thomas of Winchester

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### Examination of Witness

**Mr Andrew Lee**, Director of Policy and Campaigns, People First (Self Advocacy)

**Q60 The Chairman:** Mr Lee, thank you very much for coming. I know you have an assistant with you. We hope you will feel free to tell us what you think and feel about the law. I want to remind you that this session is open to the public and there will a webcast going out live as an audio transmission and subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and put on the parliamentary website. A few days after this session you will be sent a copy of the transcript to check for accuracy and it would be helpful if you could advise us of any corrections as quickly as possible. After today, if you want to clarify or amplify any points made during your evidence or have any additional points to make, you are welcome to send in supplementary evidence to us. If those of us around the table have an interest to declare we will mention it before we question you. Do feel free to tell us what you feel about the questions we are putting to you because we value your evidence very much. Perhaps you would like to introduce yourself before we start on the questions.

**Mr Andrew Lee:** My name is Andrew Lee. I am director of policy and campaigns at People First (Self Advocacy) in London. I have been in the disability movement for 20 years. I have been an independent lay assessor inspecting residential homes. I would not be in a job if it were not for Access to Work. It is really important to note that part of the problem with the law is that a lot of people with learning difficulties do not know the law and how they can use it. Discrimination for people with learning difficulties starts at school. For them it is normal to be discriminated against. Today it is called disability hate crime. The people that are responsible for enforcing the law do not have the skills to work with people with learning difficulties. I think employers are frightened of asking for help and advice if they are thinking about employing disabled people. We might have the ambition to get a job but we have not

got the support as we think about applying for a job. We do not know how to read or how to write, and that is our first identification of how the school system is letting us down.

**The Chairman:** Thank you, that is very clear. The first question is from Lord Northbrook.

**Q61 Lord Northbrook:** Your submission identifies problems with getting reasonable adjustments to meet the access needs of people with learning difficulties, including from Government and local authorities. Are there changes to either the Equality Act or to Government policy and practice that would address these problems?

**Mr Andrew Lee:** For years people with learning difficulties have been talking about accessible information and EasyRead. Today I received some information through the post from the Government about benefits. It is totally inaccessible to me. I cannot read it and neither can my wife. There are lots of changes around benefits that the Government are making but it is totally inaccessible and we do not know what is going on. We have not got the support at home for someone to read it. Even if we have, we are told by our own support, "It's not in my job description, I can't actually read it to you".

A good example is when my wife and I moved into our own home we were given a tenancy agreement. We asked for it to be in EasyRead because it was not in our warden's job description to read it to us. We had a problem and because the problem was in our home we did not know whether it was our responsibility or whether it was the council's responsibility. We had to go on a three-month waiting list to get an advocate to read it to us, which meant that we had a three-month problem, yet the local authority's decision was because we were in a warden-controlled set-up we had support. No, we do not.

When this information is going to a person with learning difficulties, everything needs to be in EasyRead as accessible information. It will save you money. At the moment, if you want information you have to ask for it. If you change it so that whoever is providing the information has to put it in EasyRead, and if you want it in jargon format you have to ask for it, it will save you money and more people will know what you are talking about and people might know what their rights are.

People do not have support and they need support. We need support to think about our options and our choices and to access services. In every aspect of our life we need information in EasyRead to have choice, control and independence so that we can make the decisions that we want to with the facts so we are making the right decisions. At the moment, unless we actually ask for it, we do not get it. I went into my local council one day and asked for some information in EasyRead. The individual was very nice and very helpful but she did not have a clue what I was talking about. Even if the council has a responsibility to put information into EasyRead, its staff do not know what EasyRead is. The easy answer is to have a strong self-advocacy organisation that can train people. We need support. It comes down to good strong support.

With regard to Government policy there needs to be proper funding, proper standards, capacity and no jargon. What might be jargon for one person with learning difficulties might not be for another and it might be support that a person needs. There needs to be proper support. The Government once said it wanted a strong self-advocacy organisation in every town and city. If the Government wants to meet any kind of ambitions it has for people with learning difficulties to play an equal part in society then there needs to be a strong self-advocacy organisation run and controlled by people with learning difficulties in every town and city. Funding for those organisations needs to be ring-fenced by local authorities. People should not get consultation overload. A lot of local authorities will ask for a consultation on this or that. Over the years I have noticed that we are asked for our opinion but then no

decision is made about moving forward, carrying out our recommendations and acting on our advice. Money is usually at the end of it; they have not got the money to do it. It requires common sense, time and support. With an ever-ageing population, self-advocacy organisations are going to be crucial because mum and dad and siblings are either going to be working or using social care themselves to have a quality of life. They will not have the knowledge or the support to help family members. That covers the points for the first question.

**The Chairman:** We will do our best to make sure that our report takes matters forward. I have to say—and I do not mean this lightly—it would be very good for all lawyers to have to put things in EasyRead, not just for people with learning difficulties. It would be an excellent exercise all around. The next question is from Lord Foster.

**Q62 Lord Foster of Bishop Auckland:** I have no interests to declare. You identify access to employment as a significant problem for people with learning disabilities. Can you explain what the problems are? Can these be dealt with by employers making reasonable adjustments, or is the problem a reduction in help from Access to Work?

**Mr Andrew Lee:** I am able to be here today because I am using Access to Work support. I get lost very easily. I have no sense of direction. It has taken me three days to prepare to meet you today. I would not have been able to do that without support from Access to Work. If a person with learning difficulties is thinking they would like to actually work, the problem starts with the fact that they have not got one-to-one support to help them think about what kind of career they would like. Everything is going online at the moment and that is a barrier for people with learning difficulties to get into the world of work. That is just one and there are others too: attitudes in job centres, at home, among the public generally. Employers have no information and they have not come into contact with disabled people or people with learning difficulties wanting to work. When I talk to the taxi drivers who take me to the train station in the morning about Access to Work they say, “Access to what?” They do not know, and I am sure it is the same for employers. If people want to work they have to have the right support and that will be very personal to them.

When we have spoken to Access to Work they do not understand learning disability at all. A work colleague has been given only 20% of the support she needs. For some strange reason Access to Work cannot understand that a learning disability does not change. I cannot understand why bright, intelligent people who are responsible for a big chunk of funding cannot understand that a learning difficulty is there for life. You cannot get rid of it. It will not change. We have tried to train Access to Work. We have given their staff training. We have worked with them on making information accessible. Then they change their staff. I get Access to Work but I cannot tell you who my Access to Work person is at Access to Work. I receive a text and luckily I can read but a lot of people with learning difficulties cannot read. They need support to read information so that they can make choices and decisions.

If you get a repetitive job, such as shelf stacking or trolley collecting at Tesco, you can learn that and then obviously there is less need for support, but for people who have ambition, who want to change their job or climb the ladder within their organisation, their job changes all the time and because the job changes the support they need changes. You need full-time support because you never know what is going to happen in the next moment. You might get a phone call where someone is asking for advice on benefits.

There was a gentleman who came into the People First office. His benefits were in a mess, his pay structures were in a mess and he had no support. When he came in we gave him information and he had support. He only had six weeks’ support but the problems that he

was facing were ongoing. He needed constant support to solve the problems and the support structures that were open to him within his local area just were not there. Not only were we actively helping the person who needed help, we were also advising and helping his supporter. When the supporter left our office he had learned how to help not only the person he had come in with but also the 24 other cases on his records.

I had to reapply for Access to Work. We spent a lot of time filling in the information. We sent it off. The person I spoke to said: "I get it. I understand everything. I do not need to ask any questions at all. I can approve your Access to Work." "Great," we thought. However, there is a work colleague who does a similar job to mine but is responsible for several projects and who has a learning difficulty like I do. We used the same model, filled in the information and we did not expect a problem. But we did have a problem. It took us months to get Access to Work to approve funding for a year. A year might seem a long time in some people's books but when you are running a charity it is not a long time at all because you might have several projects that you are running and you have to think about where the next batch of funding is coming from in six months' time. We could not understand why the person who was acting on behalf of Access to Work did not understand what a learning difficulty was. We had to fight. We had to mention that we were going to be taking the information to the Minister for Disabled People. If Access to Work is going to be successful, then Ministers need to knock some heads together. They need to find out why it is that the staff they employ at Access to Work do not understand what a learning difficulty actually is.

We think that there has been a change in policy whereby only 20% of your original support package is being given to people. We have not been told about it. There has been no consultation. As soon as you mention that you have a learning difficulty you seem to be automatically pushed into a column where you will get only 20% so you are losing your support; for a lot of people can mean the difference between being in a job or not. It is discrimination. It would be very interesting to see from the direction that Government policies are going whether the Government is actually breaking law. We think they are. We think that they pay lip service to the Equality Act. Other self-advocacy organisations where they employ people with learning difficulties have had a similar experience. For a lot of us, we know that if we lose our jobs the chance of us getting another job is zero because the structures in place do not allow for a learning difficulty.

**The Chairman:** Am I right in thinking that Access to Work payments have been capped at a certain amount?

**Mr Andrew Lee:** We are not sure but we think that is what is actually happening. They may say they are only prepared to fund this much, but a lot of people will be working for small charities that are fundraising themselves. Access to Work needs full-time funding to maintain the support. Some people might think that supporting people with learning difficulties in work is an easy job, but it is not. Next to being a parent, it is probably the hardest job in the world. It is bloody hard to get good support, which means keeping good people. Access to Work needs to be properly funded so that it can keep good people. When people with learning difficulties go into meetings where they are representing their organisations, when they are using their support and they come across issues, sometimes their supporter will know when they need support and when they do not. That comes with learning how the person with learning difficulties works, takes things and acts in situations and they can identify when they do and when they do not need support. That comes with time. We think there are some internal decisions being made about freezing the funding.

That needs to be investigated because, if it is true, it needs to be stopped. It needs to change.

**Q63 Lord Faulkner of Worcester:** I declare an interest as vice-president of Level Playing Field. I am the sponsor of a Private Member's Bill on disabled access to sports grounds and I am also involved in various public transport issues. My question is this: is reliance on individuals bringing cases to courts and tribunals an effective way of achieving compliance with the Equality Act? Could this be made easier for people with learning disabilities, and if so, how?

**Mr Andrew Lee:** First of all, because discrimination actually starts at school, people grow up experiencing discrimination from when they start school right through to now. For a lot of people with learning difficulties discrimination on all levels seems normal. They do not know it is discrimination when someone calls them a name or insults them. They do not know the difference between a hate incident and a hate crime. They do not know where to go to find out whether what has just happened to them is discrimination and whether they can do anything about it. The law generally is not accessible to people with learning difficulties. The support is not there. We do not know what is and is not against the law. We grow up thinking we cannot do anything about our situation, which might be completely incorrect but because there are no support structures to find out, we do not know.

When the Disability Rights Commission had its helpline, it meant that we could pick up the phone and ask someone and get some advice on what to do next. When the DRC closed and the Equality and Human Rights Commission took over, they took over the responsibility for that helpline but the Equality and Human Rights Commission did not understand the importance of the helpline to people with learning difficulties. Out of all the disability groups we are the most marginalised and most cut off from society. They closed the helpline. It was a financial decision. It was not a decision made as to whether people could actually access their rights or not. With the helpline closed it meant a lot of people with learning difficulties were cut off from access to the very organisation that was supposed to fight for our rights. With the Government closing legal aid, we cannot access the law, even if we find out through other disabled people that what has actually happened is discrimination. No citizen should ever be in that position but for some strange reason our Government seems to think it is acceptable. It is not.

I mentioned earlier that we needed self-advocacy organisations in every town and city. That can be sorted out very quickly. As to having access to the law, what might be a very good move is to have legal support in every town and city and for that legal support to be based within self-advocacy organisations so that people can go and get advice. At the moment, even if we know that the law should protect us, we do not have the funds or the capacity to take a test case. That was why the Equality and Human Rights Commission's ability to take test cases was so important. When the commission took a legal test case, because there was a self-advocacy group in a town or city, we could go to one place in that town or city and say, "The commission is taking a case against this organisation because they discriminated against this person in this way. If the commission is successful you will benefit from it because it sets an example in law". Ninety-nine per cent of information for people with learning difficulties is passed on by word of mouth. If you close down the organisations you close down the communication links that people rely on to have choice, control, independence, access to the law and access to society, and to play an equal part in society. I have all these ambitions and if I have support then I might have a chance of actually reaching

those ambitions. Without support I am stuck at home, isolated, cut off from society and the law.

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 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?”.

I had left the office and gone for lunch one day and I was kicked, punched and spat at by a group of youths. Most people would be able to undertake an ID: how tall were they, did they have blue eyes, what clothes were they wearing? Because it happened so fast I could not do that. All I knew was that they had jeans, trainers and t-shirts, but it was not enough for the police. From our experiences we might use language like bullying, but what has happened to us is that the law has been broken. The only people who can tell us that are police officers.

One good thing you could do is make sure, by having a self-advocacy organisation in every town and city, that there is a requirement for a working relationship with the local police force so that people with learning difficulties within the local level can train police officers so next time they come across hate crime, police officers will know how to work with people with learning difficulties if they have been a victim of hate crime and will be able to take it from that point to the courts to see the people that have discriminated against them charged and prosecuted. Disability hate crime should have a mandatory sentence. For example, if someone kills someone there is mandatory 30 years’ sentence. For hate crime there needs to be a mandatory sentence in order to build confidence in the system so that people will use the law. No one has confidence at the moment to use the law.

**The Chairman:** Can I go back to something you said about the helpline? Are people with learning difficulties aware that the helpline has been replaced by an outsourced Equality Advisory Support Service helpline?

**Mr Andrew Lee:** No, to put it simply. That is the Equality and Human Rights Commission’s fault. One of the reasons why the helpline was successful when the DRC was running it was that 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”. The commission closed down the helpline and they stuck the replacement on the website. However, one of the major problems that people with learning difficulties have is access to social media. How do I go on a website? I need support to use a computer so putting information as crucial as that on to a website is a bit like whistling in the wind, sending a bird off and hoping that will it fly in the direction that you want it to. I am very angry about how the commission dealt with the helpline.

**Q64 Baroness Jenkin of Kennington:** I have no relevant interests to declare. Perhaps I may say how much we all sympathise with your point about inaccessibility particularly to benefits information; it stands in contrast to the clarity of your evidence. Your submission is critical of the Equality and Human Rights Commission and argues that there has been a loss of confidence in it by disabled people. This follows on from what you were saying. Are there any specific changes to how the EHRC works that you would like to see that you have not already told us about?

**Mr Andrew Lee:** Because the Government cut the funding of the Equality and Human Rights Commission, they made a lot of staff redundant and their capacity to do crucial pieces of

work was lost. 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.

When the Disability Committee started to work with the wider commission, we were asked for advice on other equality areas. The capacity of the Disability Committee to focus on disability issues was extremely hard to fulfil. We could not tell disabled people what they were doing. For example, if you lived in Cumbria, or anywhere else in the United Kingdom, you did not know what the Disability Committee was doing. In the DRC days there was a person who went on TV and told people what the DRC was doing. So even if you did not know about the Disability Committee or the Disability Rights Commission, you recognised that person, and you knew that one person was representing the Disability Rights Commission. The Equality and Human Rights Commission did not have that and relied on sending press information out.

We were not able to work effectively. It took the commission four years to understand my access needs. If the Equality and Human Rights Commission had difficulty meeting the access needs of one person, how are they capable of meeting the needs of 2 million people with learning difficulties? How can they do that? It is about accessibility. When they set out the public sector duty responsibilities, the single equality duty, I asked how people with learning difficulties will know who the contact person responsible for equality is in that area. The person I was speaking to could not give me an answer. That is very worrying because people with learning difficulties deserve better. They need to have confidence that if they are making choices and have control, they will have support and a body that is acting in their best interests if they cannot.

One thing that you could do is look at whether there needs to be a disability equality duty that is there and in force. Each local authority would have to say, "In the next six months this is what we are going to do for people with learning difficulties and disabled people in our area. We are going to bring them all together and we are going to tell them what our plans are". Disabled people in that area can say, "Yes, we agree with that", maybe by setting up a disability panel that local authorities can refer to, supported by self-advocacy groups, to help them with every decision that they make that will affect the lives of people with learning difficulties around housing, health, choice, control. That body, with the right support, can feed back to self-advocacy groups in their local area and say, "In the next six months this is how we are going to work with local councillors and the local authority", and put in some accountability. Hopefully councillors will benefit from that. Councillors will learn what they are doing right and what they are doing wrong and if they are doing something wrong there will be a map that people with learning difficulties have rolled out about accessible information, all the issues they have, to help make local decision-making accessible to them. With funding, there are lots of people who are responsible for making decisions about contracting. People who are responsible for rolling out contracts need to say, "We need a disabled organisation in our area that will help us achieve some of the responsibilities that local authorities have around improving the lives of people with learning difficulties". That is a suggestion. It might be politically difficult but it will mean that people with learning difficulties will feel as though we are not just being listened to but our advice is being taken on board and we are part of solving the problem, not just telling people what the problem is.

**Q65 The Chairman:** As they say, some people bring us problems and other people bring us answers. Any other comments around the table?

**Lord Harrison:** Are there any examples of what you have just described currently operating?

**Mr Andrew Lee:** In my local area there is a structure called the partnership board and it brings together disabled people, family members, carers and people who are responsible for making decisions. A lot of what they talk about is to do with the issues that people with learning difficulties face, not just at a local level but at a national level, too. They actively work on solving local problems with local solutions. That means people with learning difficulties are talked to. They have asked the local self-advocacy group not just to worry about the north of the county but to cover the whole of the county. Cuts in local authority funding have led to the closure of groups or a reduction in services, therefore a lot of people with learning difficulties no longer have access to self-advocacy organisations. With hate crime, they had a local telephone number and they got all the local businesses and the railway station to put up a helpline number so that if there was a problem it could be used. That was a local solution to a national problem on hate crime.

For people who had had experiences with hate crime they developed training and they worked with the local police on hate crime and all of that went through the partnership board to make sure that not just the people in the self-advocacy organisation knew about it but parents knew about it as well. I am sure that there are local solutions but you need a strong self-advocacy organisation to work with. I would suggest that you say it is absolutely necessary that every local authority funds a self-advocacy organisation properly for the lifetime of this Parliament, to begin with, and then local authorities can learn what they are doing right and what they are doing wrong, but also have structures within local hospitals and wherever there is a public service. Health professionals need to be trained by people with learning difficulties. If you are an employer and running a public service, whether that is the police, the health service, GPs, they need to see whether their training actually meets the expectations of people with learning difficulties at the moment. If it does not, they need to say to the people who are responsible for developing the training that they will need to work with people with learning difficulties to develop training. If you are a health professional you can say, "I remember a person with learning difficulties told me this in my training and now it is actually helping". That is especially relevant if you have a learning difficulty and a mental health problem because one thing that we find is that if you have both you will swing from the learning disability service saying, "Yes, you have a learning difficulty but we do not know how to deal with your mental health", and the mental health service saying, "We can work with your mental health problem but because you have a learning difficulty we do not know what to do". We need joined-up local decisions about learning disability and mental health and to identify the organisations around that work at a local level and have a local/national structure.

**The Chairman:** Mr Lee, you said you spent three days preparing. I have to tell you it was very well worth it. Your evidence has been so helpful and really impressive and we will certainly take on board all the ideas that you have given us. I think you have made a lot of things plain to us that perhaps we suspected before but now we really know and your advocacy has been really effective. I want to say thank you very much on behalf of the whole Committee. We shall do whatever we can to resolve the problems that you have raised. Thank you very much for coming to see us and all the time you have put into it.

**Mr Andrew Lee:** That is okay. I know that you have read lots of information that has been sent to you. One question that Self Advocacy in my local area have asked is what will be done with the information—the consultation—that we sent to you, once it is read?



**The Chairman:** What you have sent us will go up on the website and we will consider it all and feed it into report that we make. Every single page of every single submission has been read. It is not wasted at all. Thank you very much, and thank you to your assistant as well.

*20 October 2015*

## **Pembrokeshire People First – Written Evidence (EQD0057)**

### **Response to the Consultation on the Equality Act, 2010**

Pembrokeshire People First (PPF) is an independent charity run by and for adults with learning disabilities and/or autism. PPF runs a number of different groups and a Living Skills project. PPF also does a range of advocacy work, including self-advocacy, peer and citizen advocacy and has a specialist issue-based advocacy service. PPF has also taken part in many research projects and has carried out many consultations.

This consultation response is the voice of the PPF members.

The methodology of this consultation response involved introducing the Act in a set manner and then asking selected set questions (both of which were adapted from the EasyRead version of the House of Lords call for evidence). This was done so that there was consistency in approach. The consultation took place in the week of 24<sup>th</sup> to 28<sup>th</sup> August. The consultees were 15 individual advocacy partners and, separately, a group of 11 people who did a joint consultation. The age range was about 20 to 65 (representative of the membership). Altogether there were 9 females, 16 males and 1 transexual (the gender balance is not representative of the membership).

All the individuals represented here have a learning disability and/or autism and some also have physical and mental health difficulties. They, also, all have at least some experience of equality or inequality in their lives and all have some familiarity with rights-based legislation.

The individual and group responses are summarized on the next page and then detailed in the following pages (page 3 on). The question numbers correspond to those in the EasyRead call for evidence. The questions were loosely interpreted and there is much overlap between the question responses so this needs to be read as a whole. Answers such as “not sure” or “don’t know” have been excluded.

### **Summary**

Several members questioned the terminology of the questions (taken from the EasyRead call for evidence) which referred to “disabled people” – this ignores the People First campaigns and the preferred terminology of our members and many others who believe that they should be referred to as people with learning disabilities not the other way about. This preference should be embedded in all Equality legislation and campaigning.

A clear majority of PPF respondents knew that the law required reasonable adjustments (though they did not use the term) to be made and were able to give examples of things that should be done. A clear majority also felt that the law was not working adequately and their experience was still of being treated without equality.

Generally, it was felt that public bodies and other organizations should better train their staff so that there was better communication in person and in print and that there was better understanding of disability, of equality and of the law.

Several respondents felt they were still being bullied and abused because of their disability and if they complained they were not treated seriously and even treated dismissively. There were strong arguments that Hate Crime should be better enforced and that there should be stronger penalties for this.

It was also argued that legislation should be strengthened for people with hidden disabilities and that mental health “disappeared” into the disability characteristic and should be its own protected characteristic.

Many respondents felt that not enough was done to support them into employment and that the law should be strengthened so that they had the same opportunities as everyone else.

Many people felt that benefit cuts disproportionately affected people with disabilities. Similarly, they also felt that the closure of things like hospital wards disadvantaged them because of the increased difficulty of getting to places (and it should be noted that the rurality of the area already makes access difficult).

In general many of the respondents still felt not listened to. It could be argued that things like the Equality Act tackle social change on a macro level but, on a micro level, the evidence here is that individuals with learning disabilities still feel excluded and subject to unequal treatment. This, perhaps, explains two comments (page 4) that “the law does respect people with different needs” and “people with disabilities are still treated without respect” which can be summarized by the comment (page 5) that “it’s partly because people don’t understand the law like they should.” That, in turn, leads to the prescription for improving the work of the Equality Act (page 6) for “more and better training and more people who understand disability and equality.”

### **Individual and Group Responses**

#### ***Question 3 – Do you know what sorts of things should be done to treat disabled people equally? Can you give any examples?***

Four of the advocacy partners could think of no example; the others responded:

1. Not being abusive and making fun of people (it happened to me)
2. We want to be equal but people put us down. We should be more respected and there should be stronger laws for Hate Crime
3. I hate being treated differently and I should have the same opportunities as everyone else, especially to get a job
4. There should be more people to help you when you are picked on
5. Everyone should be treated the same
6. People should be treated in the way they want to be treated

7. Everyone should have the right to a proper life and be treated the same as everyone else, like having relationships and living independently
8. We should be listened to
9. Extra support
10. Getting employers to take on people with disabilities for work
11. Better access to buildings. Equal rights and less bullying

The group response was:

- a. Building a ramp into the shop or have rails
- b. Automatic doors
- c. Automatic doors because a ramp might be too steep. Making sure the ramp is done properly and is safe
- d. Speak up and speak clearly
- e. Help to fill in forms for people with dyslexia. Additional help for people who need help with forms (example from the group of a person who could not register with a doctor because the receptionist refused to help. This is definitely an equality issue)
- f. Being proactive. Not just ramps and easy read. But going that extra mile to recognise people's individual needs. Extra training for people across all walks of life to support people with autism for example
- g. People need the extra help. I don't feel like I am getting support apart from my husband. You can't see all disabilities
- h. Making sure that cuts in services do not affect people with disabilities
- i. There should be more done for people with mental health difficulties
- j. People need to have information made clear. Documents need to be easier to understand, like insurance forms for example
- k. I don't have the time to search for help. Sometimes I'm too embarrassed to ask
- l. It is important to make people aware of what can help. Like printing letters on different colour paper can help with dyslexia
- m. More equipment and whatever else is needed should be put in place

***Question 2 – How has the law worked at the moment to make sure disabled people are treated equally?***

The advocacy partners responded:

1. No. It doesn't work
2. Sometimes it makes little difference
3. I think it does work
4. It's not working. People are still struggling with their wheelchairs and people are still being picked on because of their disability
5. People with disabilities are still treated without respect
6. The law does respect people with different needs
7. It doesn't work. For example, the police treat people with disabilities as liars because the police don't believe people with disabilities or mental health difficulties
8. It gives equal rights to all
9. It's a waste of time

10. Not much. I get bullied in the street and the police don't do anything
11. It has got better. Disabled people live in the community now, not in institutions
12. The law is alright

The group responded that the law wasn't working. They talked about whether they felt they were treated equally. Their response was:

- a. No. I think they should make signs easier to read. Sometimes in work they think I can't do certain things so they give me easy jobs
- b. Yes. But we need more social things to do
- c. Sometimes yes, sometimes no. When people look at me on the outside they think I am staff, but then when I start to talk they treat me differently and walk away
- d. Yes but I had to find separate support company to take me out on activities
- e. Yes. It is ok
- f. Yes. But I am struggling with it
- g. Yes people treat me the same as anybody else
- h. Yes. But it is the red tape and filling in forms that I struggle with and that is holding me back from getting employment. Plus I may look fine on the outside, but inside I am really struggling. There should be more people to speak to if you are worried

***Question 4 – Are there more things the law should do to make sure disabled people are treated equally?***

The advocacy partners responded:

1. Yes. People should be given more help like being able to use wheelchairs on the pavement
2. Yes. Especially to do with getting work for people with disabilities
3. There should be better reporting of when things do not go well
4. Have more people, like PCSOs, who understand about disability. People should have better training about disability and the law
5. There should be better rights to benefit money
6. People should be listened to better
7. It's partly because people don't understand the law like they should
8. Make more jobs for people with disabilities
9. It's okay but closure of things like hospital wards makes access more difficult
10. The law should be in better touch with people
11. More funding is needed to pay for better support for everything that disabled people should be able to do, like getting work
12. Better employment opportunities

The group response was:

- a. Make sure people know about the law and how to complain
- b. Make sure people are aware of their rights. Plus acknowledge organisations that promote them

- c. Different companies don't always follow the equality act
- d. They ask you things on a job application form that make you feel different
- e. On application forms, when you have to put down if you have a learning disability then it works against you. The penalties should be stronger
- f. Nothing will change unless something happens
- g. I think that if someone who commits a crime and has a learning disability, they are treated differently than if someone committed the same crime, they wouldn't be treated as harshly
- h. Make sure we are treated all the same
- i. There should be an advertising campaign to let the employers and employees know where they stand. Like the work-based pension
- j. I feel like I get the same chances as other people
- k. Sometimes complete equality is just not possible

***Question 5 – Do you think public bodies do what they should to make sure people are treated equally?***

4 of the 15 advocacy partners said 'Yes', 1 was 'Not Sure' and 10 said 'No'.

The group response was:

- a. If someone with learning disabilities went through all the same training as another person, they should get the job. Organisations should adapt the training to make sure people have a chance to do the same sort of job
- b. Making sure expectations are high. Help people think they can do it
- c. Sometimes we are not treated equally. I feel like I'm moving backwards not forwards because I am told I have a disability
- d. Sometimes at the doctors, the name they call next is displayed on a sign. What happens if you can't see?
- e. Bus time tables are too hard to understand

***Can you give some examples?***

- 1. The Housing Association doesn't treat me equally – because I am older
- 2. Sometimes they put you down. It all depends on who you talk to but sometime they treat you like a baby, like you can't understand
- 3. More and better training and more people who understand disability and equality
- 4. Getting to places can be very difficult
- 5. Closing hospitals and things like that make things more difficult because of travel
- 6. Sometimes when I was at school I did get treated differently
- 7. The NHS is good but the council isn't – it doesn't make allowances for people with learning disabilities (especially with communication)
- 8. Closing hospital wards makes access more difficult
- 9. The Job Centre is going to take benefits off me even though they know I need someone to support me and they make me attend when I can't.

10. I was bullied and sexually assaulted and the police didn't do anything
11. They don't do what they're supposed to do – they should take more notice of requirements

***Question 11 – Are there other ways the government could make the Equality Act work better?***

The advocacy partners responded:

1. Listen better to people's views
2. The law should be more understandable
3. I'm happy with the way things are
4. Things like jobs and other activities (for people with disabilities) should be actively promoted and there should be better access to these things
5. It would be better if the government listened to us
6. Make sure there is equal access to hospitals and health
7. Make sure that Hate Crime laws are stronger to stop abuse
8. There should be penalties for bodies who do not treat people equally
9. Better access to paid work. Better access to all buildings
10. Get the police on the beat and check that people with disabilities are okay
11. Better access to work and leisure and support to do these
12. The benefit cuts should be stopped

The group response was:

- a. By extending support to the families of the person in need of support
- b. They need to anticipate trends and be a step ahead. For example, now that most forms are online, they should have anticipated this and trained people.
- c. Government should make sure employers are happy to employ people with learning disabilities

*2 September 2015*

## **Plumstead Community Law Centre – Written Evidence (EQD0137)**

This submission has been prepared by Plumstead Community Law Centre. The Law Centre provides free legal advice and representation at tribunals in housing, benefits, immigration, employment and equality law to the residents of Greenwich.

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?

The Law Centre believes that the Equality Act 2010 had great potential to bring disability discrimination law into the mainstream. However, we have noticed that the majority of our clients who we take disability discrimination claims for do not self-identify as having a disability. They do not consider that they have a disability and therefore without legal advice would not be able to enforce their rights.

They tend to come to the Law Centre when things have gone drastically wrong, for example, when they have been dismissed. As they do not realise that they have a disability, they never ask for assistance at work, which would help them to stay in employment.

If the Act defined disability in a more accessible way, it might be more helpful at helping people identify their rights under the Act.

2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?

We feel very strongly that volunteers should be covered under the Equality Act 2010. We have come across cases where volunteers have suffered terrible discrimination in the workplace, for example, excluded from volunteering after disclosing a mental health problem. It is heart breaking to tell them that you cannot assist them with a discrimination claim. We cannot understand why volunteers have been excluded.

We feel this is particularly relevant to persons with disabilities. Many will use volunteering, for example, to get back into work after an illness.

We understand that the cost to charities of making reasonable adjustments has been advanced by some organisations as a good reason to exclude volunteers. We do not feel this is a valid reason to exclude volunteers.

Most reasonable adjustments are not costly. They include, for example, allowing flexibility as to when someone can work, allowing additional breaks etc... Where an adjustment is costly, charities would have available the defence that it was not reasonable to make the adjustment.



Access to work covers work trials but not voluntary placements. Access to work should look at changing this policy to include voluntary placements. This would be very helpful in allowing persons with disabilities to access voluntary placements.

Although the majority of disability discrimination claims that we take for workers involve reasonable adjustments claims, volunteers that approach us for assistance usually do so because they have been excluded from volunteering or because of harassment.

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?

We feel that the majority of people who qualify for disability protection have no knowledge about the protection that is available to them. We feel that service providers and employers do not have a good understanding of disability discrimination. For example, we had a case recently where a managing director of a cleaning company with 100s of employees confessed in the Tribunal that he had no knowledge about disability discrimination protection.

4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

We have produced a factsheet, which explains what reasonable adjustments are and we give examples of reasonable adjustments. The risk is that if the law was more explicit, it might limit what protection is available. It could unintentionally limit protection to those with rare conditions who need very specific adjustments made.

#### *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?

We feel that the PSED has had a real impact in practice. Although there have been very few cases in the courts, it is a very good negotiating tool to use. Most issues are resolved without needing to resort to legal action.

It forces public bodies to engage with equality issues. It assists in creating a culture of equality within public bodies. It gives an opportunity for the public to voice concerns about equality.

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?

We feel that the PSED is extremely useful to persons with disabilities. This is because they often face barriers that others do not face. The PSED gives them an opportunity to address their equality concerns and puts an onus on public bodies to consider those concerns seriously.

#### *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?

We have no knowledge of this.

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?

The Equality and Human Rights Commission used to fund organisations across the country to provide legal advice and representation in equality law.

This worked very well. The EHRC would refer cases to those organisations from its helpline. It was co-ordinated and very effective. It was great in that the EHRC was able to ensure that the whole of the country was covered and that all equality issues were addressed. Workers were also funded to do outreach work, including providing home visits and providing training to local disability groups on equality law.

Currently, it is a postcode lottery as to what advice and assistance one gets. We are funded by Greenwich Council to provide legal advice and representation in Greenwich. We used to have two equality caseworkers. After the legal help cuts to employment and equality, we now only have one.

As a consequence of our location, we are regularly approached by residents from Bexley, Bromley and Kent seeking advice as there are no specialist casework services in their areas. We have suggested that clients from these areas contact the civil aid agency in cases of discrimination but the majority come back stating that their cases were not taken on.

We feel that there needs to be advice and assistance available locally. We feel this is very important, particularly for persons with disabilities. Some disability groups are severely affected. For example, we have one client with severe mental health problems who would be unable to call the legal aid advice helpline. Even the thought of using the telephone causes her to suffer a panic attack.

We feel the most vulnerable in society rely on local advice agencies most of all. They are not confident to phone national helpline. They often would not consider phoning an equality helpline because they don't identify that they have an equality issue. They will say, *"I have been dismissed because health problems"* or *"my benefits have been stopped as I could not get to the appointment."*

We feel that all areas in the UK should have an equality caseworker who can meet persons on a face to face basis.

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?

We feel that Ombudsmen should take an active role in promoting equality.

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?

We have many clients who have been priced out of justice. They do not have £1,200 to start legal action. The majority of workers in London would not qualify for remission as the levels are set very low. Further, we have seen since the fee was introduced that there has been a race to the bottom in terms of equality protection. We have seen a significant increase in discrimination cases. We have seen a huge increase in employers ignoring grievances and refusing to provide internal solutions to problems, for example refusing to make reasonable adjustments.

We have also seen that few cases settle early on. We have found that the ACAS early conciliation process has been pointless. We have submitted over 100 early conciliation claims since it started and have had only one positive outcome. At the time we submitted that successful early conciliation claim, the client already had an exit package on the table.

We feel this is because employers want to see whether someone has £250 to issue before they will even consider negotiating.

It has also become more difficult to negotiate settlements once litigation has started. We feel this might be because employers want to see whether claimants have £950 for the hearing fee. Lengthy litigation is stressful for everyone but can be particularly stressful for clients who suffer from disabilities that are aggravated by stress.

The majority of our work used to be negotiating on behalf of clients. As most of our cases are now going to full hearings or settling just before the hearing, most of our work now involves extensive litigation. The change has been significant.

11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

Litigation in the county court is very complicated for service provision cases. We feel that it would be better to have a single Equality Tribunal that deals with all equality cases. We feel the system should be made more simple and accessible. We also feel that it would be more cost effective.

*4 September 2015*

## Portsmouth Disability Forum (PDF) – Written Evidence (EQD0084)

### General

#### 1. Has the Equality Act 2010 achieved the aim of strengthening and harmonising disability discrimination law?

1.1 No. The original DDA gave more information and guidance, the wording was clear and it was generally more helpful. Because of this clarity for example on build dimensions the phrase **DDA compliant** had more strength and even today the phrase DDA compliant is used. We have the current part 'M' of the building regulations that gives the minimum and the BS8300 standards the best practise, but there is no real pressure to ensure people use these standards and enforce it as well as a lack of any resources available to deal with the cost consequences .

1.2 Within the Equality Act there is no real definition of '**due regard**' and as a consequence it becomes diluted and ineffective, public and private organisations have no real guidance to make sure they take due regard to the Equality Act.

1.3 Although the Equality Act 2010 has made it easier having 9 pieces of legislations in one Act it doesn't account for the varying degrees of impact having one of the protected characteristics, disability is one of the most disadvantaged groups and the Equality Act does not account for this.

#### **What has been the effect of disability now being one of nine protected characteristics?**

1.4 Disability can impact on anyone at any time throughout their lives so it is fair to say that disability underpins and impacts on each and any every one of the other 8 protected characteristics, but it is not afforded the profile, recognition and support it should.

At least 17% of the population are disabled, 25% if you include the impact on families and carers, and within the nine characteristics disabled people are classed as the most disadvantaged ,the Equality Advisory & Support Service (EASS) newsletter said in July 64% of the contact was regarding disability. This obviously shows that these people are experience discrimination in work and using services more than any other of the protected characteristics.

1.5 The 2010 Act has been easier to follow, when there is a need to 'route' through an associated impact on other protected characteristics.

1.6 Over the last five years there has been an erosion of the services available to support and engage disabled people, which whilst recognising we all need to be mindful of costs has resulted in more people being dissatisfied and disenfranchised about their circumstances. Which with weak legislation they are ill placed to challenge.

**2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

2.1 The Equality Act 2010 does not have enough power as there are no comebacks or fines, individuals and organisations have become complacent in whether they accept and follow the Act or not. The Equality and Human Rights commission (EHRC) are not high profile in advertising themselves and the service they provide is limited, i.e. only offering support to the individual, not an organisation.

2.2 Individuals were only just getting to grip with the DDA, and then it was thrown out. Under the 2010 Act people have limited knowledge and are not in as good a position to challenge as they were under the DDA.

2.3 There is no requirement under the Act for checking that its requirements are being met, for example whether a Corporate Public Assessment is undertaken, if it is meeting what is required, and if not what is going to be done about it. Even if there is an action to be undertaken, Equality Officers up and down the country are being made redundant so the expertise within councils which would promote, offer advice on and administer the act is being diluted even further.

2.4 Public Authorities have no power to take action over people who ignore the Act, for example shops who don't provide the appropriate access, or alternative means of providing their service. The EHRC will neither advise nor act in these circumstances because it is not an individual requesting information or making the complaint

2.5 The opportunity for employers to follow the Act in terms of employment is further diminished in that Access to Work has been reduced and employers are being asked to pay a higher percentage of the costs, which many simply cannot afford, therefore will not employ disabled people.

2.6 The requirement to do away with zero hours contracts and on paying a minimum/living wage may dramatically reduce the opportunities that are available to those disabled people who cannot deliver against a full job description. External pressures on employers will mean that they cannot afford to employ a person who either costs them too much to pay or to provide additional support or equipment for.

2.7 The impact this pay then has on their benefits means that the individual themselves may be disinclined to find paid work as they are financially worse off.

**Examples are:**

We offered a 12 hour a week post to an employee and had to reduce it down to 10 as even on a low wage they were earning too much and it impacted on their benefits.

But for the individual to come off benefits they would have to work full time and earn in excess of £30,000 to pay for their care package.

A colleague has to upgrade their communication equipment which will cost £3000, which their employer is unable to afford, and Access to Work are not proposing to fund.

2.8 These are common examples of where the system/ACT is inflexible and stopping disabled people working, having opportunities and reaching their individual potential whatever that level may be.

### **Reasonable adjustment**

#### **3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?**

3.1 Most duties regarding physically disabled people appear known such as ramps, toilets etc., but there is a tendency for disabled people still **not** to be perceived as individuals, i.e. that 'one size fits all'. When it comes to other less obvious or more unique requirements people are still not aware. For example providing alternative formats for visually impaired people, although technology has improved some Government Websites still state that they are not suitable for some service users. Employers do not offer flexibility of working hours, precluding people who have to have personal assistants to get ready, or have difficulty in getting appropriate transport at the right time.

#### **How does this apply in the specific cases of public transport, taxis, education and access to sports grounds?**

##### **Public Transport**

3.1 **Rail**, appears to be generally getting better, specifically physical access, but lack of consistent awareness and training and indeed prejudice can still mean that an individual is treated badly. 'Does he take sugar' still exists.

3.2 **Bus**, improvements in accessibility of vehicles, ramps, verbal and visual announcements and raised bus stops are all welcome, but the battle still exists in stopping people parking in or blocking bus stop. As well as other passengers and staff not respecting and enforcing the use of wheelchair spaces on buses.

3.3 **Taxis**, improvements in terms or number of accessible, ramped vehicles but drivers still do not always follow the rules in terms of getting people in on the ramps and charging them extra because they have a wheelchair. Guide dogs are still being refused on Cultural/ religious grounds.

3.4 **Education** For those with a disability that do not meet the statutory threshold of having a Special Educational Need, their only protection is under the Equality Act 2010. However, the Act is less effective than the SEN legal framework in defending children's interests. We provide an Information and Advise Service under this framework and would commend and endorse the comments submitted to you

separately by IPSEA. (Independent Parental Special Educational Advice) who we work with.

3.5 **Access to Sports Grounds**, following high profile public comments, access to football grounds has improved although there is still a tendency to provide an on mass locality rather than to offer spectators different localities around the ground.

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

4.1 Yes, absolutely.

4.2 For the built environment, standards to be reached for physical access with specified dimensions, the types of facilities, and where they can be acquired.

4.3 For delivery of services, standards to be reached for how your services will be delivered i.e. whether a location can be changed or a home visit arranged.

4.4 A requirement for builders to be certified who can build to the standard.

4.5 A list of grants that can be accessed to match these standards physical and non - physical.

4.6 **The formal wording in the act to be changed to an ACCEPTIBLE adjustment.**

**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?**

5.1 Zero. The non-specific guidance and lack of review structure has meant that there are no checks, therefore no reinforcement or change. The Local Authority, its staff and councillors need to be reminded and educated about its importance. That they set themselves more than one objective every four years and they issue penalties and significant fines if the requirements of the duty are not met.

**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?**

6.1 We have no knowledge of the different approaches across the UK, but should these not be the same across the UK as a single equitable duty, with good practise shared between all?



## **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?**

7.1 We don't know and have no comment other than they should be challenged and policed to make sure they are effective and fit for purpose.

### **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?**

8.1 It is not effective as it is not enforcing the ACT, it has little or no local or regional presence outside London. We have been advised that contact to them has been ineffectual.

### **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?**

9.1 YES. To be effective the Act needs to be specific and to have 'teeth', having an 'Ombudsman' to whom we can refer and who would challenge would raise the standards, as would having an inspectorate like the Care Quality Commission who have rights of entry and investigation and sanctions. Complaints has its own Ombudsmen and there should be an Equalities Ombudsmen to ensure they have the expertise when dealing with claims of discrimination or ensure services are not treating disabled people less favourably.

### **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?**

10.1 NO. Making a complaint for many disabled people would simply be too stressful, too time consuming, and all down to them. There needs to be clear, concise guidelines and local support to encourage people to come forward, as there is a perception that only cases that are deemed to be 'a winner' and cut and dried legally will be taken on.

10.2 NO. Especially when locally we have the example that people in Portsmouth were expected to make their way to Southampton to an inaccessible building to attend their ATOS interview.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

11.1 Only people with relevant qualifications and experience are engaged in activities related to disabled people.

11.2 We need legislation not non-legislation, it needs teeth.

11.3 We need additional focus on disability within the Act, as so many people are impacted by it, it needs proportional representation and requirement.

11.4 Annual inspections and reports on local authorities and employers with more than 150 staff.

**END**

**This document has been co-authored by the following members of the PDF Trustee Board, Sharon Smithson PDF Chair, Peter Cairns, Wendy Roberts and Gina Perryman, who are all disabled people and Lynne Rigby PDF Principal Officer.**

**It is a response on behalf of them as individuals and as members of the Trustee board on behalf of our membership.**

*3 September 2015*

## **Stephen Prince – Written Evidence (EQD0019)**

My son has a learning disability (Fragile X) and he is a vulnerable adult. He cannot be left on his own for long periods as he has a history of mischief which can be dangerous to himself and others. He has also let people into the house when alone. He attends a day centre in Grantham for adults with learning disabilities, and has done since 2007 where he is cared for and socialises with others with similar disabilities. Provision of this service was free of charge until Lincolnshire County Council (LCC) brought in a charging policy in 2012. Also in that year the Welfare Reform Act 2012 became law introducing a benefits cap of £350 per week for a single person without children. The Government made a big case that the benefits cap would not apply to disabled people. However, LCC assessed my sons benefits and effectively capped them at less than £150 per week. My MP, Nick Boles a Government minister and my local Councillor both wrote to LCC saying that the charge is unfair asking for it to be rescinded, but they were ignored.

Lincolnshire County Council outsource a day service for people with alcohol and drug addictions which last year cost over £2.6m. This service is provided free of charge to users. So, a single person with an addiction but no dependent children can receive up to £350 per week and receive free day care, whereas my son was born with a disability and has his benefits capped at £150 and has to pay £20+ per week towards his care. This may not seem much, but it's over one thousand pounds a year and to him it makes a difference.

Lincolnshire Partnership NHS Foundation Trust provides free support and treatment via the Drugs and Alcohol Team (DART) to people with addictions, but turned down my sons application for funding under the continuing care scheme. Their scoring and mine on behalf of my son were poles apart. Another public service discriminating against the learning disabled.

I complained to the Local Government Ombudsmen (LGO) on the grounds of the Council's unfair charging policy which discriminates against people with learning disabilities. The LGO's finding is that as long as LCC charge all people with Learning disabilities and doesn't charge people with an addiction then my son is not being discriminated against. So, again, another public body discriminating against vulnerable adults with learning disabilities.

I have been in dispute with Lincolnshire County Council regarding the charge to my son which I have presented as discriminatory and unfair, but they have turned all my appeals down.

Whilst this is about my son, it equally applies to thousands in his and similar positions. The independent report into the future care of people with learning disabilities by the Transforming Care and Commissioning Steering Group chaired by Sir Stephen Bubb, states;

“We need a new Charter of Rights to empower people with learning disabilities and their families, and give them the right to challenge the system. We need that system to have the courage to act on these recommendations, and not to promise another false dawn. The time for talk is over. It's time for people with learning disabilities or autism and their families to be put first.”

Stephen Prince – Written Evidence (EQD0019)

I am submitting this evidence as people with learning disabilities need advocates to speak up on their behalf.

*12 August 2015*

## **Public Interest Research Unit – Written Evidence (EQD0069)**

The Public Interest Research Unit (PIRU) is a small registered charity specialising in socio-legal research. We welcome the opportunity to submit evidence to this Committee.

### **1. MAIN POINTS**

- Disabled people have long experienced employment-related disadvantage and at least some elements of this disadvantage appear to have increased in recent years.
- Adjustments have enabled employers to recruit and retain valuable staff and have helped disabled individuals to work and progress in their careers.
- The reasonable adjustments duty, and other legal protections (such as under unfair dismissal law), have encouraged adjustments.
- Employment adjustments have quite often not been made when there was a legal duty to make them and when there may not have been a duty but the benefits of making them would have outweighed the costs.
- Reasons for adjustments not being made have included - (a) the Equality Act definition of disabled; (b) the absence of a duty to assess the need for adjustments and the absence of an anticipatory reasonable adjustments duty; (c) the 22 major cuts to equality and employment law protections made since 2010; (d) the limited enforcement of the protections which remain; (e) the increase in employer benefit flexibility policies; and (f) public sector spending cuts.
- PIRU recommends a number of measures to strengthen the reasonable adjustments duty and other legal protections.

### **2. DISABILITY EMPLOYMENT DISADVANTAGE**

#### **2.1 The nature of disadvantage**

Disabled people have long experienced employment-related disadvantage, including negative prejudice (Williams and Mavin, 2012), unlawful discrimination (Lockwood, 2014), ill-treatment in the workplace (Fevre et al, 2013), lower wages (Coleman et al, 2013: 13) and higher unemployment (Baumberg et al, forthcoming). Further, those with the "least preferred" (Deal, 2003: 898) impairments, including mental health conditions, experience the greatest disadvantage (Coleman et al, 2013: Table 5.2). In the form of intersectionality, the disadvantage related to being disabled can interact with the disadvantage related to other "degraded statuses" (Castro and Corral, 1993), in such a way that the combined negative impact is greater than the sum of what would be the negative impact of each status on its own. For example, Harwood (2015: para. 1.3 (d)) reports that a disabled study participant wrote - "My gender, transgender, may have also been a factor in the way I was treated by my manager ...".

#### **2.2 Is disadvantage increasing?**

While there is insufficient evidence to draw confident conclusions about what has happened to the disability employment gap (Baumberg et al, forthcoming: 18), there are indications that disadvantage in relation to workplace experiences could have increased considerably in recent years. For example, a study conducted earlier this year (Harwood, 2015: para. i) indicated (with caveats about representativeness) that across the 100 plus organisations included:

- Employer attitudes towards disabled workers have deteriorated.

- Appearing to contribute to the increase in negative attitudes, rhetoric about disability benefits cheats seems to have spilled over into the workplace.
- Zero hours contracts are causing particular problems for disabled workers, including as result of the high levels of ill-treatment associated with these contracts.
- Unlawful discrimination appears to have been increasing.
- There has been a reduction in willingness to make adjustments for disabled workers and an increasing emphasis on discipline.
- Being disabled appears to have put workers at particular risk of being made redundant or otherwise dismissed.

2.3 Disabled individuals who are not in paid work have in general faced a much harder time since 2010 (e.g. Cross, 2013), notwithstanding that much of that hard time can be traced back to Labour's Welfare Reform Act 2007 (e.g. Patrick, 2011). Of particular note, sanctions against disabled claimants have reached record levels (e.g. Webster, 2014), with sanctions contributing to widespread destitution (e.g. Scottish Parliament's Welfare Reform Committee, 2014: 13). This seems to have impacted upon workplace experiences, in that, for instance, the threat of being dismissed and facing sanctions has left many disabled workers too fearful to complain about ill-treatment (Harwood, 2015). The principal government justification for the hardship that "welfare reform" has caused has been that it reduces unemployment. It is, therefore, worth noting that a report just published (Scottish Parliament's Welfare Reform Committee, 2015: 2) states - "On balance, the evidence in the report provides little support for the view that welfare reform is having important and positive impacts on the labour market in Scotland".

### **3. REDUCING DISADVANTAGE THROUGH REASONABLE ADJUSTMENTS**

#### **3.1 The role of adjustments in reducing disadvantage and benefiting employers**

Adjustments "have enabled organisations to recruit and retain valuable staff and helped disabled individuals to work and progress in their careers" (Harwood, 2014: 1511). Specific benefits have included, for example, reducing the need for employees to take sick leave (Irvine, 2011: 752) and facilitating returns to work (e.g. James et al, 2002: 88); as well as improved productivity (Schur et al, 2013). In that adjustments help employees to gain and retain work, employers in general making adjustments could substantially reduce the disability employment gap. Adjustments also have some potential to reduce the often disastrous impact of "welfare reforms" on disabled individuals.

#### **3.2 The role of the reasonable adjustments duty, and other laws, in encouraging adjustments**

There are strong indications that the reasonable adjustments duty (now in the Equality Act (EqA) 2010) has encouraged adjustments. Of particular note, a series of large scale surveys found that there being a legal requirement to make adjustments was an important reason for adjustments being made (e.g. Dewson et al, 2009: Figure 4.2). Other laws also appear to have encouraged adjustments, including, for instance, the Public Sector Equality Duties, unfair dismissal law, and health and safety law (e.g. Harwood, 2015: para. 1.3(e)). For example, Harwood (2014: 1517) found that the equality schemes, which public authorities were required to produce under the Disability Discrimination Act 1995 Specific Equality Duties, "included adjustment-related planned actions".

### 3.3 Reasons why adjustments are not made

The literature suggests that disability employment adjustments have often not been made when there could have been a legal duty to make them and when there may not have been a duty but the benefits of making them would have outweighed the costs (e.g. Lockwood et al, 2014: 4). It also seems that the Department for Work and Pensions routinely sanctions disabled claimants for failing to carry out activities which their impairments made it hard or impossible for them to carry out (e.g. Pfefer, 2015: 43). Sanctioning in these circumstances would in general constitute a failure to make reasonable adjustments in the exercise of a public function (e.g. Harwood, 2009). "Welfare" adjustments are not dealt with further here but reasons for employment adjustments not being made include the following:

#### 3.4 The wording and interpretation of the reasonable adjustments duty.

- *The definition of disabled.* At apparent odds with the UN Convention on the Rights of Persons with Disabilities (e.g. Butlin, 2011), read with the EU Equal Treatment Framework Directive, there is no entitlement to reasonable adjustments, however substantial the disadvantage experienced, unless the individual is judged to meet a restrictive definition of disabled.
- *No requirement to assess.* In *Mid Staffordshire General Hospitals NHS Trust v Cambridge* ([2003] IRLR 566), the Employment Appeals Tribunal (EAT) determined that a 'proper assessment of what is required to eliminate a disabled person's disadvantage is ... a necessary part of the' Reasonable Adjustments Duty (para. 17). Later, however, in *The Royal Bank of Scotland v Ashton* [2011] ICR 632, the EAT argued that 'it is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment' (para. 24). This would appear to reduce the statutory encouragement to take the arguably common-sense step of considering what adjustments would be effective (Harwood, 2014: 1514).
- *No anticipatory reasonable adjustments duty.* An over-riding weakness of the employment reasonable adjustments duty is that it is not well designed to bring about changes in organisational practices, other than the improvements made for particular disabled individuals. This is in large part the result of the employment duty (unlike that in the services field) not having an anticipatory dimension.

#### 3.5 Weaknesses in (and weakening of) other laws.

- *The Public Sector Equality Duty.* There is a good deal of evidence that the Disability Equality Duty (DED) helped improve disability employment practice (e.g. Pearson et al, 2011), including, as referred to above (para. 3.2), in relation to adjustments. The effectiveness of the DED depended, to a considerable degree, upon the specific duties made under it. However, the specific duties that the Coalition made under the successor EqA Public Sector Equality Duty (PSED) are a pale reflection of the DED specific duties. It appears that this change could be having a substantial impact. For example, Harwood (2015: para. 1.3(e)) reports that one local government survey respondent wrote - "The PSED has been weakened dramatically. Consultation has decreased greatly, DET (disability equality training) is now all but non-existent and recruitment of disabled people is now even lower than it was before 2010".
- *Other employment laws.* The UK has a low level of employment law protection relative to the norm for western economies. During the Coalition years, the level of protection was lowered still further, with 22 major cuts to equality and employment law protections (Harwood, 2015: para. 3.2(b)). Some of the protections which have been weakened, such

as those under unfair dismissal law, had (as referred to above at para. 3.2) provided encouragement to make adjustments (e.g. Harwood, 2014:1514).

- *Economic justification for legal cuts.* A principal stated justification for the cuts to employment law protections was that such protections damage economic growth (e.g. BIS, 2012). The empirical evidence, however, indicates that reasonable levels of employment law protection (i.e. some distance above those in the UK) are more conducive to economic growth than low levels (e.g. Prassl, 2013: 324).

### 3.6 Limited and declining enforcement.

The legal duty to make adjustments might be expected to have more influence when there is a reasonable prospect of it being enforced. However, employment law enforcement is now so weak that a substantial percentage of UK workers can be regarded as in practice having few if any workplace rights (except perhaps protection under criminal law from, for instance, being assaulted). Particular problems have included:

- *Legal advice and representation.* There is now very limited free legal advice or representation available. For example, Holgate et al's (2012: 772) findings "highlight the paucity of individual employment advice and a growing crisis for workers' rights with the decline in collective union representation".
- *Tribunal fees.* The TUC warned that the introduction of tribunal fees would "price working people out of access to justice" (TUC, 2011, 18); and there is mounting evidence that this is what is happening. For example, Harwood (2015: para. 1.3) found that the problem, standing in the way of taking legal action, which was mentioned by the most survey respondents was the tribunal fee.
- *Judicial review.* Individuals with standing can bring judicial review proceedings for a failure to comply with the Public Sector Equality Duty. Judicial review is a bedrock of liberal democracy in that it helps ensure that government acts within the law. Seeking judicial review has, however, become more difficult as a result of the Criminal Justice and Courts Act 2015 (e.g. Mills, forthcoming).
- *Collective enforcement.* The Disability Rights Commission and the other predecessor commissions made limited use of their "enforcement" powers (Harwood, 2006), and the Equality and Human Rights Commission appears to have made even less use of its powers. This could be in part a matter of preference but must be assumed to also be in part a consequence of major funding cuts. Giving a flavour of the scale of these cuts, Baroness O'Neill (2015: Q27) stated - "The Disability Rights Commission ... ended up with a budget of £21 million ... The core funding for the Equality and Human Rights Commission this year is £17 million ...". And this funding is spread across nine equality strands.

### 3.7 Other influences.

There are many other non-legal factors which have discouraged adjustments. Of particular note, these include an increase in employer benefit flexibility (EBF) policies, with EBF policies having a disproportionate adverse impact on disabled workers. For example, Harwood (2015: para. 4.3(b)(i)) reports that a survey respondent who worked in retail wrote - "My employer said that I had a zero hours contract ... I had to be on call any and every day for a shift ... no adjustments made despite quoting the disability act till I'm pink in the face. Zero hours are not good for ADHD or OCD. It turns you into a complete wreck". It also seems that



spending cuts in the public sector have reduced the willingness to make adjustments (Harwood, 2014; 2015: para. 4.4)

#### **4. RECOMMENDATIONS**

*4.1 A social model definition of disability.* Drawing on the UN Convention on the Rights of Persons with Disabilities, and the Advocate General's opinion in *Karsten Kaltoft*, the Equality Act 2010 definition of disability should be brought more into line with the social model.

*4.2 Reasonable adjustments assessment.* The reasonable adjustments duty (in the employment and public functions fields) should be amended to include an explicit requirement to conduct a reasonable (in the circumstances of the particular case) assessment of what is required to eliminate a disabled person's disadvantage. This assessment might involve no more than a brief mental assessment, and (where appropriate) a discussion with the disabled person in question. However, where either of these steps indicate that, for instance, an individual has complex needs, there could be a duty to acquire more information on how best to meet those needs. In short, the duty would be purposive and proportionate.

*4.3 An anticipatory duty.* There should be a new anticipatory employment reasonable adjustments duty towards disabled people at large (akin to the current anticipatory duty in the services field), to stand alongside the existing individual duty. This could be achieved through amending the employment duty so that there is a duty to 'a disabled person' and 'to disabled persons generally'. Such a duty would facilitate the employment, retention, and progression, of disabled workers.

*4.4 Strengthened and extended equality duties.* The current Public Sector Equality Duty specific duties are so weak as to be of questionable relevance. The predecessor Disability Discrimination Act specific duties, which were the strongest of the predecessor duties, should be reintroduced and (with necessary changes) extended to all the equality strands. In addition, there appears to be no good reason why private sector organisations, and charities, should not also be subject to requirements (of the type in the Public Sector Equality Duty) to have due regard to the need to, for instance, reduce unlawful discrimination against their customers and clients.

*4.5 Reinstatement of the 22 employment law protections.* The 22 major cuts to equality and employment law protections made under the Coalition government should be reversed. The research literature indicates that employment law protections can support economic growth, as well as reducing the exploitation of employees.

*4.6 Research into the impact of flexible workforce policies.* Research is needed into how the increase in employer benefit flexibility policies (such as the greater use of zero hours contracts) is impacting on disabled workers and into what role worker benefit flexibility policies (including adjustments) can play in mitigating the negative impacts.

*4.7 End sanctions.* Benefit sanctions are cruel and counter-productive and hit hardest our most vulnerable citizens.

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3 September 2015

## RCT People First – Written Evidence (EQD0080)

Please find below the Rhondda People First Group (self advocacy group for people with learning disabilities in the county of Rhondda Cynon Taff) views on the above.

1. No

1b: No

2. Yes eg. work, leisure, education, health 3. Transport - Buses are better but not all drivers pull the ramp down or lower the floor to help us get on and off. Busses will only allow 1 wheelchair user on a time this means that we have to then wait sometimes a long time until a bus comes along that has enough room for us to get on.

Taxis - Some now are accessible for wheelchairs but not every company has accessible taxis you have to ring about.

Education - Access is better there are lifts and ramps

Sports stadiums - are getting better (new builds only) old builds are still not full accessible.

4. YEs - for people to know about the law and what changes need to be made. This needs to be in easy read.

5. RCTCBC - dont employ people with learning disabilities neither does the Welsh Assembly Government.

They don't discuss things fully with disabled people when they make changes to things.

6. Dont know

7. Don't know

8. Don't know about them

9. Yes

10. No

11. Yes they can tell us more about it. Employ people with learning disabilities in government. Use simple language , no jargon.

Involve us more in policies and decision making.

Please find below the Taff Ely People First Group (self advocacy group for people with learning disabilities in the county of Rhondda Cynon Taff) views on the above.

1. No

1b: No

2. Yes eg. work, leisure, education, health 3. Transport - Buses are better but not all drivers pull the platform down to help us get on and off.

Taxis - Some now are accessible for wheelchairs

Education - Access is better there are lifts and ramps

Sports stadiums - are getting better (new builds only) old builds are still not fully accessible.

4. YEs - for people to know about the law and what changes need to be made. This needs to be in easy read.

5. RCTCBC - dont employ people with learning disabilities neither does the Welsh Assembly Government 6. Cant see differences 7. Don't know 8. Don't know about them 9. Yes 10.

They need help and support here. They need some one to talk to them in simple language, not jargon.

11. Yes they can tell us more about it. Employ people with learning disabilities in government. Use simple language , no jargon.

Involve us more in policies and decision making.

Hi Please find below comments from Blaenau Gwent People First a self advocacy group for people with learning disabilities in the county of Ebbw Vale.

Q 1. Yes

Q 1A Yes

Q.2 No

Making Changes:

Q 3 Transport has improved low level floors, taxis are now wheelchair accessible Education There are lifts for access Sports Grounds: New swimming Pool that is disabled friendly

Continuing Education: Lack of funding has meant that non traditional courses are not being offered to people with learning disabilities.

Q4 Yes the law should be made more clear about the changes and be in easy read and you need to talk to groups about the changes”.

What public bodies (like the government and councils) should do

Q5: NO. Ebbw Vale Council have not made it accessible across the county for wheelchair access”

“Closed public toilets is making it difficult for people to get out and about”

Q6: Dublin access is easier and things are cleaner.

Checking whats happening

Q7 Don't know

Q8: No one knows who they are or what they do

Q8A: Don't know

Q9: Yes more could be done

Q10: Don't know

Q11: Easy access to information, advertisement, make sure that local councils are following the act and making things easier for people to get about.

Hi Please find below comments from a self advocacy group for people with learning disabilities at the Bert Denning Day Centre in the county of Ebbw Vale.

Q1: Yes the environment I live in has made it easier

NO: "Spoke to local council and they have not done anything"

Action: "Pavements are not accessible across Ebbw Vale for disabled people"

Q3: NO

Q3A Transport has improved low level floors, taxis are now wheelchair accessible Education There are lifts for access Sports Grounds: New swimming Pool that is disabled friendly

Continuing Education: Lack of funding has meant that non traditional courses are not being offered to people with learning disabilities.

Q4: No: 7 Yes 2

"Yes the law should be made more clear about the changes and be in easy read and you need to talk to groups about the changes".

Q5: NO. Ebbw Vale Council have not made it accessible across the county for wheelchair access"

"Closed public toilets is making it difficult for people to get out and about"

Q6: England - public toilets remain open.

Q7 Don't know

Q8: No one knows who they are or what they do

Q8A: Don't know

Q9: Yes more could be done

Q10: Don't know

Q11: Easy access to information, advertisement, make sure that local councils are following the act and making things easier for people to get about.

*3 September 2015*

## Reclaiming Our Futures Alliance – Written Evidence (EQD0089)

### Introduction

#### ROFA

Reclaiming Our Futures Alliance is a grassroots collaborative network of Deaf and Disabled People's Organisations and campaign groups throughout England.

ROFA welcomes the opportunity to submit evidence to the Lords Select Committee inquiry on the Equality Act and Disability.

This written submission has been drafted specifically to address the impact of the Equality Act 2010 on Disabled people's independent living.

#### Context

The equality gap between Disabled and non-disabled people is widening.

Research has shown that Disabled people have been impacted by austerity measures nine times harder than the average UK citizen. For Disabled people with high support needs that figure rises to nineteen times harder.<sup>401</sup>

Rights and equality for Disabled people are regressing in the UK for the first time. In 2005 the Improving Life Chances of Disabled People report produced by the Cabinet Office set a target for achieving full equality for Disabled people in the UK by 2025. The current trajectory of UK disability policy is moving further away from rather than towards that goal.<sup>402</sup>

### 1. Impact of the Equality Act 2010 on Disabled people's right to independent living

1.1 Disability equality in the UK is regressing. The Equality Act 2010 has an essential role to play in protecting equality of opportunity for Disabled people but a number of measures are needed to make it more effective, particularly regarding Disabled people's right to independent living.

1.2 Currently the Equality Act does not fully support the 12 Pillars of independent living, (see Appendix), nor does the Equality Act support all the Rights under the UN Convention on the Rights of Persons with Disabilities,<sup>403</sup> which the UK ratified in 2009. Article 19 of the

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<sup>401</sup> <http://www.centreforwelfarereform.org/library/by-date/briefing-on-how-cuts-are-targeted.html>

<sup>402</sup> <http://www.disabilityrightsuk.org/sites/default/files/pdf/IndependentLivingStrategy-A%20review%20of%20progress.pdf>  
<http://www.disabilitynewsservice.com/choice-and-control-have-plunged-under-tories-say-government-figures/>

<sup>403</sup> <http://www.un.org/disabilities/default.asp?id=259>



UNCRPD<sup>404</sup> states Disabled people's right to, *'full inclusion and participation in the community'*. There is no definition of inclusion in the Equality Act and as a result Disabled pupils and student can be segregated into special education units and schools, institutionalised in hospital units or residential homes and excluded generally from society. The human right to live independently with all necessary support is fundamental to equal life chances, equality of opportunity and real and lasting inclusion for Disabled people. That right must start from the beginning and be recognised and protected through childhood and into adult life. Disabled people continue to experience barriers in numerous areas including communications, employment and health as shown in Inclusion London's evidence to the inquiry. Please see the submission from ALLFIE for more information about the Equality Act in relation to education and disabled pupils and students in the context of Article 24 of the UNCRPD.<sup>405</sup>

1.3 The impact of the closure of the Independent Living Fund (ILF) at the end of June 2010 has starkly evidenced dramatic regression in Disabled people's independent living. Former ILF recipients who had access to opportunities including education, employment, family life and community participation are now facing cuts to their support packages to "level down" to the amount and types of social care support available through Local Authorities.<sup>406</sup>

1.4 According to Article 19 of the UNCRPD *'Living independently and being included in the community'*, the state should take action to ensure that Disabled people's independent living includes:

- *'full inclusion and participation in the community'*;
- *'the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement'*;
- *access to 'in-home' and 'other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community'*;<sup>407</sup>

1.5 A complaint launched against the closure of the ILF to new applicants in December 2010 as a breach of Article 19 and the right to independent living under the United Nations Convention on the Rights of Persons with Disabilities is currently being investigated.<sup>408</sup> It is also understood that the UK is being investigated by the UN for grave and systematic violations of Disabled people's rights.<sup>409</sup>

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<sup>404</sup> <http://www.un.org/disabilities/default.asp?id=259>

<sup>405</sup> <http://www.allfie.org.uk/>

<sup>406</sup> <https://www.uea.ac.uk/about/-/uea-research-shows-disability-support-payments-short-change-disabled-people>  
<http://www.disabilitynewsservice.com/disabled-woman-loses-all-but-one-of-49-hours-of-ilf-support/>

<sup>407</sup> <http://www.un.org/disabilities/default.asp?id=279>

<sup>408</sup> <http://dpac.uk.net/2015/03/uk-disabled-people-appeal-to-the-un-over-independent-living-fund-closure/>

<sup>409</sup> <http://www.independent.co.uk/news/uk/politics/un-to-investigate-uk-over-human-rights-abuses-against-disabled-people-caused-by-welfare-reform-10478536.html>

## 2. Public Sector Equality Duty

2.1 The contribution of the Public Sector Equality Duty (s.149 EA 2010) is significant because people can use it to stop a discriminatory policy in its tracks without individuals having to bring claims after the event. This can help to prevent the distress that experiences of discrimination cause to individuals and their networks and also saves time and resources in the long run, replacing the potential for numerous individual claims with a single legal challenge. It also makes public authorities think about what the impact of their proposed policies will be, and in some instances, change their minds about a policy or service that would have adverse consequences.

2.3 The limitation of the PSED is that it is entirely process driven. It cannot stop discrimination from occurring, so long as the public authority can prove it has paid "due regard" to the equalities impact.<sup>410</sup>

2.4 It is also possible for public authorities to get away with doing little more than pay lip service to the PSED without properly engaging with what the duty means in law or the material impact of proposed policy on Disabled people on the ground. Campaigners believe it would have been entirely feasible for the government to carry out a more detailed and in depth assessment of the likely impact of the closure of the ILF. However the judgment in R (Aspinall) v SSWP<sup>411</sup> upheld the Minister's decision to close the Fund which went ahead on 30 June 2015. We are concerned that the duty to take 'due regard' of the impact of a policy is too weak, as this judgement indicates. So we recommend that the duty to take 'due regard' is strengthened. The impacts since the judgement have been as campaigners predicted and a number of Local Authorities have allegedly breached their duties under the Care Act 2014. A string of individual legal cases against Local Authorities is now underway with many more likely to follow.

2.5 Recommendation 1: for a review to be carried out of what data is collected and analysed at both local and central government levels necessary to monitor and evaluate Disabled people's access to independent living and assess equalities impacts.

2.6 There is also a significant gap in understanding in organisations that aren't public authorities but are exercising public functions and should therefore be meeting the duty.

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UNCRPD takes a progressive approach to the realisation of rights. Breaches occur when a state regresses, irrespective of comparisons with other states.

<sup>410</sup> <http://www.leighday.co.uk/News/2013/July-2013/Bedroom-Tax-Judgment-to-be-appealed>

<http://dpac.uk.net/tag/scott-moncrieff-associates-and-deighton-pierce-glynn/>

<sup>411</sup> <http://dpac.uk.net/tag/scott-moncrieff-associates-and-deighton-pierce-glynn/>

2.7 Recommendation 2: awareness raising to be carried out to ensure all organisations responsible for distributing Government money and providing services for Disabled people are informed about their duties under the PSED.

2.8 Recommendation 3: The duty to pay 'due regard' to the impact of a policy that impacts on Disabled people is strengthened.

### **3. Equality and Human Rights Commission**

3.1 The EHRC has made a number of significant interventions in key cases taken under the PSED over recent years.<sup>412</sup>This has proved an effective function of the EHRC in contributing to the impact of the Equality Act 2010 on Disabled people.

3.2 Recommendation 3: EHRC to continue supporting and intervening in cases taken under the PSED in relation to equalities impacts on Disabled people.

### **4. Gaps in other areas of law**

4.1 Equality of opportunity for Disabled people is regressing as a result of government policy. The Equality Act 2010 is not able to adequately protect against this as it regulates the processes by which policy decisions are taken but has no powers to stop policy itself that discriminates.

4.2 In order to maintain and progress disability equality, Disabled people's right to independent living needs to be protected in domestic legislation.

4.3 Recommendation 5: The UNCRPD to be enshrined in domestic legislation.

4.4 The Equality Act 2010 can only be effective so long as Disabled people have access to justice to take cases under it. Recent changes to legal aid have made it more difficult for individual Disabled people to take judicial reviews.

4.5 Recommendation 6: Reverse changes to legal aid that have increased barriers to Disabled people's access to justice.

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<sup>412</sup> [Stuart Bracking and others v Secretary of State for Work and Pensions](http://www.bailii.org/ew/cases/EWHC/Admin/2012/2967.html) [2012] EWHC 2967; <http://www.cpaq.org.uk/content/government-loses-disability-benefit-case-appeal-court> *Burnip v Secretary of State for Work and Pensions* (CA) [2012] EqLR 701;

## **6. Summary of recommendations**

ROFA makes the following recommendations:

1. For a review to be carried out of what data is collected and analysed at both local and central government levels necessary to monitor and evaluate Disabled people's access to independent living and assess equalities impacts.
2. Awareness raising to be carried out to ensure all organisations responsible for distributing Government money and providing services for Disabled people are informed about their duties under the PSED.
3. The duty to pay 'due regard' to the impact of a policy that impacts on Disabled people is strengthened.
4. EHRC to continue supporting and intervening in cases taken under the PSED in relation to equalities impacts on Disabled people.
5. UNCRPD is enshrined in domestic legislation.
6. Reverse changes to legal aid that have increased barriers to Disabled people's access to justice.

## **7. Appendix**

The 12 pillars of independent living:

1. Appropriate and Accessible Information
2. An adequate income
3. Appropriate and accessible health and social care provisions
4. A fully-accessible transport system
5. Full access to the environment
6. Adequate provision of technical aids and equipment
7. Availability of accessible and adapted housing
8. Adequate provision of personal assistance
9. Availability of inclusive education and training
10. Equal opportunities for employment
11. Availability of independent advocacy and self- advocacy
12. Availability of peer counselling

*3 September 2015*

## **Gerald Reilly – Written Evidence (EQD0035)**

### *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 sportsgrounds?

Very little of the Equality Act 2010 (EqA) is understood! This is indicated in the very phrasing of this question. The architecture of the DDA 1995 partitions the duties of service providers from the duties of an employer. The onus on a service provider is to anticipate and then provide the inclusive design and delivery of services; where these services remain either impossible or unreasonably difficult for a disabled person to use, the service should be provided by a reasonable alternative means. Employment is different. If the physical features of a building comply with Part M of the Building Regulations neither the DDA nor EqA would require them to be altered. However an employer is required to make reasonable adjustments to equipment, policies, procedures and practices if they militate against the performance, in the workplace, of a disabled employee. That is to say, reasonable adjustments are to mitigate the adverse impact of disability in workplace performance.

4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

Given their applicability on employment, everything in the workplace, as per above, should be open to reasonable adjustment with the exception of health and safety.

### *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?

The total failure of the PSED (EqA S. 149-157) is down to the fact that it is the only part of the EqA that most in the public sector ever look at. That is to say, they have little or no knowledge of the mass of the other sections. Given the direction of travel in the public sector, the PSED should be scrapped in the cause of providing an even playing field for all service providers and employers.

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?

Very few people understand the difference between civil and criminal law. Equality and diversity must become permanently embedded in the operations (tick-lists) of all enforcement agencies public, quango and private – Ofsted would be a prime example of an agency needing this.

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?

Trade unions have failed to provide anything like adequate specialist support for disabled employees for whom there has been a failure to make reasonable adjustments and thereby have been victims of constructive dismissal. Sadly, where such support has been provided, there have been too many out of court settlements with non-disclosure clauses. This has entailed insufficient case-law or publicity covering the enforcement which is available. Not enough people have been prepared to have their day in court. As a 'reasonable adjustment' tribunals for employees with disabilities should be less onerous than the latest regulations have imposed.

*27 August 2015*

## Royal College of Nursing – Written Evidence (EQD0059)

### 1.0 Introduction

- 1.1 With a membership of over 425,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.
- 1.2 70% of disability within the nursing profession is acquired rather than congenital.<sup>413</sup> Nurses may experience work related illness and disability as a result of the physical demands of the job, with ill health retirement due to musculoskeletal or stress related illness and long term disability the most common complaints reported by nurses. The RCN welcomes the opportunity to submit evidence to the committee. This submission focuses on whether the reasonable adjustment duties are known and understood, based on the reported experiences of RCN members.

### 2.0 Executive summary

- Anecdotal evidence from RCN members suggests that many employers are still unclear about reasonable adjustments; what they are and how they should be delivered. Their experiences suggest that reasonable adjustments can be treated by employers as a box ticking exercise. The RCN believes that implementing reasonable adjustments must be accompanied by not only support from an individual's line manager but accompanying measures to promote cultural and attitudinal adjustments amongst all staff.
- The RCN believes there is a strong case for revising the workplace adjustments guidelines to emphasise the business benefits of making reasonable adjustments for increasing organisational productivity as well as the need to foster a culture where reasonable adjustments are accepted and normalised among all staff.
- The RCN believes it is in employers' interests to make reasonable adjustments to improve the recruitment and retention prospects for nursing staff and to safeguard the retention of experienced staff.
- The RCN believes that in the current climate of nursing staff shortages, employers who fail to successfully implement reasonable adjustments risk losing some of their

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<sup>413</sup> Wray, J., Aspland, J, Gibson, H., Stimpson, A. & Watson, R. 2008: A Wealth of Knowledge: A Survey of the Employment Experiences of Older Nurses and Midwives in the NHS; International Journal of Nursing Studies 46 977-985

most experienced staff, which in turn poses a risk to productivity and ultimately a risk to quality of patient care.

### **3.0 Experiences of reasonable adjustment by RCN members**

- 3.1 Anecdotal evidence from RCN members reveals that experience of reasonable adjustment varies. This variation indicates that the requirements of the Equality Act 2010 in relation to disability are by no means universally understood and implemented effectively. In the period March 2014 to March 2015, the RCN advice line dealt with 438 calls about disability and 170 of those calls were specifically related to reasonable adjustments.
- 3.2 Evidence from surveys of RCN members<sup>414</sup> suggests that nursing staff with a disability often experience difficulty in the workplace. For example, in the RCN employment survey in 2013, almost half of respondents who identified as having a disability reported bullying or harassment from a team mate or manager.
- 3.3 The specific demands of the nursing role, such as handling patients, administering injections and coming into contact with infectious diseases, can lead to greater incidences of workplace injury resulting in disability and this has been found to be a cause for early retirement of nursing staff.<sup>415</sup> The RCN believes retention of disabled nurses may assist in stemming staff shortages across the EU. There is a clear role for employers in retaining disabled nursing staff by making reasonable adjustments, enabling flexibility in job roles and promoting a positive attitude towards disability in the workplace<sup>416</sup>.
- 3.4 Research from the Business Disability Forum suggests that employers across all sectors would benefit from embedding workplace adjustment processes as quickly and efficiently as possible. Their 'State of the Nation: Retaining and developing employees with disabilities' report<sup>417</sup> also recommended that all employers should distinguish between disability-related absence and sickness absence.
- 3.5 Research specific to health care workplaces and more broadly underlines the importance of attitudinal adjustments in creating a successful reasonable adjustment process.<sup>418</sup> This chimes with anecdotal evidence received from RCN members.

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[http://www.rcn.org.uk/\\_data/assets/pdf\\_file/0005/541292/Employment\\_Survey\\_2013\\_004\\_503\\_FINAL\\_100\\_214.pdf](http://www.rcn.org.uk/_data/assets/pdf_file/0005/541292/Employment_Survey_2013_004_503_FINAL_100_214.pdf)

<sup>415</sup> Pattani, S., Constantinovici, N., & Williams, S. (2001). Who retires early from the NHS because of ill health and what does it cost? A national cross sectional study. *Bmj*, 322(7280), 208-209 & Friis, K; Ekholm, O; Andersen Hundrup, Y (2008) The relationship between lifestyle, working environment, socio-demographic factors and expulsion from the labour market due to disability pension among nurses, *Scandinavian Journal of Caring Sciences*, 22:2 241-248

<sup>416</sup> Smouse Ferguson, D; Evans, S; Bodnar Hajduk, D; Jones, L; Liston, D; Myers, E; Myers, T; Sutara, A & Zuraikat, N (2009) Enable the disabled: An untapped resource for the nursing shortage, *Nursing Management*, 40:2 9-11.

<sup>417</sup> <http://www.businessdisabilityforum.org.uk/about-us/news/state-of-the-nation-report-retaining-and-developing-employees-with-disabilities/>

<sup>418</sup> Neal Boylan, L (2012); An exploration of the worklife experiences of registered nurses and physicians with permanent physical and/or sensory disabilities ;*Rehabilitation Nursing*; 37:1; Jan 2012



Employers of health care professionals have been reported to have a lack of understanding about the possibilities for reasonable adjustments or are unwilling to consistently prioritise these above the requirements of the role of the healthcare professional. More flexibility around job roles would help to resolve this issue. RCN members have also expressed frustration that accessibility has improved for patients but these improvements often do not extend to non-patient-facing areas.

- 3.6 It is important that individuals affected are in receipt of practical solutions that are supported by their line manager, colleagues and the wider organisation. RCN members report that some employers focus on the legal requirement to make reasonable adjustments, approaching it as a box-ticking exercise for complying with the law, rather than first considering the needs of those for whom they will be making the adjustments. Genuine attempts to implement solutions have failed because of staff shortages or a lack of buy-in from colleagues.
- 3.7 Commons examples from RCN members acquiring some form of impairment during the course of their working life include:
- Being told that they must be able to match the performance of their peers, not to the job description but including excessive hours above contract stipulation. It is the RCN's experience that reasonable adjustments are denied to those who need them on this basis.
  - Where employees have had reasonable adjustments implemented and these changes have been supported by Occupational Health professionals, feedback from RCN members underlines the fact that in some of these cases, these adjustments are then abandoned within a few weeks of implementation. This has led to experienced staff opting to ill health retire. The RCN remains deeply concerned by this, particularly given the national shortage of nursing staff. The RCN believes that what is needed is a commitment to changing not only the reasonable adjustments required by the individual employee, but buy-in for this from all staff. Attitudinal and cultural change must be present if reasonable adjustments are to be implemented effectively by employers.
  - Feedback from RCN members in some cases is that they are not given the opportunity to specify the kind of adaptations that they are confident will allow them to remain in post. In some cases, those affected are provided with 'standard' adjustments that are not effective.
- 3.8 Some RCN members have described staying in post successfully when they have had good relationships with their direct team and successfully negotiated compromises when their team and managers have knowledge and experience of disability.
- 3.9 Individuals with impairments are experts on their own strengths and limitations. The RCN believes that employers should support them to suggest the kinds of reasonable

adjustments that can enable them to retain their roles.. Working in collaboration with colleagues and managers, enables strong relationships to be fostered to encourage understanding of needs and team work.

- 3.10 Employers are often aware of the legal obligation to provide reasonable adjustments and do so, but RCN members report that these adjustments can be withdrawn without consequence to the employer. This underlines the need for education and training around disability and the need to foster attitudinal changes towards disability in workplaces.
- 3.11 Awareness of legal obligations must be accompanied by awareness of practical and attitudinal factors that can make reasonable adjustments benefit not just individuals but the whole organisation and its clients.

*2 September 2015*

## Royal Mencap Society – Written Evidence (EQD0157)

### **About Mencap**

Mencap supports the 1.4 million people with a learning disability in the UK and their families and carers. Mencap fights to change laws and improve services and access to education, employment and leisure facilities, supporting thousands of people with a learning disability to live their lives the way they want. See our website for more information: [www.mencap.org.uk](http://www.mencap.org.uk).

### **About learning disability**

A learning disability is caused by the way the brain develops before, during or shortly after birth. It is always lifelong and affects someone's intellectual and social development. It used to be called mental handicap but this term is outdated and offensive. Learning disability is NOT a mental illness. The term learning difficulty is often incorrectly used interchangeably with learning disability.

### **Executive Summary**

The Equality Act has a vital role to play in protecting people with a learning disability from discrimination and opening up access to goods, services, education and employment.

However, Mencap is concerned that progress across different areas varies and there can be a disconnect between policy and practice. For example, pupils with a learning disability are still disproportionately more likely to be excluded and bullied at school. And people with a learning disability are still not getting equal access to healthcare and are dying early. Significant disadvantage remains to be addressed.

In our submission we raise concerns about the treatment of people with a learning disability across education, health care, rights and access to justice and lastly, employment.

We also wish to raise concerns about the quality of impact assessment attached to major government policy changes. Recent equality analysis, for example in relation to policy as outlined in the Welfare Reform and Work Bill, has been lacking in detail and inadequate. Failing to carry out comprehensive impact assessments means that little consideration is given to how to mitigate the negative consequences on protected groups, including disabled people, with the result that the impact of policy changes is not fully understood.

### **1. Education – background**

In the context of education, the Equality Act 2010 (EA) has had a significant impact on disabled children and young people.

Fundamentally, this stems from the duties on schools, early years providers, post-16 institutions, local authorities and others have towards disabled children and young people. Specifically, these are:

- They must not directly or indirectly discriminate against, harass or victimise disabled children and young people
- They must not discriminate for a reason arising in consequence of a child or young person's disability
- They must make reasonable adjustments to ensure that disabled children and young people are not at a substantial disadvantage compared with their peers.

Public bodies, including further education institutions, local authorities, maintained schools, maintained nursery schools, academies and free schools are covered by the public sector equality duty and, when carrying out their functions, must have regard to the need to eliminate discrimination, promote equality of opportunity and foster good relations between disabled and nondisabled children and young people.

The general duty also applies to bodies that are not public bodies but that carry out public functions. Such bodies include providers of relevant early years education, non-maintained special schools, independent specialist providers and others making provision that is funded from the public purse.

### **1.1 Impact on children and young people in education**

In this section we will highlight ways in which the EA is applied in education to benefit disabled children and young people.

#### **Benefiting disabled children and young people**

There is a key distinction to make between disabled pupils and pupils with Special Educational Needs (SEN). This is borne out in the government's own statistics in the SEN Green Paper of 2011 which stated that around 75% of disabled pupils had SEN.<sup>419</sup>

Consequently, there are 25% of disabled people who do not have SEN and are therefore not covered by some of the entitlements that pupils with SEN have under the SEN system. For example, they do not benefit from the duty on schools and colleges to use their "best endeavours" to ensure that special educational provision is made for those who need it.

This 25% are therefore reliant on the aforementioned provisions in the EA to ensure that their needs are adequately met in education. This includes, but is not limited to, the duty on most providers to make reasonable adjustments to ensure auxiliary aids and services and physical alterations to ensure access and opportunity for disabled pupils.

#### **The anticipatory nature of the duties under the EA**

The duty to make reasonable adjustments under the EA is an anticipatory one, meaning that it should seek to proactively make alterations to meet additional needs.

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<sup>419</sup> The SEN Green Paper acknowledges that "around three quarters of disabled children also have SEN": [www.education.gov.uk/publications/eOrderingDownload/Green-Paper-SEN.pdf](http://www.education.gov.uk/publications/eOrderingDownload/Green-Paper-SEN.pdf), p. 19, paragraph 30

This is an essential mechanism for disabled children and young people to help ensure timely intervention that ensures that their needs are met as early as possible and do not escalate.

This anticipatory duty also helps to ensure that providers consider in advance to what disabled children and young people might require and what adjustments might need to be made to prevent that disadvantage. This has meant that schools and other educational settings have been encouraged to be more accessible and inclusive to disabled pupils, for example by using their notional element 2 funding to pre-empt the likely needs of pupils with hearing impairments by installing hearing loops in classrooms.

### **Equality of access to education**

The EA duties with regard to protecting pupils with SEN and disabilities from being directly or indirectly discriminated against also apply to schools' admissions and exclusions policies.

Mencap believes that the current educational system means that premium is put on pupils who will reach expected educational attainment levels. This means that those with additional needs, who are less likely to reach these milestones, are at risk of being seen as a barrier to a school achieving these expected levels. The EA therefore ensures that pupils with SEND are equally able to access the educational settings they want.

Furthermore, many pupils with SEN struggle to have their needs identified and met in education which can cause behaviour that puts them at risk of exclusion. The EA's protections are therefore very welcome.

### **Access to redress**

Access to the SEND Tribunal, and the redress it can achieve, is primarily limited to pupils with SEN through the SEN system. Furthermore, it is essentially for issues pertaining to statements of SEN or Education, Health and Care Plans.

However, it is also possible to appeal to the Tribunal for matters concerning disability discrimination through rights afforded under the EA. This means that this route of redress is opened up to a wider cohort who may not have a statement or a plan, or who may be disabled but not have SEN. It consequently means that educational settings are also more accountable to all disadvantaged pupils to ensure that they adequately meet their needs.

## **1.2 Evidence that EA hasn't been fully embraced by settings**

### **Getting the right support**

Families of children and young people across the range of SEN face issues when it comes to getting the support they need to meet individual needs. While some schools support pupils very effectively, others do not use their "best endeavours" to ensure that they can meet someone's SEN: over a third of teachers claim they have received no training for special educational needs and 60% of primary teachers say they lack confidence to meet children's

language needs.<sup>420</sup> Furthermore, 65% of parents also believe that their son or daughter with special educational needs (SEN) receives a poorer education than pupils without SEN.<sup>421</sup> Mencap believes this shows there is a way to go before all settings actively support the inclusion and involvement of disabled pupils.

### **Bullying**

Mencap's Don't Stick it Stop it campaign found that 8 out of 10 children with a learning disability have been bullied compared to 1 in 3 of all children.<sup>422</sup> Mencap believes this shows that many settings still do not adequately promote good relations between disabled and non-disabled pupils.

### **Exclusions**

Children and young people with SEN are 8 times more likely to be permanently excluded than their non-disabled peers.<sup>423</sup> Furthermore, Contact a Family (CAF) recently surveyed 404 parents who had all experienced some form of unofficial or illegal exclusion. In 70% of those cases the children had a statement of Special Educational Needs and in one out of seven cases, illegal exclusions were occurring every day.<sup>424</sup> 2.7 per cent of schools have sent children with statements of SEN home when their carer, classroom support or teaching assistant is unavailable.<sup>425</sup>

Mencap believes this represents a clear inequity between disabled and non-disabled pupils which is not consistent with a school's obligation under the Public Sector Equality Duty to promote equality of opportunity for disabled pupils and their duty to make reasonable adjustments to ensure disabled pupils can participate in school activities. This is particularly the case in light of the fact that many exclusions of pupils with SEN are as a result of their needs not being met and escalating as a result.

### **Tribunal stats**

The latest SEN Tribunal statistics show that the tribunal received 135 registered appeals pertaining to disability discrimination between 1 September 2012 and 31<sup>st</sup> August 2013.<sup>426</sup> This shows that there are still incidents of disability discrimination that families feel compelled to bring to tribunal, with almost half of these leading to a decision.

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<sup>420</sup> [https://www.family-](https://www.family-action.org.uk/content/uploads/2014/06/early_intervention_grasping_the_nettle_full_report.pdf)

[action.org.uk/content/uploads/2014/06/early\\_intervention\\_grasping\\_the\\_nettle\\_full\\_report.pdf](https://www.family-action.org.uk/content/uploads/2014/06/early_intervention_grasping_the_nettle_full_report.pdf)

<sup>421</sup> Mencap conducted a survey of 908 parents who have a son or daughter with a learning disability or special educational needs in the education system. 435 parents reported having a son or daughter in a mainstream primary, secondary or further education institution. All parents responded to the survey between 30 October-28 November 2014.

<sup>422</sup> <https://www.mencap.org.uk/get-involved/campaigns/successes/putting-stop-bullying>

<sup>423</sup>

<http://www.childrenscommissioner.gov.uk/sites/default/files/publications/They%20never%20give%20up%20n%20you%20summary.pdf>

<sup>424</sup> [http://www.cafamily.org.uk/media/639982/falling\\_through\\_the\\_net\\_-\\_illegal\\_exclusions\\_report\\_2013\\_web.pdf](http://www.cafamily.org.uk/media/639982/falling_through_the_net_-_illegal_exclusions_report_2013_web.pdf)

<sup>425</sup> <http://www.childrenscommissioner.gov.uk/publications/%E2%80%9CAlways-someone-else%E2%80%99s-problem-report-illegal-exclusions>

<sup>426</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/265399/send-tribunal-stats-tables.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265399/send-tribunal-stats-tables.xls) (tab 11)

## 2. Health

### Equal access to healthcare

For nearly 10 years Mencap has been campaigning and influencing on health issues. Mencap's *Death by indifference report (2007)*<sup>427</sup> looked at the reasons behind the deaths of 6 people with a learning disability in NHS care and exposed the unequal treatment and institutional discrimination that people with learning disabilities often experience within the NHS. A follow-up report in 2012, *Death by Indifference: 74 deaths and counting*<sup>428</sup> showed people with a learning disability were still not receiving equal healthcare in all NHS settings and were continuing to die as a result.

Mencap's *Death by Indifference* reports identified themes such as poor communication by hospital staff, lack of basic care, delays in diagnosis and treatment, failure to recognise pain and failure to follow the Mental Capacity Act and make reasonable adjustments under the Equality Act.

Under the Equality Act 2010, people with a learning disability have a right to equal healthcare. The legislation requires individuals and authorities to make reasonable adjustments to enable disabled people to access services. Too often reasonable adjustments are not being made. As well as adjustments like providing information in accessible formats such as easy read, reasonable adjustments can include taking extra time to listen to families and using different methods to assess pain when a person doesn't use formal communication.

There is much that still needs to be done to improve healthcare for people with a learning disability. We have had over 100 cases reported to us over the last decade where families and carers feel loved ones have died or suffered due to them receiving poor or negligent healthcare.

*Death by Indifference* triggered an independent inquiry, *'Healthcare for All'*<sup>429</sup> and resulted in the Parliamentary and Health Service Ombudsman conducting an investigation<sup>430</sup> into the six original cases. It also played an important role in influencing the Department of Health to commission the *'Confidential Inquiry into premature deaths of people with a learning disability'*<sup>431</sup>.

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<sup>427</sup><https://www.mencap.org.uk/sites/default/files/documents/2008-03/DBIreport.pdf>

<sup>428</sup><https://www.mencap.org.uk/sites/default/files/documents/Death%20by%20Indifference%20-%2074%20Deaths%20and%20counting.pdf>

<sup>429</sup>[http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_099255](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_099255)

<sup>430</sup><http://www.lgo.org.uk/news/2009/mar/ombudsmen-call-review-care-people-learning-disabilities/>

<sup>431</sup><http://www.bristol.ac.uk/cipold/>

The Confidential Inquiry reported its findings in 2013. It looked at the deaths of 247 people with a learning disability in the South West of England. Using the Office of National Statistics' definition of avoidable causes to mean 'avoidable or amenable deaths by change to quality of health care', the Confidential Inquiry found that **37% of people with a learning disability died from avoidable causes compared to 8.8% of the general population**. Scaled up, this shows that 1,200 people with a learning disability are dying every year due to poor healthcare. The most common reasons for premature deaths were problems with investigating and assessing the cause of illness and delays or problems with treatment.

It also showed that men with a learning disability die on average 13 years earlier, and women 20 years earlier than the general population.<sup>432</sup>

The Confidential Inquiry found issues regarding reasonable adjustments: 'In general, the Confidential Inquiry found little evidence that reasonable adjustments were being made for people with learning disabilities on a day-to-day basis. More specifically, and in relation to premature deaths, the Confidential Inquiry found many occasions when reasonable adjustments that should have been made were not, thereby disadvantaging people with learning disabilities at crucial stages of the care pathway'.

Despite the Confidential Inquiry and all the reports before, Mencap continues to hear from families in relation to deaths and serious incidents of family members of people with a learning disability, where a lack of reasonable adjustments is evident. For example, '*When we asked if we could stay with our son as he was frightened and bewildered we were told that no visitors were allowed on the ward and they were not going to make any exceptions for us.*'

It is vital that reasonable adjustments are made for people with a learning disability and they are able to access equal healthcare.

We welcome reports which help raise awareness about the need for reasonable adjustments, and give guidance on what reasonable adjustments should be made to ensure equity of access<sup>433</sup>. Alongside guidance, there must be consequences when the Equality Act isn't followed. It is vital that NHS complaints processes, guidance for professionals and fitness to practise processes (eg General Medical Council) include a strong focus on adherence to the Equality Act.

### 3. Access to justice

It is crucial that people with a learning disability have equal access to information, advice and legal support. This is very important in ensuring rights and needs are met. The health and social care system can be extremely complicated to navigate, particularly for those with

<sup>432</sup> For a brief summary see <https://www.mencap.org.uk/news/article/1200-avoidable-deaths>

<sup>433</sup> [https://www.improvinghealthandlives.org.uk/uploads/doc/vid\\_11084\\_IHAL%202011%20-01%20Reasonable%20adjustments%20guidance.pdf](https://www.improvinghealthandlives.org.uk/uploads/doc/vid_11084_IHAL%202011%20-01%20Reasonable%20adjustments%20guidance.pdf)



complex needs. Families we have worked with in relation to the Transforming Care programme<sup>434</sup>, whose sons and daughters with a learning disability, autism and behaviour that challenges have been stuck in inpatients units, have told us that lack of accessible information about their rights, at the right time, and not being able to access advocates and lawyers with the right skills, have been key issues.

It is important the findings of the Legal Services Panel report: What happens when people with learning disabilities need advice about the law? (2013) are addressed and the recommendations implemented. These focus on:

- Developing accessible information for people with learning disabilities about the purpose of legal services and how they can be used
- Developing information and resources to clarify the routes that family carers and others can take to access specialist legal services on behalf of others
- Strengthening the awareness legal professionals have about learning disabilities through professional training and guidance
- The promotion of collaborative working between legal services and the social care sector.

Building on this work, we welcome the Law Society's recent practice note on 'Meeting the needs of vulnerable clients'<sup>435</sup>. This recognises the fact that 'some clients have difficulty accessing and using legal services. Research has concluded that solicitors need to adapt their practices to identify and meet the needs of vulnerable clients.'

#### **4. Employment**

The employment rate of people with a learning disability is currently very low. We know that only around 7% of people with a learning disability known to social services are in paid employment with the majority of these jobs being part-time.

People with a learning disability are likely to need a number of adjustments for them to be able to work. Such adjustments can range from more extensive measures such as job-carving to quite simple things such as providing information in a more accessible format.

Mencap believes that there is still a level of unwillingness on behalf of some employers to make the reasonable adjustments that would be required for a person with a learning disability to take on paid work, as well as a level of ignorance of what reasonable adjustments would be appropriate.

Research looking at disabled people's employment as a whole, highlights that people with a learning disability are not alone in not having their needs met in this context. A recent report has shown that only 41% of disabled people Leigh Day surveyed have received everything

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<sup>434</sup> <http://www.england.nhs.uk/ourwork/qual-clin-lead/ld/transform-care/>

<sup>435</sup> <http://www.lawsociety.org.uk/support-services/advice/practice-notes/meeting-the-needs-of-vulnerable-clients-july-2015/>

that they asked for in terms of reasonable adjustments, with nearly a third reporting that they have received no help or only little help following their request.<sup>436</sup>

Based on these insights, it is clear that the Equality Act 2010 is not yet achieving the outcome it hoped to deliver, and that there is more work to do. This work will be important, as the government starts to put together plans to meet its highly ambitious target to halve the employment gap experienced by disabled people. This welcome commitment will only be achieved when negative attitudes and discrimination are tackled, and reasonable adjustments made to enable participation in the labour market.

## 5. Recommendations

Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

- We believe more awareness of the Equality Act is needed so its provisions are fully embraced and translated in practice. We believe a public awareness campaign would help to achieve this aim.
- We believe that practice in relation to Equality Impact Assessments needs to be addressed. We believe action is needed to ensure that all public sector organisations understand the impact of their policies on disabled people and other protected characteristics.

*11 September 2015*

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<sup>436</sup> Leigh Day (October 2014) [The purple workforce: A report by Leigh Day into the experiences of disabled people in the workplace](#)

## **Royal National Institute of Blind People – Written Evidence (EQD0164)**

### **About us**

We are the largest organisation of blind and partially sighted people in the UK and welcome this opportunity to respond to the consultation. We are a membership organisation with over 14,000 members who are blind, partially sighted or the friends and family of people with sight loss. More than 80 per cent of our Board of Trustees are blind or partially sighted. We encourage members to be involved in our work and regularly consult with them on government policy and their ideas for change.

We campaign for the rights of blind and partially sighted people in each of the UK's countries. Our priorities are to:-

- Be there for people losing their sight.
- Support independent living for blind and partially sighted people.
- Create a society that is inclusive of blind and partially sighted people's interests and needs.
- Stop people losing their sight unnecessarily.

RNIB regularly advises blind and partially sighted people of their rights in relation to the Equality Act up to and including legal action. We also campaign for public and private sector organisations to act in accordance with the requirements of the Act. RNIB Business also provides expert knowledge to business and the public sector through consultancy on improving the accessibility of information, the built environment, technology, products and services.

RNIB welcomes the opportunity to respond to the House of Lords Select Committee on the Equality Act and Disability call for evidence.

### **Response**

#### **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?**

The Disability Discrimination Act 1995 (DDA), played a key role in supporting a cultural change in attitudes towards disabled people in the UK, promoting a better public understanding of disability amongst employers service providers and the general public.. Whilst the Equality Act has provided welcome clarity in some areas such as the meaning of discrimination and the inclusion of specific requirements to provide accessible information, we are concerned that there has a dilution of the impact of the DDA because disability is now just one of nine protected characteristics. The legislation is no longer specifically targeted at disabled people and the discrimination they face as with the DDA and the Disability Equality Duty (DED).

We believe that this is particularly the case when it comes to Public Sector Duty and equality impact assessment. With the increasing number of issues to think about, the detail, analysis and quality of impact assessments have been reduced (see comments on PSED below). The Codes of Practice are less helpful in enabling employers and service providers (and disabled people) to understand the requirements of the Act because they are no longer specific to disability.

## **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

Because of a lack of case law (see below), it is difficult to say what amendments need to be made because we are not clear as to the limits of the existing legislation. However, one of the most obvious limitations of the Act is in relation to the design and manufacture of goods (including packaging and instructions). This is an area that is particularly problematic for blind and partially sighted people. Examples that arise on a frequent basis are the accessibility of smart meters, touchscreen ticketing machines, bowel cancer screening kits and set top boxes. These are areas which may be covered by the legislation (because they are often part of a service provision) but there is a lack of clarity and case law is needed. Other “goods” are not covered for example washing machines, TVs and microwaves as well as food labelling and drug packaging. It is increasingly possible for these products to be designed inclusively but there is no legislation which requires it.

## **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?**

Blind and partially sighted people are generally aware of the duty to make reasonable adjustments (particularly in relation to accessible information) but do not realise the extent to which the duty applies in their everyday lives. Whilst many service providers are also aware of their responsibilities, this often does not filter through to the services that they design and deliver as the anticipatory and continuing nature of the duty requires. Websites and apps are designed without considering accessibility. IT systems are purchased that do not work with access technology. Thus blind and partially sighted people and their advocates are always playing ‘catch up’ and accessibility ‘fixes’ are often bolted on as an afterthought (if they are provided at all) to existing arrangement which never quite work as they should or are simply ineffective. When service providers don’t consider accessibility, it is very difficult for blind and partially sighted people to force compliance. It is too easy for a service provider to say that something is not feasible or will be incredibly costly and very difficult for a disabled person to disprove.

RNIB is particularly concerned about the implementation of the duty to make reasonable adjustments and the provision of accessible information. Whilst some sectors have embraced the requirements, particularly banking and energy (although this is not without issues) 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 and we are yet to see whether the commitments will result in a tangible change in approach. Local Government is

proving to be particularly problematic and this is not easy to address as there are so many of them offering a wide range of services.

**4. Should the law be more explicit in what constitutes a reasonable adjustment? If so in what way?**

RNIB believes that a Code of Practice/Statutory Guidance is needed which 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. This is particularly the case in goods and services provision.

**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?**

RNIB does not consider that the PSED is proving to be particularly effective on a day to day level in ensuring that public authorities make better decisions. It has been useful tool to challenge decisions but not to make sure that good decisions are made in the first place. In our experience, public authorities often only pay lip service to the requirements to impact assess without properly considering the impact of their decisions and how a negative impact can be overcome etc. It is rare for changes to policies/schemes to be made as a result of an impact assessment and we have never heard of a scheme ceasing to go ahead as a result. As noted above, the requirement to impact assess all equality grounds appears to have negatively impacted in relation to disability.

**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 to disabled people?**

It is not clear to RNIB that the approach to the specific duty taken in England has been effective in embedding disability equality within public sector organisations. It is our view that these very limited duties are not taken seriously by public sector organisations and it is easy for “disability” to slip through the net. In our view the requirement to produce disability equality schemes under the Disability Equality Duty for which public bodies could be held accountable 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.

See Appendix One for the response of RNIB Cymru in relation to the operation of the specific duty in Wales.

**7. Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?**

RNIB believes that the current arrangements are confusing and ineffective. The Minister for Disabled People sits within the DWP and is responsible for “cross governmental disability issues and strategy” (as well as disability benefits). The Office for Disability Issues also sits

within DWP. The Minister for Women and Equalities is part of the Department for Culture Media and Sport (portfolio holder also currently Secretary of State for Education) and is responsible for “cross government equality strategy and legislation”. This obviously includes the Equality Act. The General Equality Office is also part of DCMS.

There is clearly a danger that disability equality issues and the promotion of disability equality are sidelined under the current arrangements with the focus being on disabled people’s access to benefits rather than wider inclusion/equality issues.

**8. How effective has the Equality and Human Rights Commission been in exercising its regulatory and enforcement powers and what contribution has this made to the impact of the Equality Act 2010 on people with disabilities?**

A strong, adequately funded, focused, enforcement body with the power to take cases is vital to the success of any equality legislation and disabled people fought hard to replace the National Disability Council with the Disability Rights Commission. RNIB is concerned that the current Commission’s work across all strands with increasingly limited budget and powers has been to the detriment of progress on disability equality issues.

We do, however, welcome the role that the EHRC has played in providing funding for ‘test cases’ (and in intervening in Judicial Reviews). Without this funding it is unlikely that these cases would be able to proceed. However with so few cases being bought in the lower courts (see below) it would be beneficial if they could support strategic litigation at an earlier stage. We also believe that the Commission could play a very positive role in standard setting for example in relation to web accessibility and procurement perhaps working with the regulators to provide sector specific standards and guidance in relation to implementation of the Act. For example, working with Ofcom to provide rules in relation to the accessibility of set top boxes.

**9. Could other regulatory bodies with a role in the effective implementation of the Equality Act 2010 such as inspectorates and Ombudsman, play a more significant part?**

As referred to above, we believe that the regulators could play a much more significant role in promoting compliance with the requirements of the Act. Although the current regulators do often look at disability issues, they do not provide guidance or set standards for their stakeholders to ensure compliance with the Act.

RNIB also believes that the Ombudsmen also have a role to play in enforcement. The current enforcement mechanisms are not effective (see below) and a less formal, cheaper and potentially quicker, enforcement mechanism would be beneficial for people wishing to pursue straightforward claims around for example, guide dog refusals and lack of accessible information. RNIB has actively encouraged people to use the Ombudsman services to pursue their complaints but the quality of the decision making on discrimination matters has often been poor (and these complaints are often treated as customer service issues). They have also tended to shy away from making determinations of what, for example, is reasonable under the Act despite being in a unique position to do so given their knowledge of the industry. Any compensation awarded is usually considerably less than a person pursuing the matter through the Courts could expect to receive. An Ombudsman type body to which

complaints could easily be made would be welcome but if this mechanism was pursued it would need to be entirely voluntary (court action would still be an option for those wishing to use it or where a case was not suitable for determination by an Ombudsman e.g. where it was potentially a test case) Ombudsman decisions would need to be binding on parties and the compensation would need to reflect that which would be awarded by a Court.

**10. Are disabled people able to use the enforcement mechanisms associated with the Act? Is reliance on individual litigation an effective means of enforcing compliance with the Equality Act? If not, what would be?**

There are significant problems in enforcing the Act and it is for this reason that there have not been more litigation and the Act has not had a greater impact. One of the problems with litigation as a means to improve accessibility/eradicate discrimination is that the “model” is the wrong way round - it costs a service provider nothing to be inaccessible but a disabled individual a lot to put it right.

Although the small claims process is designed to be usable by individuals in practice it is extremely difficult not least because of the inaccessibility of the process for blind and partially sighted people. It requires people to invest significant personal time, energy and resources which people already impacted by disabilities clearly have less of. The legislation is also too complex to rely on individual (unrepresented) enforcement. Defendant’s wishing to dispense with claims can easily argue that cases should not be pursued in the small claims court thus leaving claimants open to costs. Litigation expenses insurance to insure against these costs is also prohibitively expensive and would often exceed the amount that a Claimant can recover in damages.

Also, particularly in the case of visual impairment, much discrimination e.g. inaccessible website, lack of accessible information etc affects blind and partially sighted people as a class and so relying on individual enforcement is not effective not least because individual cases can be settled without wider change.

RNIB believes that a change to the costs regime needs to be brought in which shifts the risk to Defendants (who will often have much more significant resources behind them). The costs regime in personal injury claims needs to be extended to disability discrimination claims. It would also be helpful for disability organisations to be able to pursue claims that affect their constituents as a class. We think this would be particularly effective in giving the anticipatory duty some teeth and reducing the burden on individuals.

**11. Are there other legislative and non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

There are numerous pieces of legislation and guidance which impact upon disabled people and their inclusion in society. It is essential that when legislation is being proposed or reviewed, guidance is being drawn up (in relation to both new and existing legislation/policies) and policies/schemes are being implemented, there is a systematic assessment of the impact that these measures will have on disabled people and how it fits with the requirements of the Equality Act not just in relation to the Public Sector Equality

Duty but also the substantive provisions of the Act including the duty to make reasonable adjustments. This is clearly a requirement of the existing legislation but it is not working and more needs to be done to make this a reality.

## **Appendix One**

### **RNIB Cymru response to Question 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 to disabled people?**

In Wales specific duties have been embedded in public life such as the Welsh Government's duty to report bi-annually on organisations' efforts in Wales to meet the Public Sector Equality Duty (PSED).

The Equalities and Human Rights Council in Wales has helped to monitor progress of the implementation and Welsh Government efforts to ensure the PSED is at the heart of Welsh public bodies' policy, however there are concerns that whilst the willingness of these bodies including the Welsh Government is high, the culture is still lacking to ensure that real change is delivered. The Welsh Government Equality Report states "some public sector bodies cited the fundamental lack of awareness of this duty across organisations outside equality leads." (Welsh Ministers' Report on Equality 2014, Welsh Government, p.16)

RNIB Cymru has witnessed great commitment to the concept of the Public Sector Equality Duty, including the writing and publishing of EIAs, however there is little done to resolve the issues identified by the assessments or acknowledgment of what a reasonable adjustment means.

Under the Disability Discrimination Act (DDA) 1995 contractors, public bodies and government knew and understood what it meant to be 'DDA compliant'. In a recent EIA on the behalf of Cardiff Council by AECOM, their private contractor, on the new bus station in Cardiff City wrote about the 'user friendliness of facilities': "Designs to be finalised, but DDA compliance will be a requirement of design". (Cardiff Council Cabinet Meeting minutes, 15 December 2014, p. 40)

RNIB Cymru believes that complying with the DDA was so culturally embedded that there is now a confusion regarding what needs to be done to ensure compliance with the Equality Act, therefore leading to difficulties in ensuring reasonable adjustments are made.

The Welsh Government's own report states that the PSED seems to drive an organisational rather than partnership approach; became law at a time when resources have been scarce and that there needed to be greater practical information to support public sector bodies in implementing PSED in a proportionate way. (Welsh Ministers' Report on Equality 2014, Welsh Government, p.15)



The experience of RNIB Cymru has been that these statements are indicative of the cultural change which is needed to ensure the Equality Act and the PSED is properly implemented for blind and partially sighted people in Wales. 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. RNIB Cymru believes that this is due to a number of issues. The term 'equality' covers so many different protected characteristics that certain groups lobbying for their cause can take focus away from other groups. The public sector bodies in charge of implementing 'standards' may not have the resources and believe that these requirements are additional to the work they do with blind and partially sighted people, and not legal requirements.

RNIB Cymru has been alerted by members and service users that nearly two years after the Welsh Government brought in these standards, people with sight loss cannot state a preference in the format of their appointment letters and therefore often receive things they cannot access, leading to a completely inadequate, unfair and unequal experience of their health services because of a protected characteristic.

The devolved context also makes it very difficult to hold authorities to account. Some train stations in Wales are owned and maintained by Network Rail but have low footfall compared to others across the UK which they also own, and therefore are a much lower priority for upgrade. RNIB Cymru has raised the issue of Chepstow railway station which currently has no tactile paving at the edge of the platforms and therefore presents a very real risk of serious injury or even death to blind and partially sighted people. However, despite working with Network Rail, Arriva Trains Wales and the civil service within Welsh Government, the footfall at this station currently is too low for it to be a priority, and we have been passed between the relevant organisations, only to be told that due to grandfather rights, this does not need to be addressed.

RNIB Cymru believes adding tactile paving to denote the edge of the platform is a reasonable adjustment, not a supplement which will be added when the operators are able to find finance or time.

The Welsh Government is now required to continue reporting on the PSED implementation bi-annually. Whilst RNIB Cymru recognises it takes time for cultural change to ensure the PSED will be at the heart of all public sector working, we believe that more needs to be done by UK and Welsh Governments to enforce the duty and the Act. The Welsh Government reporting tool is not detailed enough to reflect whether or not real changes are being made and whilst there may be real commitment to the PSED in Government departments, this does not filter down into the bodies responsible for delivering services or outside of equality leads.

At present public sector bodies are unclear as to their duties and the consequences are not clear, nor is where the responsibility lies for persecuting or holding that body to account for lack of compliance.

**Emma Sands**  
**Public Affairs Manager**

**RNIB Cymru**

*18 September 2015*

**Royal National Institute of Blind People and Disability Rights UK – Oral Evidence (QQ 14-26)**

[Transcript to be found under Disability Rights UK](#)

**Royal National Institute of Blind People and Confederation of Passenger  
Transport – Supplementary Written Evidence (EQD0181)**

Following the oral evidence given by Simon Posner, Chief Executive, Confederation of Passenger Transport, on Tuesday 3 November, the following exchange of correspondence was copied to the Committee.

Letter from Michael Wilson, Campaigns Manager, Royal National Institute of Blind People, to Simon Posner

Mr Posner

We have been made aware of your testimony to the Equality Act 2010 and Disability Committee on Tuesday. I understand you referred to RNIB and the use of smart phones by blind and partially sighted people. Could you clarify on what basis you said the following: "Most visually impaired people do use smartphones - RNIB say the great majority of their members have and use smartphones"

"RNIB have said that "We are living our life more and more with our smartphone, and we are plugged into it as we move along, and we don't particularly like it being... having the system coming up that we sometimes can't hear it because we're plugged into our telephone"

These are not statements we would agree with and are very concerned that RNIB is being misrepresented.

Your sincerely  
Michael Wilson

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Letter of 17 November 2015 from Simon Posner, Chief Executive, Confederation of Passenger Transport, to Michael Wilson, Campaigns Manager, Royal National Institute of Blind People

Dear Michael

Thank you for your recent letter concerning the House of Lords Equality Act 2010 and Disability Committee and the oral evidence I gave on 3 November.

I am sorry if you think that I have tried to misrepresent the position of the RNIB. I can assure you that was not my intention.

My remarks follow our ongoing research and trial of our Next Stop Announcement app in Leeds where we worked closely with Claire Randall, a blind person who was recommended to us by the Department for Transport to head up our focus group. My understanding was that Claire was a member of RNIB and I apologise if that was not actually the case.

The fact remains however that the comments I reported were made by Claire at various times when both discussing and trialling the app earlier this year. These have been echoed by a number of blind and partially sighted users who operators have been in contact with whilst testing the app. I have attached an article from "Route One" magazine which I hope you find interesting. Unfortunately, I do not have access to it in a more accessible format.

I would not wish to enter into a war of words with you over this issue. What is important is that we both want the same thing - a public transport system that is accessible to all people who wish to use it. I am well aware of the barriers that still exist - many of which are out of operators' control but, as the industry trade association we will work with our members and stakeholders to remove as many barriers as possible.

We are all aware of the benefits of Audio Visual announcements which are indeed fitted to a number of vehicles. The plain fact is, however, that current systems are very expensive, their installation is not always practicable and we needed to look at other ways of alerting passengers to the stops along the route. Hence the trial of the system in Leeds. I am pleased to say that early indications are that the technology can be adapted to be used as a Next Stop Announcement system for people who do not wish to or are unable to use a smartphone.

As a result of this, on Friday 27 November, First in Leeds is planning to launch a 6-week pilot of an onboard next stop announcement system using the same technology and back office system used for the app that was trialled. The onboard announcement system is being fitted to 3 of the 4 Leeds CityBuses which run at a high frequency on a circular route around the city centre.

Final details of the launch are still to be confirmed but it is expected to take place at 11am in a hotel close to the railway station. Those attending will have the opportunity to ride on a CityBus and experience the system for themselves.

The Deputy Chair of the Combined Authority, MD for First in Leeds, the RNIB and Guide Dogs will be invited to attend the launch, along with the local and trade press. I will ensure that CPT will pass on details of the launch when they are finalised.-

I am sure you agree with me that this is a welcome move and I will ensure that you are kept up to date as the trial progresses.

Very best wishes.

Simon Posner

## **Royal National Institute of Blind People – Supplementary Written Evidence (EQD0192)**

### **Smart Phone Usage**

From our most recent research, published on November 16 we know that only 1 in 5 blind and partially sighted people own a smart phone. The ownership of smart phones has a clear correlation to the age of the person concerned; a younger person is more likely to own one than an older person. Research from Deloitte\* showed that only 34% of people aged 65 and over in developed countries had a smart phone. Of these, only 29% had ever downloaded an app.

With one in five people aged 75 and over living with sight loss, it's interesting to note that Ofcom's own research says that only 9% of partially sighted people who are over 65 owned a smart phone\*\*.

\* <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Technology-Media-Telecommunications/gx-tmt-2014prediction-smartphone.pdf>

\*\* Disabled consumers' ownership of communications services, Ofcom, 25 September 2013 <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/tce-disabled-13/>

### **Other concerns**

We have a number of concerns about some of the evidence which was given in response to questions, particularly in relation to some general information on buses and the built environment. We believe the most constructive way of tackling this is to respond to the questions asked during committee providing our own evidence.

#### **a) Why do you believe that the Act has been a 'backward step?' What would improve the situation - better enforcement or revised legislation?**

We certainly believe there should be better enforcement of the Equality Act and other legislation which affects the ability of blind and partially sighted people to travel independently and spontaneously. There are some particular issues relating to enforcement which are:

1. The Equality Act states that disabled people should be able to pursue their rights as individuals. This has always been a particular problem as many disabled people will face genuine barriers in accessing the legal system. For example, many blind and partially sighted people find that even the process for lodging a complaint with a transport provider is inaccessible to them. Details of the phone number for complaints is often advertised via posters on the buses, which many people with sight loss cannot read. Also, the information requested by bus operators in order to make a complaint, such as bus numbers, driver name/ number, and ticket number, is often very challenging for a blind or partially sighted person to retrieve. Support for

disabled people wanting to pursue cases, both in terms of financial support and access to expertise, has diminished since the DDA was replaced by the Equality Act. This has made it increasingly difficult for all disabled people to take legal action when they believe they have been discriminated against. If cases are not being brought forward how can the Equality Act be enforced? At RNIB we support as many cases as we can by providing advice and expertise, but our resources are limited.

2. Other legislation relating to accessible transport has not been enacted, so cannot be enforced. For example EU regulations 181/2011 which sets mandatory disability awareness training for bus drivers has been deferred. We will cover this topic more fully in question (f), but it is clear from the extensive work we have undertaken with bus operators and blind and partially sighted passengers, that the current level of disability awareness training is not adequate in many cases.
  
3. Legislation relating to accessible street environments is poorly enforced and guidance is often not followed. We will cover more aspects of this in questions (b) and (c). We recognise that the Department for Transport is currently revising guidance on tactile paving, and will undertake a review of Inclusive Mobility. We welcome these developments. However, we have concerns that this guidance is being reviewed to make it easier for local authorities and designers to comply with, rather than reviewed to better meet the needs of disabled people. Enforcement of guidance around tactile paving, pavement parking, and what constitutes a street obstacle etc is inconsistently followed and enforced around the country. If the aims of “localism” are to be successful, this national guidance and legislation must be followed consistently at a local level. Unfortunately, what happens in reality is that local authorities interpret legislation and guidance differently; making consistent enforcement impossible.

**b. Are local authorities making adequate use of their powers to make sure existing, and new, transport infrastructure is accessible?**

We do not believe local authorities consistently use their powers to ensure that transport infrastructure is accessible. We carried out research in 2014, which over 500 blind and partially sighted people completed. General evidence that we were able to gather stated:

- 95% of blind and partially sighted people have collided with an obstacle in their local neighbourhood in last 3 months.
- Nearly a third of those were injured, yet less than 1% claimed compensation for injuries.
- The most common obstacles collided with are:

- cars parked on pavements (70%)
- bins of all kinds (64%)
- street furniture permanent and temporary (59 and 55%)
- Advertising Boards (49%)
  - No local authority monitored how many blind and partially sighted people were being injured.

Specifically related to new developments, including transport infrastructure, we discovered:

- Over 50% of respondents reported a new transport development being built / renovated in their local area.
- Over half of blind and partially sighted people reported that recent building developments in their area had made it either a little harder or much harder for them to get about.
- Many couldn't avoid using these areas, but 40% were either using the area less or avoiding it altogether.
  - 2/3 had not been consulted about these changes to their neighbourhoods, which is consistent with reports from local authorities. None of them were able to provide figures on how many accessible documents had been provided, for example consultations, to blind and partially sighted people.
- Few local authorities provided evidence of robust consultation policies for planning and highway disruptions, many did not mention consulting with access panels or groups.

This evidence backs up what we hear anecdotally, which is that blind and partially sighted people continue to face real barriers when getting around their local areas. Regrettably these problems persist, and often become worse, when there are new developments. Many local authorities do not actively consult with local blind and partially sighted people, and only become aware of problems once a new development is finished. It's frustrating that lessons we thought had been learnt over 10 years ago, with the introduction of the Disability Equality Duty, appear to have been forgotten. Alongside this, the demise of access officers and access groups and panels seems to be making the situation worse.

We have worked with local authorities and transport providers on large scale infrastructure projects, such as the redevelopment of Birmingham New Street station. Although we are often invited to take part in consultations and information gathering sessions, quite often we are not involved at the right time. For example the team dealing with the construction at New Street Station often ran sessions that were inaccessible to blind and partially sighted people, so our members could not contribute and share their views. The team involved in the opening of the station were a lot better, but the lack of consultation at the beginning of



the process resulted in a lot of physical barriers that were difficult, or impossible, to deal with during the construction phase.

**c. What is the view of the disabled community on shared road space?**

By their very nature shared spaces are problematic for blind and partially sighted people. Many people with a visual impairment rely on crossings and kerbs to navigate the street environment, they cannot make “eye contact” with drivers to signal that they want to cross. We also believe that many other groups would struggle with the reality of shared spaces including children, people with learning disabilities and some older people. Our research told us that:

- 28% of blind and partially sighted people reported that a shared space had been developed in their local area in the last 3 years.
  - 64% said a shared space had made things harder for them to get around.
  - 42% were now either using the area less frequently or avoiding it.
  - 22% still had to use the area even though it was difficult for them to do so.

In addition to the above findings, the results of a much smaller survey we did with people who don't have any sight loss conveyed that 62% of people who had a shared space developed near them said it was a little harder or much harder to get around as a result of it. Only 12% said it made getting around easier. These results correspond with the findings in Lord Holmes' report 'Accident By Design' which was published earlier this year.

A Freedom of Information request we carried out in 2014 illustrated that local authorities' own knowledge of shared spaces is very patchy. Over a third didn't know if any had been developed in their area in the last 5 years. Many had to ask for clarification on what a shared space was. When we cited Department for Transport guidance on shared spaces, some local authorities said that because there was no clear definition of what a shared space is, they couldn't provide us with any information. Just over a third said that between 1 and 10 shared space sites had been developed in the last 5 years, whilst 20% knew that they had not developed any. Nearly 70% of shared spaces were situated in town centres. Only 14% of local authorities reported that they had turned down a shared space on safety grounds, a few also mentioned making amendments to plans after consulting with disabled people.

We are gravely concerned by the lack of awareness shown by local authorities about shared spaces and the terrible impact they can have on blind and partially sighted people. Many people with sight loss describe shared spaces as “no go zones” for them, yet local authorities

do not routinely involve blind and partially sighted people in the planning stages of new developments.

We do understand that in some situations it is very difficult for local authority planning departments to even identify where shared spaces are being designed, for example in large housing developments they are not “flagged up” as being shared spaces. One local authority explained that they would refuse to adopt any shared spaces they felt were unsafe, but they could not prevent them from being built by housing developers.

But for town centre developments it is a lot easier for local authorities to identify shared spaces and to ensure disabled people, including blind and partially sighted people, are involved in scrutinising plans. Unfortunately this does not appear to be happening yet.

The Department for Transport claim they are giving power to local authorities so that they can make the right planning decisions for their local area. Sadly these intentions do not stand up to scrutiny; we have clear evidence that many local authorities are not exercising their power in any meaningful or inclusive way. In fact, what we have currently are local authorities who are unaware what shared spaces are or how they affect large numbers of local residents. Some local authorities believe they are powerless to prevent developers from building shared spaces. This is leading to a worrying trend where they can be built, but not adopted by a local authority.

In their evidence on shared space, the Department for Transport said “we are neutral on the issue”. We absolutely believe this is the wrong attitude, and goes against both the Equality Act and any Public Sector Equality Duty.

Another trend seems to be local authorities relying on private developers to take sole responsibility for ensuring adequate accessibility. As private companies have no requirement to consult with disabled people, or involve them in their plans, this does not happen. Local authorities should not abdicate their responsibilities in this way.

**d. Is it acceptable to have to phone for assistance on trains at least 24 hours in advance?**

RNIB doesn't believe it is acceptable for blind and partially sighted people to have to phone for assistance at train stations 24 hours in advance. Especially as we believe that if access in general was improved many blind and partially sighted people would not need assistance in the first place. Having to book assistance 24 hours in advance means that blind and partially sighted people cannot be spontaneous, and they do not receive the same level of service as everyone else.

Some of the ways station access could be improved to enable blind and partially sighted people to use them independently include:

- Providing accessible ticket machines – we are not aware of any completely accessible ticket machines. Relying on buying tickets from staff at the station, or online, can mean that blind and partially sighted people have to plan much more than 24 hours in advance. Especially where stations are unmanned or only partially manned.
- Platform information at stations is often not completely accessible. Although audio announcements are used at many stations, they are not universal. On top of this announcements often do not run at night, or only announce the platform for a train minutes before it is going to arrive. Even where train apps provide platform information which those with smart phones can use, the information is not always available or accurate. It is also important to stress that it is still a minority of blind and partially sighted people who have access to smart phones. Even within the community of smart phone users, not all of them are confident enough to use them when out and about.
- Station layout often causes unnecessary barriers for blind and partially sighted people to use, such as poorly designed and signposted routes in and out of stations, steep stairs where no lifts are available, and poor lighting.

Although improvements outlined above would help many blind and partially sighted people be more independent when travelling, it is very important to stress that many blind and partially sighted people will still need assistance especially if they are travelling somewhere unfamiliar or at night.

**e. What can be done to improve accessibility at stations?**

Please see response to Question (f)

**f. Do bus drivers and station staff receive adequate disability awareness training?**

We do not believe that people who work for train and bus companies receive adequate disability awareness training. We base this on a number of factors, not least the number of complaints we receive from blind and partially sighted people flagging issues which could have been prevented by better training.

We believe that working with rail and bus operators, and especially their training managers, could really improve the situation. We can provide positive evidence to support this based

on our 'Stop for me Speak to me' campaign which has engaged with bus companies across the country for the last three years.

Our initial research identified that blind and partially sighted people were receiving a very poor service from bus operators. Major problems include buses failing to stop for blind and partially sighted people at bus stops and significant communication problems between the driver and passenger. In our initial meetings with bus operators many believed they were providing a good service for blind and partially sighted customers because they had received few complaints. We had to point out to them how inaccessible their complaints procedures were. It soon became obvious that many of the problems blind and partially sighted people face when using buses could be vastly improved if drivers and customer service staff receive better disability awareness training (and in particular visual awareness training).

In the past 3 years we've held over 50 'Swap With Me' events with bus operators across Great Britain. These innovative events enable blind and partially sighted people to swap places with bus drivers and other staff to experience bus travel in a different way. Led by blind and partially sighted people, these events have been a huge success and lead to the development of our Bus Charter. Our charter sets out 13 commitments which we hope bus operators will make to improve bus services for all passengers. The final commitment in the charter is:

In order to achieve the above we will build interactive sight loss awareness training into our driver training. We will involve blind and partially sighted people in the design of the training materials and activities, and seek endorsement for our training from organisations representing blind and partially sighted people.

We have since worked with a number of bus operators advising them on their disability awareness training. We know that there is some good training taking place within some bus operators, whilst others strive to improve their existing training. Sadly, we have come across some examples which cause us great concern. Before signing up to our charter, one major bus operator delivered "Visual awareness" training for drivers which involved drivers pouring glasses of water while blindfolded. This task clearly had no relation to their job, or how they should interact with blind and partially sighted passengers. A training manager from the same company told us that he taught drivers that it was discriminatory to ask disabled people if they needed assistance!

Although Certificate of Professional Competence (CPC) training requires all drivers to receive an element of disability awareness training, this comprises just part of the 35 hours training which has to be delivered over 5 years. We have been told by bus operators that, as there is no stipulation as to how much time should be spent on disability awareness training, it can range from a full day in best practice cases to just a matter of minutes with other providers.

This situation is not good enough. Why should best practice bus operators, who provide interactive and extensive disability awareness training, have to compete with other companies who deliver a few minutes training? We believe that the EU regulation 181 should be enacted immediately. This would require all bus operators to provide disability

awareness training, rather than just the current proactive ones. It is important to note that both large and small bus operators have signed up to our bus charter, proving that even small businesses can deliver best practice and are not disadvantaged by this.

**g. Are regulations on provision of audio-visual information properly enforced?**

In relation to trains: We have had some success after our campaigners targeted a train operator who didn't routinely use audio visual announcements on their trains which had the equipment installed. Campaigners were featured on national radio, and had meetings with the Office of the Rail Regulator, and the train company in question. After these interactions the use of audio visual announcements on the affected line improved immensely. However we do receive complaints about operators who are not using AV on trains which are equipped to do so.

In relation to buses: We believe that audio visual announcements should be included in bus access regulations. The technology now exists and works, with cheaper alternatives to the London iBus system being developed, which means that it is possible to implement AV on buses at a far cheaper rate than a decade ago. We know that the bus industry say they have concerns that regulation will tie them to a particular type of AV, which could become obsolete. We don't think this would be the case; any regulations should be worded so that the requirement on the bus operator is to provide an AV solution which is appropriate to the bus and current technology. The regulation does not have to stipulate how AV is implemented, just that it is implemented!

The Equality Act (and DDA before it) is worded in such a way to allow for the changes in technology and society to be incorporated into its concept of "reasonable adjustment". This means that it does not specifically cite what any reasonable adjustment might be in detail. I think we can increasingly argue that, as technology has advanced and costs reduced, providing AV on buses can be considered a "reasonable adjustment" under the Equality Act. Of course a legal case will have to test this.

In relation to the use of bus apps. These apps have varying degrees of accessibility built in to them. Some partially sighted people do use these apps and find them incredibly useful, however this is a minority of blind and partially sighted people. Although we want to encourage bus operators to make their apps as accessible as possible, there are a number of issues with these apps:

- The vast majority of people with sight loss are over 60, and amongst this group in particular use of smart phones and apps is very small.
- Even those blind and partially sighted people who use smart phones are not always confident using an app when out travelling.
  - The apps in question are not always completely accessible for those who do want to use them.

- The real time feature of these apps only works with bus operators who share that data, some smaller operators do not. Therefore the information these apps provide is not real time, and doesn't help blind and partially sighted people much.

*11 December 2015*

## **The Salvation Army – Written Evidence (EQD0112)**

### **1. About Us**

The Salvation Army is a Christian church and registered charity present in 700 communities in the UK. We provide and deliver a range of services tailored to a diverse group of people and needs involving some of the most vulnerable in society. These include those who are homeless, unemployed, who struggle with addictions, older people, victims of modern slavery, those who are trying to trace family members, or who are caught up in major emergencies. Through our local churches we reach out and respond to the needs of local communities.

The Salvation Army is in a unique position as an employer, provider of services and a church to be instrumental in creating positive outcomes for people with disabilities.

### **2. EA 2010 General Issues**

The Act has resulted in the development of a range of provisions, services, tools and resources to promote the inclusion of people with a disability in the workplace and wider society and to enable them to participate on an equal footing. However, even when these resources are readily available they appear not to be used, which in a church-setting for example, can result in exclusion for the disabled person.

We would recommend the introduction of further guidance for employers and service providers on accessing the resources and aids that are available to support people with a disability, and the extent of that range. It would be beneficial to promote best practices as the norm rather than the exception.

The difficulties and challenges that disabled people face tend to be linked to the approach and attitude of employers and service providers. Where someone has an understanding of the challenges that someone with a disability faces, the experience is generally better. We believe that greater promotion of the Social Model of disability with its emphasis on inclusion and being proactive, would in turn achieve a better balance between legislative compliance on the one hand, and recognising and valuing the contribution that someone with a disability can make on the other.

### **3. Reasonable Adjustments**

#### **i) EMPLOYMENT**

Evidence suggests that within employment there is often a lack of understanding and clarity regarding what constitutes 'reasonable', and furthermore, an over-reliance on the person with the disability taking the lead in securing the adjustment, rather than line managers and those in positions of responsibility. This can result in the person with the disability waiting longer than necessary for an adjustment to be put in place.

A sample survey undertaken in August 2015 at a Salvation Army creative arts camp for adults with disabilities revealed a mix of experiences regarding reasonable adjustment duties within employment; some accessing reasonable adjustments with ease while for others it was more difficult.

The survey also showed that some were reluctant to share details of their disability prior to an offer of employment, resulting in a failure to secure the reasonable adjustments needed to enable them to carry out their job.

ii) PUBLIC TRANSPORT

Our survey showed this area to be particularly contentious. People felt that there was little understanding of the impact that minor disruptions e.g. a broken lift, had on those with a disability attempting to travel. Wheelchair users living in more rural locations typically found using buses more of a challenge due to poor wheelchair access and low frequency of services. The trams in Croydon were praised for their wheelchair accessibility.

Evidence suggests that the rules governing eligibility for the disabled railcard have a negative impact on people who do not receive the higher rate of DLA as they do not qualify for the card and as such cannot book assistance for a rail journey despite encountering mobility challenges themselves.

In some instances, even when a user is eligible for assistance, difficulties can still be experienced: for example, one user found his wheelchair space on board had already been occupied by another wheelchair user and instead was directed by a guard from the rail company to a space reserved for bikes next to a toilet. The alternative of waiting for the next available train would have caused disruption to the accessible taxi that had been booked for their destination.

iii) COMMUNICATION

Our experience tells us that more needs to be done to ensure that people with a disability can access and understand the information being presented to them in order to make informed decisions. This is particularly important for people with a learning disability such as dyslexia as many public services are accessed on line.

iv) ACCESSIBILITY

Although more buildings are accessible, there are occasions where new buildings are failing to meet minimum standards i.e. doors wide enough to accommodate a wheelchair/no lift access.



#### **4. The Public Sector Equality Duty: the impact of different specific duties for England Scotland and Wales**

We welcome the fact that public sector bodies in England, Scotland and Wales are subject to the general duties for each of the protected groups. However, the existence of different specific duties for each part of the UK is confusing both for individuals and for national organisations (both public, private and those working alongside or with public sector bodies) 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. This is of particular significance because the requirement to publish equality information, or to set equality objectives (which are the specific duties for England and Wales), would not necessarily identify or address the issues that are of relevance to people with a disability.

#### **5. Conclusion**

The Salvation Army supports the aims of the Equality Act 2010 and recognises the potential it has to improve the living and working conditions of people with a disability. However, we would recommend improving guidance and providing greater clarity for those employers and service providers with a reasonable adjustment duty to further reduce barriers and challenges met by disabled people. We would also encourage greater awareness-raising amongst those with a reasonable adjustment duty on the day-to-day challenges faced by disabled people, and improvements to training particularly for those in frontline roles in line with a Social Model of disability ethos. Whilst legislation is one method of ensuring compliance, we feel that changing attitudes towards disabled people, realising their God-given abilities and valuing the contribution they make to society, is above all the most effective way to meet the ideals of EA 2010.

*4 September 2015*

## **Catherine Scarlett – Written Evidence (EQD0004)**

### Summary

Disabled for four years and a wheelchair user for two years.

Have had many issues with many organisations breaking the EA2010. These organisations have been my employers in education, the local council, transport companies, hospitals, shops and training companies (including one who purports to be a disability awareness trainer). These have covered the whole spectrum from irritating to devastating and has resulted in me becoming unemployed and having a mental breakdown.

The following is a summary of the submission

\* Employment issues: a three year battle to keep working and an employer who refused and delayed reasonable adjustments, sent me home from work for many months (on 2 occasions) and then issued a formal warning for absence, bullied and harassed me including telling me that I couldn't possibly have the physical presence to be a teacher now I was in a wheelchair and telling me that 'soldiers coming back from Afghanistan adapt, you need to too.', moved me to a classroom where I had no access to other teachers or staff room facilities and then put me under so much pressure that I became ill with PTSD. Their final act was to sack me three days before going into hospital for tests to see if I had ALS (they knew about this) despite my psychologist having written to them saying it would be dangerous for them to cause me further stress.

\* union issues: Union deciding not to uphold the EA2010 as written and interpreting 'reasonable adjustments' to mean that if the employer does something no matter how small, ineffective or late that the employer had discharged their RA duty. Delays to taking action resulted in further discrimination and worsened the situation for me plus ran out time limits for legal action.

\* Retail issues: Still many establishments that are completely inaccessible or don't have accessible toilets in the case of pubs, restaurants and cafes. One post office near us has taken out a wheelchair ramp!

\* Transport issues: Issues with Northern Rail conductors leaving me stuck on the train 4 times in the past year - 2 of those were in one journey, after which they dumped me at an unmanned station. It took over 6 months to get an apology. Problems with locked up lifts and no help on the Tube.

\* Training problems: Most recent experience of trying to book on a disability awareness training session to find it was being held in a room that was not wheelchair accessible. Their solution was that they could carry me upstairs!

\* hospital issue: No accessible toilets on wards

\* Council issue: Lack of dropped kerbs on main footpaths- told that access money had been completely cut three years ago.

### Employment Issue

This is very long due to the complex and multiple discrimination that I suffered over three and a half years from the first meeting that they made discriminatory comments to them sacking me at the end of May, just three days before I went into hospital for diagnostic tests.

The problem first became apparent at a meeting after school a couple of weeks after my disability had suddenly affected my ability to use my arm. I had been getting a lot of nerve pain and pins and needles for several months and had had to stop lifting anything, doing housework and driving but it hadn't affected my job as a teacher until now. My hand suddenly started going blue and cold when I tried to write and I couldn't lift it up. Occupational health had told the school that I could work with someone else to do my writing and I could apply to Access to Work to fund this and that I should also not have to do break duty. This was put into place without any problems during lesson time to start with. At the meeting on February 14th, I was told that occupational health had said that if I couldn't do all my duties that I wasn't fit to teach and should go off sick but that going off sick would cause me problems with the absence policy as I'd had a long absence the previous year for mental health issues (I'd had a recurrence of PTSD symptoms that had originally started following a rape and triggered by being faced by the grandchild of the rapist being in a nearby class). I was also told that the assistant head had visited the occupational health nurse the previous Friday to confirm this and that my classroom assistant had complained that I was asking her to do too much. I rang the occupational health nurse to find that she hadn't even been at work on the day the meeting was supposed to happen and when I apologised to the classroom assistant she said that she hadn't even spoken to the assistant head for months. At the meeting I was also told that I should be using a sling (not recommended for circulation problems!) and that if I was one of her horses she would have me shot.

I was very upset after the meeting and got the union involved for the first time.

During the next two months there was a long round of meetings called and then cancelled when I told her the union would be there and classroom and corridor ambushes where I would be questioned in detail about my medical conditions and told that I must get a

diagnosis at my next hospital appointment. After these conversations they kept issuing letters saying that I'd agreed to various things when I'd done nothing of the sort. There were also a run of meetings that weren't cancelled where I did manage to take the union but was faced by a whole panel of different people they'd brought in throwing questions at me about why different suggestions they'd made weren't acceptable and why I needed the adaptations that Access to Work had put in their report. They also kept giving me an inflated figure for what the classroom assistant was costing (I had shown the letter with this in to the classroom assistant and it was double what she was being paid) and telling me that Access to Work wouldn't fund it and weren't returning their calls. I chased this up with Access to Work and they emailed her saying that they had been trying to contact her upon which she emailed them saying that she was sorry but she didn't realise that they needed to talk to her. After she had rung them she told me that they weren't going to fund the assistant and that the support would stop after the next week. This had constantly been threatened. On that Friday, two days later, I got an email from Access to Work saying that they would provide full funding which I immediately forwarded to the assistant head. I felt so relieved and thought that the pressure would now be off.

The following Monday I had gone into work at 7.30am as usual and was preparing for the day. The assistant head then stopped me in the corridor just as I was going to the loo and said she needed to speak to me urgently. I told her that I would have to go and get the union rep to which she said OK but she won't be in yet. Luckily the union rep had come in early so I managed to have a witness. I was told that they couldn't abide by the conditions of my GP fitness for work statement (which they'd been ignoring since the end of January and it was now 30th April 2012) and that they'd had the Local Authority H&S officer in on Friday and they'd done a risk assessment and decided that me staying at work was too much of a risk to my health. I hadn't been seen by the H&S officer or had a chance to answer their points on the risk assessment. I was just handed the papers and told to go home. My classroom assistant and other teachers in my department were told I'd gone off sick.

Over the next few weeks my union tried to argue with them and the local authority HR and to arrange a meeting to no avail. We got a meeting at the end of June which appeared hopeful but then didn't hear anything until the last day of term before the summer holiday which was an email from the head saying that I could return when I could guarantee being able to do without all adjustments within six weeks. We tried to reply to this and get a meeting but didn't get any reply until September when they arranged and then cancelled a meeting, saying there was no point as my condition hadn't improved.

We eventually got a meeting at the end of October where they tried to give me a formal warning for absence and told me that if I returned I would have to do all duties. They asked me to construct a phased return timetable to be back full time at the end of six weeks, which I did, checked it with the union and emailed it to them the next day. I didn't hear anything

until 4pm on the last day before half term when they sent me a timetable that had me teaching full time after two weeks but not picking up my form and break duties until following weeks. We tried to challenge this but there was nobody there until after half term when I was returning. We then got an email during that week saying that if I returned I was accepting their phased return. I had also gone onto half pay. I really struggled with the first week of the phased return and had to go to my GP to get a fit note suggesting a more reasonable return which would still have me back full time at the end of six weeks. I was told in a meeting with the school rep taking the minutes that they could arrange my GPs phased return suggestion but had decided it wasn't reasonable. They refused to qualify that. They also hadn't bought the equipment of a chair and footstool that Access to Work had asked for in March so I was struggling with unsuitable seating as well.

I got Access to Work back in and the area supervisor came in to watch me teach in mid-November. She was horrified about the chair and recommended a correct chair - citing one of the type that had been previously provided for another member of staff, and an adjustable desk and various other little bits of equipment. She also referred me to the Access to Work mental health support provided by Remploy. The school were still stalling on getting the equipment and increasing my workload so I ended up breaking down in my GPs surgery on 22nd November and being signed off with reactive depression as well as the arm disability. I put in a grievance to governors citing issues with the assistant head and the head. With the help of the union we submitted the grievance and evidence in the form of emails and letters and got a date for a hearing in early December. When we got to the meeting we discovered that it was the head who'd been given the job of investigating it. He told us to expect a reply before the Christmas holiday.

The Christmas holiday came and went and I got a letter from the head just after the holiday rejecting the grievance. We appealed it. In the meantime my GP had given me the go ahead to go back to work and we contacted the school to let them know. They said that they would have to get an occupational health doctor to see me first. The local authority didn't have their own occupational health doctors so I had to wait for them to source one. All this time I was on half pay and had approached the governors to be given full pay as my absences amounted to suspension. I didn't get to see an occupational health doctor until February, just after the appeal hearing. The hearing went on for hours and we found that they had never questioned the witnesses I had cited in the grievance and there wasn't time for us to call them. They had also only given notice of the hearing the previous Friday (hearing was on Wednesday) and delivered a huge pile of their 'evidence' late Friday afternoon with the instructions that we had to submit replies by 10am on the Monday. They hadn't sent the papers to the union and would not provide an electronic copy for me to forward. They said they'd send them to the union but that didn't arrive until Monday afternoon. Needless to say we couldn't get the replies to them by the deadline and took them with us to the hearing. They originally told us that they wouldn't accept them but the union rep threatened legal

action and they said they would but would adjourn the hearing for half an hour to read them. When we got back in they said they'd scanned them and they just said the same things as previous papers. It wasn't until this point that we found out that our witnesses had never been spoken to. The head laughed it off and the fact that only two or three questions from over twenty had been addressed in his reply by saying that he was too busy to waste time on it. Over a week later I was told that the appeal had been rejected and that the school hadn't kept me off and rejected my pay request. The appeal reply was virtually identical to the head's rejection of the grievance. The only ground that was different was that they said that a chair had now been provided- something that turned out not to be true.

The occupational health doctor said that of course I could work with adjustments and the additional adjustments due to my mobility having worsened by now as well and he suggested a variable phased return that changed depending on how I was coping.

It was the end of February that I returned and I was limping quite badly by this time. Again they demanded too rapid a return and when I asked them to vary it they told me to just try it. After the first major increase I could hardly walk and had to go to the hospital and was given a pair of crutches. The equipment still hadn't arrived. The Access to Work supervisor came back in in response to my panicked phone call to her and went to the assistant head and demanded that they provide the equipment or she would suspend the payment for the support worker and the school would still have to provide one. About a week later the chair and desk appeared but I had been struggling and the day after they arrived the assistant head demanded that I teach full time. I said that I couldn't manage it and gave her a letter written by my psychologist telling her that they were making me more ill and were failing in their duty of care but this was ignored and I was told to just try it again. I was in agony and in tears and could hardly drag myself to my husband's car at the end of the day. The next day I couldn't walk. I emailed the school asking for a slight reduction for a couple of weeks (and would then be ready to go full time again) but they told me that I could only return if I agreed to go part time. This was in March and they didn't meet with us until after the Easter holiday. They initially made my timetable part time by cutting more non-contact time than teaching time, leaving me with 75% of the teaching, less than 50% of the non-contact time but 100% of the marking as I still had a majority share of each class's lessons. This was for being paid 56% of the salary. We refused and came up with six different models. These were based on my day starting and finishing early to cope with fatigue. They changed this to starting and finishing late except on meeting days where I was to start and finish early but was then told I would have to come back for meetings less than an hour after finishing! This was to be reviewed 4 weeks later at half term when I would get the choice to either stick with it permanently or go back to full time. Effectively I was in full time but being paid part time and when study leave started a week later I was teaching more lessons a week than any other teacher in the school.

I was then subjected to loads of lesson observations and criticised for not getting around to enough kids in the classroom and for getting slower and slower and for the classes being behind which was to be expected as they had had seven teachers that year and were understandably really negative. I insisted on going back full time after half term so that the kids would have some continuity. I continued to get negative comments from the assistant head at a time when I was awaiting the results of a test for Parkinson's disease. I was really hopeful that I would get treatment after the results and be almost back to normal. I was otherwise very worried that it could be something even worse. I got a phone call one lunchtime near the end of June (just over a year since symptoms had started) saying that it wasn't and they were back to square one. I had a complete meltdown and dissolved in floods of tears as my chance of treatment had gone again. My union rep took me home and my husband had to call the mental health crisis team out the next day as I was suicidal due to being terrified of just getting worse with nothing done about it. Another factor in my meltdown was that we had been given our new classes the week before and the other grandchild of my rapist had been put in my class despite the school having previously agreed that it shouldn't happen and that they would let me see classes in advance- this didn't happen and we were only given the class lists at the parents evening to meet the parents so there was no time to get it changed. I had emailed the school to let them know why I was off after getting copied into an email to HR saying I had gone home without permission and that I wasn't fit to teach as I was just getting slower. I showed this to the crisis team the next day and they were horrified and said that it must count as discrimination and harassment. I emailed the school to say that I'd been told to stay off for the next two days but I'd be back the next week and that their email had made my mind up for me to go for a wheelchair assessment so I could get around quickly enough for them.

I returned to work on the Monday and nobody in management spoke to me and my head of department wasn't there. On the Tuesday lunchtime the assistant head came to see me and after getting me to tell her what had happened, served me with notice of a formal warning meeting for absence. I had to hold myself together and teach the last lesson before being able to ring the union. I also found out that my caseworker had retired and that I had a new caseworker. We managed to get the school to reschedule the meeting for September but it meant that I had it hanging over me for the summer holiday of 2013. In the next couple of weeks I also had an appointment with the head neurologist who said that I needed an urgent brain scan as it couldn't possibly be normal and if it was then I would need to go into hospital for further tests.

I was due to have the wheelchair assessment during the holiday but it was postponed twice and ended up on the first day of term. In the meantime I was loaned a wheelchair by our local hospital. I had informed the school that I would be using a wheelchair when I went back. On the first day back I asked where there was a toilet I could get into with a wheelchair to be given an embarrassed look and told it was down a flight of stairs, round a corner and

then up another flight of stairs! All the toilets for able bodied people can be reached without using stairs. I asked what I was supposed to do and they just made jokes about not having to drink or getting a catheter. Later in the day they told me they'd found a larger cubicle in the 6th form toilets that I could use. I could only get into it by taking the footplates off the wheelchair and there were no rails. I also struggled with doors and could not get out of the building doors on my own as they were so heavy. I asked for all the door closers to be loosened to regulation weight.

I had the brain scan during the holiday and the follow up appointment just after the formal warning meeting. We argued that my absence in the last year and a half except for the 3 day absence in June was all because the school had kept me off and had engineered the phased returns in a way calculated to push me back off work. Also that adjustments were greatly delayed and had contributed to me being ill and stressed. We also argued that they had not made any adjustments to the absence policy. We were told that adjustments were only for equipment and not policies and the assistant head accused me of having contradictory symptoms! I ended up very distressed and had to go home (they had scheduled me to go back to teaching again afterwards) and they pushed through the warning anyway and told me that if I went over 12 further days off over the next 12 months then they would dismiss me.

The hospital appointment was soon after and I found that the scan was normal and was told to be on standby to go into hospital as soon as they had a bed. Despite this and the obvious stress it was causing, I had to go through performance management observations which I wasn't allowed to redo, even though someone else in the department was allowed a second go after a poor observation. I was also injured stopping two students fighting & was struggling to push my wheelchair around. I asked for a reduction in workload but was refused and blamed for getting injured. About three weeks later we had a parents evening where I didn't finish until after 8pm and when I was getting ready to go at the end of the next day, my head of department insisted that I stay to complete a risk assessment. I insisted on including the factors that were causing me stress as well, and included the fact that this child had been put in my class despite what had happened previously. The meeting didn't finish until after 6pm. I was troubled over the weekend by a numb feeling in my foot that wouldn't go away and called the out of hours GP service who called an ambulance and rushed me into hospital. I ended up staying in hospital for 9 days as they kept me in to do the tests that had been planned. Luckily it was the beginning of half term when I got out and I had the rest of the week to recover before going back. I still didn't have a diagnosis then. My weight had dropped to less than 8 stone as I was going home too exhausted to be able to eat.

Just over a week later I got a diagnosis by letter, just telling me I had spastic paraplegia. I had to look this up on Google and eventually found that it was linked to motor neurone disease. I



had to wait three weeks still for my hospital appointment. The school didn't speak to me about it when I told them but called a meeting to go through the risk assessment. I told them I would be bringing my caseworker, the AtW adviser and a person from our local access centre who was a wheelchair user. Just before the meeting they told me I should move to a classroom in the performing arts block as there was a disabled toilet. I went to see the room they'd said and found that it was about 15 feet high and echoed and the desks were so close together that the cleaner struggled to get a vacuum cleaner between them. There was also a really long slope to the toilet and I couldn't get my wheelchair back up it. I couldn't get to the workspaces in the staffroom and couldn't access any of the other buildings as I couldn't propel the wheelchair up the slopes and couldn't open the doors. It would have meant that I would have been cut off from the rest of the department and the department office. I refused, giving my reasons and was told that they would get the H&S officer to come and look at it. I was then subjected to going round with my head of department, the H&S officer and the site manager while they talked over my head and told me that I wasn't going to get a choice! They suggested hiring a powered wheelchair and I said I was waiting for one and would need to see what size and type it was as the wrong wheelchair would cause me damage and that my environment needed to be suitable for me to use a manual chair if needed. They also looked at the toilet I was using and the H&S officer suggested that I leave the wheelchair outside it and had a handle on the inside of the door to hold onto to balance myself on the way in. When I told him that was a bloody stupid idea and asked who was going to pick me up off the floor every time I used the toilet I was told that they wouldn't try to help me if I was rude.

Two days before the meeting I was given the completed risk assessment saying that everything asked for wasn't reasonable including rails in the toilet and lighter door closers.

The next day I had a first training session in my new powered wheelchair and found that I needed a lot of help to get in and out of it due to not being able to get my feet on the floor under me to stand up (I have a lot of muscle wastage on my right leg)

During the meeting I was put in an uncomfortable position many times, including being asked in front of everyone exactly why I had PTSD and then it was officially noted that I'd refused to answer. The Access to Work adviser suggested that they could partially fund a better manual wheelchair for me to use at work but that the school would have to pay 20% mandatory employer contribution. They refused immediately and said that I would have to use the powered wheelchair, even after I pointed out that I couldn't get to the toilet as I couldn't get in and out of it independently. They also refused rails and any other adjustments except for automatic building doors but those wouldn't get done until January. The person from the access centre pointed out all the problems with what they were planning and they did listen enough to her to scrap the planned building move and to clear the junk out of the department office so I could get in. They also got me a water boiler that I

could use as I couldn't access the kettle and I managed to negotiate rails in the toilet with the site manager the next day but it took until the end of term to get them. The school HR manager and the local authority HR person then continued the meeting with just me and the union caseworker and started really pushing about the diagnosis and the time off coming off my 12 days. They told me that I couldn't get any workload reduction and that I had to agree to going part time. I told them that I didn't know what the diagnosis really meant and that I was really scared about it and that I couldn't afford to go part time as I was the breadwinner and could only make that decision after the appointment with my consultant in two weeks but I'd give them an answer then. They then wrote down that I'd refused their offer of part time in the minutes. They did agree to counselling and said they'd arrange it.

When I saw my consultant he said that there was no treatment for me except pain control and muscle relaxants and that it would probably get worse but wouldn't give any more information. I showed him the muscle wastage in my leg and he ordered another test for me. I asked about work and he said it would be best to go part time.

I emailed the school the next day to request the move to part time. It was only a week to the Christmas holiday so I assumed that I would get an answer straight away to start after Christmas. I got an email back saying they'd give me an answer in due course. I had my first counselling session just before Christmas.

After Christmas I still hadn't heard and I started emailing asking what their decision was. They said they'd need a consultant report. I had had an EMG test on New Year's Eve and was waiting for the results. There was a possibility of being told it was ALS and I didn't want to risk getting that diagnosis by post or for the school to find out before me. I refused to start with and told them exactly why but they insisted that they couldn't let me go part time without a report, despite having told me I should go part time. I gave in after a couple of days and gave consent, emailing them to say it was under protest and that I felt bullied. I had also booked a counselling appointment and physio appointment on the day I'd requested off and had to then put in a request for time for the appointments. They told me that they would only grant them this once but wouldn't grant any more as I'd had so much time off so I was being kept waiting for going part time but couldn't make any more appointments even though they'd been made for what should have been my day off!

Over the next couple of weeks I kept sending emails begging them to let me go part time as I was exhausted and ill and worried about the next parents evening which was at the end of January. All of this was just ignored.

I did the parents evening at the end of January and didn't finish until 8.15pm again as I had 2 large classes in that year group and ran over even though I'd started half an hour early and hadn't stopped. The next morning my husband took me to work at 7.45 as usual and went ahead of me into school to fill my kettle and take my stuff to my classroom. There were

automatic doors on that building since the beginning of January so I should have been able to get into the building. It took me longer than usual to get from the car to the doors but then I found that I didn't have the strength to get up the slope into the building and was stuck outside. It was a few minutes until my husband came to see where I'd got to - he'd been straightening some desks in my room and assumed that I'd gone to the office or staffroom and been looking for me there before he realised that I hadn't made it into the building by which time I was in floods of tears and shivering with cold. He pushed me inside near the heater and then went to find someone to tell them he was taking me home. I went to see my GP later and they wrote a fit note saying I could only work 3 days a week. I emailed this to the school saying that I hoped to return the next week once they'd sorted out my part time. They replied that they would get back to me. It took over a week for me to get a letter from the head by email (last thing on a Friday again) refusing the request saying it wasn't possible for anyone in the Maths or English departments to be part time (there were at least 2 English teachers part time then!) but that I was welcome to go back full time when I was well enough!

The union then tried several times to get a meeting but this wasn't granted until May 4th.

The meeting on 4th May had a few notable points. Firstly the HR manager told us that they were recording the meeting so we wouldn't have to make notes. Secondly, I was questioned very closely about my medical condition despite them having the consultant's report and another report from the occupational health doctor saying that I could work with reasonable adjustments and stated that the adjustments I had requested were reasonable. Thirdly, the head was very aggressive and at one point told me that a classroom teacher had to have physical presence and I couldn't have enough physical presence now. Fourthly, they were going to count the time off waiting for the adjustments to be made as sick leave and had made enough reasonable adjustments by not sacking me already. Lastly they grilled me on how many of the 5 lessons a day I could teach, which I said 4 and was then asked if I could manage a full five lessons on one day if I just had 3 the next day. I said I would struggle but could possibly manage it but no more than that. I was told that they would have to decide if they could accommodate the part time but that I would lose my job if they couldn't.

It took them 9 days to contact me after the meeting. I got an email with a letter attached on the Friday at 4pm. The letter just thanked me for meeting with them and that they would give me a decision in due course. It took another week before I got another letter calling a second meeting on June 4th and gave conditions to me returning, including cutting my non-contact time back, having to make appointments in days off etc. I was also sent a transcript from the last meeting which hadn't included the head's comment about presence but had kept my reply so it didn't make sense. I immediately demanded the recording and was refused so all I could do was insist that they didn't destroy it. After this I bought a voice recorder and recorded everything that happened at school.

At the meeting on June 4th there wasn't much said that was controversial except they insisted on doing observations before the end of the phased return. I then got a letter in the afternoon of Friday June 6th with the details which had observations starting from the second day back and no PPA time for the first two weeks. I had two observations before I had any PPA. The first observation went ok but I was pulled apart on the second one, including being criticised for books not having been marked - it was only my second lesson with that class! The 3rd observation was just over a week later and that was judged to be good but I didn't ever get the written feedback for it.

In the meantime I had found out that the department was being moved to another building with the department office/ staff room on the first floor and my room being the only ground floor classroom aside from a couple of science labs. The room was half the size of the room I had been teaching in. I was initially told there was going to be a lift to the first floor but then found out that it was going to be a platform lift which are incredibly slow, unreliable and usually need the button to be held in all the time the lift is moving. I emailed the site manager reminding him that they had a duty to consult and said that the new arrangements were going to be unworkable for me.

I was summoned to a meeting with him and the head of department and told off for being awkward. I explained my problems with the lift and that I could keep a button held in because of weakness and cramp in my hands and was told that there were other mechanisms and that it hadn't been decided which sort they'd get. I explained my fear about getting stuck in the lift and that it would be even worse in a lift that took nearly ten times as long as a normal lift. My fears were just rubbish and I was told that it was my choice if I couldn't get upstairs then I'd just have to stay in my classroom.

We then moved onto the classroom and I showed them that it was too small and that I couldn't get around with a full set of desks in it. They said that they'd put them in 3 long rows and I could get between them. I said that there wasn't any space for me to turn round and was told that there was plenty. I got them to put the desks in the row they were taking about and then showed them that I didn't have enough space to turn and was then told that I'd just have to reverse out. At this point I was in tears as I had to explain to them that I couldn't reverse in a straight line as I had a weak arm and struggled to reverse. I was then shouted at for just causing problems and not coming up with any solutions, even after I told them that there weren't any solutions as the room was too small. I was told that I should be grateful that they hadn't put me in one of the small classrooms upstairs and that they were building me a disabled loo. I then asked what would happen to my resources as there wasn't any space for storage and they said they'd find me a bit of space in the cupboard in the corridor and then asked why I should have resources like the printer as nobody else had a printer in their room. I had to remind them that I was given the printer as I couldn't get to the printer in the office or the staffroom. They said that I'd have to meet with them the following week

to try out a different desk arrangement. I left the meeting in tears and cried all the way home and all evening.

The next week they moved the room into a horseshoe. I had to point out that the desks were so far back that the kids wouldn't be able to get behind them and that they would keep moving forward. They said it was up to me to keep the kids in the right place. When I said that it was just a nightmare I was told that soldiers coming back from Afghanistan adapt so I should too. Again I ended up in tears. I was told to complain to the head if I had a problem with it. I told them that I'd already emailed him.

Before this meeting there had been the staff social picnic that is held in the quad garden in a different building. I told the deputy head of department that I was worried that I wouldn't be able to get in but she said that she was sure there was a ramp from one entrance and that it would spill over into the hall anyway and the department would stay in there. When I got there all the tables were crammed into the quad and it was just steps so I couldn't get in. I was told I was being awkward for not letting them bump me down the step. I have a wheelchair that it isn't safe to do that with!

The next day AtW did an assessment of the new room and said it was too small and were surprised that I still didn't have the desk they'd said I needed a year before- when the school had bought the adjustable desk they'd only bought a really small one with just enough computer space but not work space. We also found that I couldn't get out of the classroom door by myself (the door had been wedged open at the two meetings), couldn't get into the building office and couldn't get to the area where they serve the food in the canteen as they'd put side barriers in that were too narrow for a wheelchair. I got the report at the beginning of the holiday and emailed it to the school. It also said that the school management need disability awareness training and set a fee it would pay. I arranged with a trainer called Mik Scarlet to do the training and he brought his fee down to what AtW would pay as he felt it was urgent and he also offered to meet with me and the kids who were wheelchair users and do an access audit. The school refused, saying they didn't need it and there wasn't time on the calendar.

On the last day of term I got the reply from the head to my email complaint refuting all my complaints and refusing my requests for adjustments. Hence I spent the whole holiday worrying and dreading going back.

In September I went back and the first thing I did was try the lift - despite everything I'd said, they'd put in the basic hold to run mechanism. I tried it but only managed to get it to go up 10cm before my hand and arm cramped up completely- I had to reach over the bar that someone standing would hold onto and twist round to reach it. I managed to get it down again but then almost tipped out of the wheelchair trying to get back down the ramp and

realised that the ramp was too steep. A couple of days later the lift engineer was there as it wasn't working properly and I got him to measure the ramp - it was a one in five whereas a wheelchair maximum safe operation is one in six. I was told I was being awkward when I brought this up. I also found that the classroom door hadn't been altered and so I couldn't use the room unless there was someone to open the door. I was told I was lying when I said this but the door was altered over the weekend. The disabled toilet wasn't finished so I had to go to a different building to go to the loo. So I couldn't get to the loo, couldn't get to food in the canteen and didn't have access to basic facilities like water or a fridge. They had put my resources in huge piles in an old office down the corridor from my room and put my water boiler in there - just didn't have any way of filling it up.

Just after this I had a hospital appointment where the consultant told me that I just had to accept that there was no treatment and that I would keep getting worse but wouldn't discuss how much worse. After I argued he suggested passing me on to the national hospital for neurology in London.

The next day I spoke to the head of department about it and broke down in tears. I had hardly seen any other teachers since the move and was feeling really isolated. The next day I was interviewing support assistants with him all day and it didn't get mentioned again. Due to the next few weeks meeting slots being used for training, I didn't get to speak to him or anyone else in the department for a month. I went days without seeing another teacher as my room was so isolated. I'd also found out that my timetable had two full days teaching in a row on one week and one on the other, meaning that half my timetable was full days. I tried to bring this up on two occasions, one with the head of department on the day before interviews and one in an email with the HR manager. It was ignored both times. So not only was I isolated, I was exhausted. I was also having to take marking home as the new support assistant needed time to get used to the job.

During this time the toilet hadn't worked for 3 weeks and when I'd complained about having no access to drinking water was told to use the tap in the disabled toilet before eventually being given some bottles of water, but was questioned about the amount of water we were using. The toilet was also not completely private as it was just partly partitioned from the caretakers cupboard which was accessed from the boys toilets.

I was accused by the head of department of choosing not to go to the department office in the lift and then told that they'd do the lift ramp at October half term as the one that was on it was designed for assisted access not independent access but there were no warning signs. It isn't possible to have assisted access with my chair as it has no handles! I was then told that they would train the support assistant in using the lift and the evac chair - so I couldn't even get assistant access anyway as there hadn't been any training! She said she wasn't happy with trying to get in the lift with me to operate it as it was so small we wouldn't fit in

together and certainly didn't want to operate the evac chair. I spoke to the head of house that week and he told me that he'd accompanied a child in a wheelchair in the lift and had to virtually sit on top of him to fit in.

Towards the end of October, just before half term, I had a sudden deterioration due to the stress and had to go home on my last day at lunchtime. My speech suddenly deteriorated and I went to pieces mentally. I kept getting flashbacks and nightmares and couldn't sleep. My GP signed me off. I sought legal help from an independent lawyer and was advised to take it to Acas and then a tribunal. I tried to go through early conciliation and asked the county for a transfer to which they agreed in principle but never spoke to me about it. The union issued an ET1 at the beginning of January.

I managed to get appointments with a neurological psychologist and she has diagnosed PTSD revolving around the bullying I've experienced in the last few years at work.

When I was in London for a hospital appointment at the end of January I got an email from the union saying that they'd had a call from an independent HR adviser to the school offering £10000 for me to resign but I was advised to turn down the offer.

The union had already told the school that all correspondence must go through them but I got an envelope with a huge pile of papers and a letter summoning me to an absence hearing at the end of April. Using the psychological report that stated I wasn't fit to attend tribunal hearings at the moment they asked for the hearing to be put on hold but this was turned down saying that we would have to submit written evidence. I wasn't able (and still not able) to look through the papers so wrote some arguments to the union and my psychologist wrote them a report stating that the PTSD and suicidal thoughts appeared to be linked to the school and that they should not do anything that could cause stress as it could be dangerous, especially as I had to go back to London for a week in hospital from the 1st June.

I didn't hear anything for a while and thought that they'd decided to leave it until I suddenly got a letter 3 days before going to London to say I'd been dismissed as there was no chance of me ever returning. My immediate thought was that if I committed suicide while I was still employed then my family would get the death in service grant from my pension. I had to ring my husband and get him to come home from work to stop me doing anything silly.

I am currently waiting to hear if they're going to let me appeal. The union has asked them for the reasonable adjustment of waiting until September so that I have the results from the hospital tests when I go back for them in August. The only test I know is the EMG which has finally ruled out ALS. I'm now hopeful that some treatable cause may be found.

Conclusion:

I feel that there needs to be an enforcement body for the Equality Act with similar powers to the HSE, that has the power and funds to investigate and serve enforcement notices and levy fines.

Reasonable needs replacing as a qualifier for adjustments and needs a higher bar setting, especially for public bodies.

The two ticks system needs replacing with a much tougher system that has a way of people to challenge accreditation if the employer is not complying.

Disability and equality training of high standards needs to be compulsory for all employers with funding available for smaller businesses. Mik Scarlet would be an ideal consultant on this.

All public buildings should have regular access audits.

Union issues

Throughout this case the union have kept saying it wasn't strong enough due to time limits and the fact that they've made some adjustments, no matter how small or ineffective or late. The other limiting factor for them has been that I hadn't lost my job until now and they're claiming that it isn't cast iron enough to risk the tribunal fees. They are now claiming that putting in another claim for unfair dismissal wouldn't succeed because I've been signed off, not sent home this time.

This attitude has prolonged the abuse at work and contributed to my current MH problem worse. In my opinion there had been many times previously when we could have taken a tribunal and stopped the bullying.

ET fees, the fact that time limits are hard to apply to disability discrimination cases and a few recent tribunal outcomes where panels appear to ignore the letter of the EA2010 have caused these issues. The other issue is that the word reasonable is so far open to interpretation that getting reasonable adjustments has become virtually impossible in the current economic climate. It also doesn't help that the EHRC doesn't have any meaningful powers of enforcement since 2010.

Conclusion:

Similar for the employment section but with the additions of:

Unions must seek the services of specialist disability discrimination legal experts for claims and legal advice as this is a highly specialised area and much more complicated than basic employment law.

The same should apply to panels in employment tribunals.

Fees for tribunals are inappropriate and stopping individuals and unions from accessing justice, especially as costs cannot be recovered by a winning employee.



### Retail issues

There are still so many shops and restaurants that don't have wheelchair access or accessible toilets.

Our local post office actually removed a wheelchair ramp to the shop part. Our local access group sought help from the council building control officials but has never received a reply.

Our local school uniform shop can only be accessed via a few steps and the bell for disabled people to call for assistance has been removed.

Conclusion:

There needs to be a body who can serve enforcement notices for organisations to comply with the Equality Act.

There needs to be advice and funding available to improve access for small businesses.

### Transport issues

Over the past year I've been left stranded on trains 4 times on overground lines, two of those were on the same journey.

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. We went back into the carriage and another passenger went to get the conductor who 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 had been getting home for my younger daughter coming home from school and had a few minutes of panic until I could get hold of my husband to be there for her. We got to Bridlington and were transferred across and asked by the conductor if I'd got on the wrong train before. I explained and told him we needed to get off at Driffield. I was going to remind him again when he came through for tickets but he didn't. I was very nervous on approaching Driffield and we waited by the door again but the same thing happened again! This time I lost my sense of humour and dissolved in tears and my daughter went to ask the guard what had happened. He didn't appear until we were pulling into a village station 4 miles away. He 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.

I complained to Northern Rail immediately and was told they would reply within 20 days. It took over a month and several more emails to them which were ignored. When I got the letter they apologised for taking too long to reply, told me I should book assistance for manned stations (which Driffield isn't one) and gave me a £20 voucher for further rail travel. To be honest, I really didn't feel like getting on a train again. I passed this onto Choices and Rights in Hull and they wrote to Northern Rail, who again took a very long time in replying and eventually offered a meeting just before Christmas. Their compliance manager was apologetic and assured us that they were going to change their systems to a smartphone based reminder system and that they were going to arrange training in disability awareness for station staff.

She was going to contact me after investigating what had happened. It took until the middle of January to get an apology & £100 compensation. Part of the agreement from the meeting was that they would keep me up to date with their improvements but this hasn't happened. In early March a similar thing happened when I caught a Northern Rail train to Doncaster and there wasn't anyone to get me off the train. Luckily it was the end of the journey and I was travelling with a friend who went to get help but the conductors had swapped at Hull and the new conductor hadn't been told, however, he had checked our tickets and I get a concession ticket which was clearly marked and always travel in my wheelchair! Again I complained and got an apology much quicker this time (& a £40 voucher but I can't use it online where I book my tickets!). There had also been a similar incident coming into Hull on a Transpennine Express train and my booked assistance didn't appear. On that occasion another passenger went to alert the driver who had changed part way through the journey and didn't know I was on the train and there didn't appear to be a conductor. I don't travel by train that often since the original incident last July and being forgotten about four times out of less than 20 journeys is a ridiculously high proportion.

In hindsight, I should have taken Northern Rail to court after the first incident but the cost of taking a case and withdrawal of legal aid to take cases put it out of my reach. I was also keen to negotiate improvement in the system and thought that we had secured that but it transpires that there are no changes.

Again the answer to this would be an enforcement body that disabled people can go to for help. The EHRC is now viewed as being completely toothless and not worth approaching.

I have also had major problems recently with access in underground stations in London. When I use the tube I always refer to the step free map and feel I should be able to trust the information in it. It states that Liverpool street station is step free going East so I caught the tube from Kings Cross to Liverpool st. The first thing we found was that we couldn't find an exit from the platform that was step free as there are three steps and there are no signs

saying otherwise. Luckily I was travelling with someone and I dragged myself up the steps while my friend struggled with my wheelchair. We then found that the lift was out of order and had to crawl up the next set of steps to find that the lift out of the station was also out of order and there were too many steps for me as I was already shaking from the effort of getting up the first set. I took the risk of putting the escalator technique I'd seen on YouTube into action and my friend steadied the back of the wheelchair. There were no staff to be seen for support and no instructions on the lifts as to what to do.

On the way back we got to Kings Cross on the Victoria line and found the lift locked up. There was no advice notice and no staff. Someone went up the steps to try and get someone but couldn't find any staff and couldn't get anyone on the emergency intercom. Luckily for me, two passengers came and offered help and ended up helping my friend carry me up the stairs - a question of nil points to TfL but 1000000 to the wonderful people of London.

I complained about both to TfL and got a 'sorry that shouldn't happen and we've had words with the station manager' email but friends in London say this happens regularly and complaints make no difference. This was about Kings Cross but I didn't get a reply about the Liverpool st complaint.

Conclusion: The only way to change this is a law setting out acceptable service and emergency arrangements for disabled people on public transport and to make sure it is enforced - it should be possible to use EA2010 as the primary legislation for this - again it comes down to the wooliness of the term 'reasonable adjustments' which desperately needs beefing up and clarifying.

There also needs to be a single organisation that is well publicised for people to complain to.

#### Training course issue

This is my most recent experience of a gross breach of the Equality Act and possibly one of the most shocking.

I got an email last week for a course of deafness awareness training by the company Signs4life. They specialise in sign language and deaf awareness training but also offer general disability awareness and equality training.

I emailed the company to book a place and checked to make sure it was wheelchair accessible. I got an email back saying that it wasn't wheelchair accessible as it was upstairs in a converted stable block. I was given an alternative in Leeds which is double the distance and then the venue was about 5 miles away from Leeds station so not accessible for me unless I found a wheelchair taxi and the cost of train tickets and taxi would be more than £50 as opposed to virtually nothing to get to York as I could get a lift there. I said that I couldn't do

that and then got an incredible email back, saying that the staff at the conference centre would carry me upstairs! I was horrified and asked Mik Scarlet for advice as I wasn't sure if I was overreacting. Mik was also horrified and pointed out how dangerous this was and how it wasn't possible that they had any manual handling training as the first lesson of that is never carry.

They then offered to meet me in a coffee shop sometime and give the training 1-2-1. There is only one coffee shop out of 4 in my town that is wheelchair accessible and it is always busy and noisy, which makes it very difficult for me to hear and concentrate, so I had to refuse this.

Conclusion: Anyone offering training under the EA2010 should be registered under very strict criteria - their advice can jeopardise the safety of people as can be seen with their offer to carry a wheelchair user.

### Hospital and NHS Issues

When I was on the neurological ward at Hull Royal Infirmary, there were no wheelchair accessible toilets on the ward. There was also no accessible shower for women - only one for men.

I have had to change dentists as my previous NHS dentist was on the first floor with no lift and the steepest staircase imaginable.

I have had multiple issues with wheelchair services and having to go to Access to Work to get a wheelchair I could use independently, would cope with pavements in my locality and I could use for work. The wheelchair combination that I was prescribed by wheelchair services was a manual chair that I couldn't propel outside and would have caused major shoulder injury and the powerchair was too big to drive in and out the house, slid off pavements around our house and I couldn't get in and out of it without a lot of help so couldn't go out on my own or use it for work.

Conclusion: The health services must cater for independent wheelchair users. The porters and nurses were wonderful and allowed me the dignity of propelling myself but the facilities, which are a management responsibility, are very poor. In other hospitals the bin provided is usually a pedal bin - in a wheelchair accessible toilet!

This is an example of a failure to make reasonable adjustments.

Wheelchair users need wheelchairs that enable them to live their lives on the same basis as if they were able-bodied - the heart of the reasonable adjustments of the Equality Act.

### Council and government Issues

Most of these are very recent. This is in no particular order and I have one example of a positive as well.

Footpaths: In Driffield we have a major issue with footpaths being in very poor condition but since getting a wheelchair with powered wheels I have been able to get out independently and travel distances and this has shown up major issues with a lack of dropped kerbs on main routes.

After months of taking my life in my hands on the way to and from work due to there not being a dropped kerb at a road end on the only route from my house to the schools and bus stop. This means that I either very carefully lower myself forward off a loose kerbstone that has dropped at one side, risking tipping myself out of the chair or turning round and dropping off a wobbly kerb backwards. Obviously going backwards into a road isn't safe so I tend to take a deep breath every time and lower myself forward. I have managed to tip myself out on one occasion. At the other side it means either travelling along the road until I get to a driveway or wheeling up the kerb (I can manage up to a 3.5" step). Again, the possibility of this depends on underfoot conditions as the slightest frost or wet weather makes wheelies risky.

I also found the same situation trying to get across the main road to our local shop and around the estates.

The disabled parking spaces in town have no dropped kerb and either it is impossible to transfer directly out of a car into a wheelchair as the wheelchair is at too high a level if on the footpath or there is a 10-15m journey on the main road to get to a place where the wheelchair can get onto the footpath - it is too high to wheelie up.

I requested a meeting with a county councillor and the head of highways and took them around a couple of the problem areas. While they were in agreement with me that dropped kerbs were needed, the head of highways informed me that the council had completely axed the budget for disabled access (he called it DDA money) meaning that there is no money to do the work - surely this contravenes the public sector equality duty and the special duties of public bodies.

We are also in the process of having our local library extended to incorporate the council offices. A fellow wheelchair user was recently given a copy of the architects drawing which shows two emergency exits, one a low level one but both with steps! I emailed the contact on the plans and enquired about this, citing the Equality Act, article 9 of the UNCRPD and Part M of the building regs. I got a reply stating that the plans state a ramp but on closer examination of the plans there is no way of the ramp fitting the space - either there is no flat surface at the top or the ramp itself is very short and steep!

Building control did not reply to the access group's letters about the removal of the ramp at the Post Office.

However, there has recently been a positive and the planners for a new integrated road system in Bridlington have consulted with our group on the new plans and appear to be taking our advice and concerns seriously, including flat areas alongside on road parking. This is the first consultation of its kind in East Yorkshire and fits well with the public sector equality duty and has been very positive so far.

I have also had issues with government departments. When Mike Penning was disability minister I emailed him about the changes needed for disabled people to ensure that the Equality Act was embedded in employment and DWP processes and included my experiences of barriers where employers, wheelchair services etc didn't abide by the Equality Act. I got a reply several weeks later from an unknown person at the DWP stating the the Equality Act was the responsibility of the department for culture etc and nothing to do with the DWP!! To be honest the letter completely failed the Turing test: it was obvious that if it had ever been seen by a human that they'd scanned it for key phrases and pressed a button that gave a standard DWP statement. It did not answer any of my questions and my letter had not been read for context. If the Equality Act is not within the remit of the minister for disabilities then there is not point in anyone holding that post! It would also be of more use if the minister had experience of or at least an interest in disability issues and rights - the last few post holders have been a kick in the teeth for disabled people.

Conclusion: Both government and local authorities should be leading the way in removing barriers for disabled people and upholding the Equality Act and I just see the opposite happening where disabled people have barriers put up and not challenged and are then vilified for not being able to play a role in society.

The Equality Act should ensure that disabled people are able to access all opportunities with the same expenditure of effort and energy as able-bodied people (barriers of any description mean that disabled people have to expend so much more energy than able-bodied people at a time when they may have much less energy to expend) and are included in places of employment and leisure so that the sight of disabled people in work, public office, the shopping centres or leisure centres is no longer seen as a novelty.

*8 July 2015*

## **Scope – Written Evidence (EQD0158)**

### **Summary**

This submission is a response to the House of Lords Select Committee on the Equality Act 2010 and Disability into the impact of the Equality Act 2010 on disabled people.

Given that the Equality Act 2010 has a significant and wide-ranging impact on a number of different areas, Scope has identified three specific topics related to the provision of goods and services and employment, where disabled people face high levels of inequality in their day-to-day lives. These are:

- **Taxis and private hire vehicles (PHVs)**
- **Digital inclusion**
- **Insurance**
- **Workplace adjustments and flexible sickness absence**

### **Recommendations**

#### **Taxi and PHVs**

- The Government should adopt the Law Commission's proposals on taxis and PHVs that would improve implementation of the Equality Act 2010 in respect of disability.

#### **Digital inclusion**

- The Equality and Human Rights Commission (EHRC) should carry out a review of the impact of the Equality Act 2010 in ensuring that service providers are meeting their obligations in relation to digital accessibility. Specific funding should be provided for the EHRC to carry out this review.
- Some of the money already set aside by the Department for Business, Innovation and Skills to fund organisations who train people in digital skills should be specifically targeted at disabled people who have never or very rarely used the internet. Future funding or programmes around training in digital skills should specifically address the needs of disabled people.

#### **Insurance**

- The Financial Conduct Authority (FCA) should investigate whether disabled people have equal access to the market in terms of insurance products which fairly reflect risk. Appropriate steps should be taken if it is found that there is market failure or a lack of competition in the market.
- If an FCA investigation finds that the insurance market is competitive for disabled people, the Government should take steps to address lack of access to insurance products amongst disabled people. In particular attention must be paid to the solutions for disabled customers who find their insurance costs as objectively based on risk to extremely high or unaffordable.

#### **Workplace adjustments and flexible adjustment leave**

- The Government should provide more specific guidance on what constitutes a reasonable adjustment under the Equality Act to enable employers to understand their obligations better. The guidance should include flexible adjustment leave.
- Primary or secondary legislation should be introduced making specific provision for disabled employees to take flexible adjustment leave.
- The legal rights and obligations of the Equality Act 2010 for employers should continue to be promoted through the use of high quality advice and guidance from specialist disability employment advisers in Jobcentres.

### **About Scope**

Scope is a pan-disability charity. Scope exists to make this country a place where disabled people have the same opportunities as everyone else. Until then, we'll be here. We provide support, information and advice to more than a quarter of a million disabled people and their families every year. We raise awareness of the issues that matter.

## Introduction

1. Scope welcomes the creation of the House of Lords Select Committee on the Equality Act 2010 and Disability. The Equality Act 2010 has been an important tool in strengthening and harmonising disability discrimination law to create a more equal and fairer society for disabled people. However, more needs to be done to achieve this goal.
2. Scope is keen that the Committee explores areas where the Act could play a stronger role in promoting equal treatment and equality of opportunity for disabled people. Given that the Equality Act 2010 has a significant and wide-ranging impact on a number of different areas, Scope has identified four specific topics related to the provision of goods and services and employment, where disabled people face high levels of inequality in their day to day lives. These are:
  - **Taxis and private hire vehicles (PHVs):** Two thirds of wheelchair users report being overcharged for a taxi or PHV because of their wheelchair.<sup>437</sup> This demonstrates the need to look at the impact of the Equality Act 2010 in creating fair service provision for disabled people.
  - **Digital inclusion (in the context of service providers):** Twenty seven per cent of disabled adults have never used the internet compared to 11 per cent of the adult population overall.<sup>438</sup> To help narrow this gap, it is important to consider the role of Equality Act 2010 in ensuring service providers meet their obligations with regards to web accessibility.
  - **Insurance:** Twenty two per cent of disabled people feel that they pay more for insurance and a further 8 per cent said they had been turned down for insurance, of whom the majority felt that this was due to their disability or pre-existing health condition.<sup>439</sup>
  - **Workplace adjustments and flexible sickness absence (in the context of employers):** The gap between the employment rate amongst disabled people and non-disabled people has remained stagnant for over decade, hovering at around 30 per cent.<sup>440</sup>

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<sup>437</sup> Unpublished survey by the Department for Transport (2014)

<sup>438</sup> Office for National Statistics (2015) Internet Users, 2015 <http://www.ons.gov.uk/ons/rel/rdit2/internet-users/2015/stb-ia-2015.html#tab-Disability>

<sup>439</sup> Ipsos MORI (2013) Disabled people and Financial Wellbeing <https://www.ipsos-mori.com/Assets/Docs/Publications/sri-ews-scope-disabled-people-and-workplace-wellbeing-2013.pdf>

<sup>440</sup> Scope analysis ONS (August 2015) Labour Force Survey. <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/august-2015/table-a08.xls>



Too many employers are not implementing proper workplace adjustments to support their disabled staff members to stay in work – only 22 per cent of disabled people have had access to modified hours, compared with 48 per cent who felt that they were important to staying in work.<sup>441</sup> There is a need to explore the effectiveness of the Equality Act 2010 in enabling disabled people to maintain employment.

### Section One: Taxis and private hire vehicles (PHVs)

3. Taxis and PHV vehicles services are important services for many disabled people. Disabled people tend to use taxis and PHVs 67 per cent more than non-disabled people<sup>442</sup> and will therefore be disproportionately affected by issues relating to access.
4. Additionally, disabled people are often more reliant on taxis and PHVs. In some cases this is because public transport is inaccessible, limited or unavailable in their area; in other cases, travel by taxi or PHV may be preferable if someone's impairment causes them to become agitated in public environments (e.g. epilepsy or autism) or because they encounter negative attitudes in these environments.
5. For these reasons, taxis and PHVs feature prominently as an “extra cost” of being disabled.<sup>443</sup> Extra costs create further inequality for disabled people, for whom these costs average £550 per month.<sup>444</sup> For disabled taxi and PHV customers, these extra costs are likely to be exacerbated by the fact that overcharging is common. The Department for Transport has found that almost two in three wheelchair users report being charged more for a taxi or PHV because of their wheelchair,<sup>445</sup> driving up transportation costs for this group.

### Question 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?

6. The Equality Act 2010 contains a number of provisions that are designed to support disabled people in obtaining equal access to taxi and PHV services. These include provisions for disabled people with assistance dogs (**Sections 168 to 171**). There are also provisions to not make additional charges to passengers who use wheelchairs and to give these passengers the mobility assistance that is reasonably required (**Sections 165, 166**

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<sup>441</sup> Scope Living Standards Survey of 738 disabled adults, run between 28 August and 16 September 2013

<sup>442</sup> Disabled Persons Transport Advisory Committee (2001) Attitudes of Disabled People to Public Transport – a research study conducted for the Disabled Persons Transport Advisory Committee, [http://www.transport-research.info/Upload/Documents/200608/20060811\\_110503\\_45123\\_UG395\\_Final\\_Report.pdf](http://www.transport-research.info/Upload/Documents/200608/20060811_110503_45123_UG395_Final_Report.pdf)

<sup>443</sup> <http://www.scope.org.uk/get-involved/campaigns/extra-costs-commission>

<sup>444</sup> Scope (2014) Priced Out <http://www.scope.org.uk/Scope/media/Documents/Publication%20Directory/Extra-Costs-Report.pdf?ext=.pdf>

<sup>445</sup> Unpublished survey by the Department for Transport (2014)

**and 167)**, which are important in helping to ensure that wheelchair users are not discriminated when using taxis and PHVs.

7. However, the duties and provisions of the Equality Act 2010 are not fully reflected and supported by licensing law. The significant gaps in this area are discussed below.

## **Question 2: Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

8. The legal framework covering taxis in England and Wales is the Town Police Clauses Act 1847, whilst the Local Government (Miscellaneous Provisions) Act 1976 covers PHVs (and taxis to an extent as well). However, there are separate Acts for both taxis and PHVs in London (the London Cab Order 1934 and the Private Hire Vehicles (London) Act 1998) and PHVs in Plymouth (the Plymouth City Council Act 1987). Between this legislative framework and the Equality Act 2010, there are significant gaps which impact on access to taxis and PHVs for disabled people.
9. **One very significant gap is an obligation to stop when hailed.**<sup>446</sup> A survey by the Department for Transport has reported that this is an issue in London, where taxis often refuse to stop or subsequently refuse to take a wheelchair user.<sup>447</sup>
10. A second gap is the lack of sufficient conditions on issuing licences for drivers and vehicle operators:
  - **Disability Awareness Training:** As outlined above, two thirds of wheelchair users report being overcharged for a taxi or PHV because of their wheelchair. This type of issue and reluctance to stop when hailed could be reduced through compulsory disability awareness training. Only 93 local authorities currently have this as a prerequisite for taxi drivers and 75 for PHV drivers.<sup>448</sup> Compulsory disability awareness training would serve to increase understanding amongst drivers of their obligations regarding specific groups of disabled passengers as outlined in the Equality Act 2010.
  - **Compliance with the Equality Act 2010 as a condition of licence:** Taxis and PHVs have a duty to comply with the Equality Act 2010 in terms of service provision. However, compliance is not an explicit condition of licence and as such, many may be unaware of this requirement or do not consider it important. Making compliance

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<sup>446</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/314106/9781474104531\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314106/9781474104531_web.pdf)

<sup>447</sup> Ibid

<sup>448</sup> Local Government Association (2015) Taxi and PHV Licensing – Councillors' Handbook (England and Wales) [http://www.local.gov.uk/documents/10180/6869714/L15-87+Councillor+Handbook+-+Taxi+and+PHV+Licensing\\_06.pdf/c73bec4b-cd31-4bcd-be2c-f5fe3e87b4f4](http://www.local.gov.uk/documents/10180/6869714/L15-87+Councillor+Handbook+-+Taxi+and+PHV+Licensing_06.pdf/c73bec4b-cd31-4bcd-be2c-f5fe3e87b4f4)

with the Act an explicit condition of licence would raise its prominence and underline its importance.

11. There is also no legal requirement to display information about complaints procedures within vehicles. Currently, individuals do not always know how to seek redress if they have been overcharged or experienced discrimination when using a taxi or PHV.  
**Improving the complaints process would strengthen fulfilment of existing obligations under the Equality Act 2010.**

**Question 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?**

12. As public bodies, the licensing authorities for taxis and PHVs have a duty to eliminate unlawful discrimination and advance equality of opportunity for disabled people. Equal access to appropriate taxis and PHVs is a fundamental aspect of this.
13. 176 licensing authorities in England and Wales have a requirement for accessible vehicles in all or part of their taxi fleet.<sup>449</sup> However, two fifths (42 per cent) of licensing authorities in England and Wales do not have a requirement for accessible vehicles in all or part of their fleet.<sup>450</sup> Outside London, the proportion of taxis that are accessible is only 41 per cent.<sup>451</sup> This can make it harder for wheelchair users to access services from taxis and PHVs due to potential difficulties in sourcing accessible vehicles.
14. The responsibilities of licensing authorities to promote equality of opportunity and eliminate unlawful discrimination under the public sector equality duty is not reflected sufficiently in licensing law because authorities do not currently have the option to require operators with a large enough fleet to have a minimum requirement of accessible vehicles.<sup>452</sup> However, enforcing such a requirement in legislation would help to mitigate the challenges wheelchair users may experience in obtaining accessible vehicles.

**Question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

15. The Law Commission has made a series of recommendations<sup>453</sup> around changes to the law around taxis and PHVs. A number of these regulations relate specifically to disabled people's use of these services. Adoption of these legislative measures would significantly assist implementation of the Equality Act 2010 in this area:

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<sup>449</sup> Department for Transport (2013) Taxis and Private Hire Vehicles Statistics: England and Wales 2013 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/321277/taxi-private-hire-statistics-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321277/taxi-private-hire-statistics-2013.pdf) Data gathered from a survey where 305 out of 316 licensing authorities responded (97 per cent of licensing authorities)

<sup>450</sup> Ibid

<sup>451</sup> Ibid

<sup>452</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/314106/9781474104531\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314106/9781474104531_web.pdf)

<sup>453</sup> More information about the Law Commission's review of taxis and private hire vehicles can be found here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/314106/9781474104531\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314106/9781474104531_web.pdf)

- **Legislation be enacted that has the effect of requiring taxi drivers to stop when hailed by visibly disabled people;**
- **Licensing authorities should be obliged to make disability awareness training a condition of licensing;**
- **Government exercise standard-setting powers to make it a condition of licence for both drivers and operators that they comply with the provisions of the Equality Act 2010, specifically those that prohibit discrimination in the provision of a service;**
- **It be a legal requirement for information about how to make complaints to be displayed in vehicles.**
- **Government should permit – and licensing authorities impose – quotas for accessible vehicles available to large operators/dispatchers.**

## Section Two: Digital inclusion

17. As the provision of a service, the internet and access to it is covered under **Section 29** of the Equality Act.
18. Disabled people experience unequal access to the internet. This is seen by the fact that 27 per cent of disabled adults have never used the internet compared to 11 per cent of the adult population overall.<sup>454</sup>
19. Equal access to the internet for disabled people is important for a number of reasons. It will empower disabled people as consumers, by enabling individuals to access the best deals and offers which are commonly found online.
20. Internet access is also highly important for job seeking. Eight out of 10 jobseekers are now searching for their next job online<sup>455</sup> and demand for digital skills in the workplace is high, with 92 per cent of new jobs requiring internet skills.<sup>456</sup>
21. Use of the internet will support disabled people in accessing opportunities to learn online, a growing section of the education market – for example, FutureLearn, the UK's online university platform, has reached a million students signing up for courses.<sup>457</sup>

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<sup>454</sup> Office for National Statistics (2015) Internet Users, 2015 <http://www.ons.gov.uk/ons/rel/rdit2/internet-users/2015/stb-ia-2015.html#tab-Disability>

<sup>455</sup> Business Report (2015) Article on the rise in online recruitment solutions

<http://www.businessreport.co.uk/article/01179/online-recruitment-solutions-that-work-for-your-business>

<sup>456</sup> Statistic from UK Online Centre, *Start Something Useful* campaign <https://www.ukonlinecentres.com/learning-themes/jobs-skills/jobs-and-skills-toolkit>

<sup>457</sup> BBC (2015) Article on the rise in online courses through FutureLearn <http://www.bbc.co.uk/news/education-31533681>

22. Unequal access to the internet therefore both creates discrimination in the provision of a service in its own right and acts as a cause of wider inequality of opportunity between disabled and non-disabled people.

**Question 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?**

23. As provided by **Section 29** of the Equality Act 2010, it is unlawful for a service provider to neglect to provide a service to a person that is offered to other persons. In the context of disability, the Equality Act 2010 places a requirement on service providers to anticipate barriers faced by disabled people and remove these barriers (**Sections 20, 21 and 22**) putting in place reasonable adjustments and alternative means of communication where it is not possible for disabled people to overcome access barriers.
24. Accessibility of digital technology is a key issue in the effective implementation of the Equality Act's aims in this regard. Accessible technology is technology that disabled people can perceive, understand, navigate and interact with, regardless of their impairment.<sup>458</sup> For instance, a study by AbilityNet found that a series of leading price comparison websites were either difficult or impossible for disabled people to use as a result of poor accessibility features.<sup>459</sup> Therefore, it is important that steps are taken to enable the Equality Act 2010 to be fully implemented to ensure that web technology is accessible for disabled people.
25. In addition to inaccessible web content and technology, the Government's Digital Inclusion Strategy<sup>460</sup> identified poor digital skills as a key barrier for disabled people in using the internet. The high cost of equipment may also act as a barrier in the context of the extra costs disabled people face.

**Questions 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?**

**Question 4: Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

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<sup>458</sup> Barton, F. et al (2015) Digital Accessibility: A brief landscaping <http://www.citizenonline.org.uk/wp-content/uploads/digital-accessibility-report-a-pdf.pdf>

<sup>459</sup> AbilityNet (2012) State of the enation web accessibility reports: Price Comparison Websites [https://www.abilitynet.org.uk/sites/abilitynet.org.uk/files/State\\_of\\_the\\_eNation\\_Report\\_-\\_Price\\_Comparison\\_Websites\\_-\\_April\\_2012.pdf](https://www.abilitynet.org.uk/sites/abilitynet.org.uk/files/State_of_the_eNation_Report_-_Price_Comparison_Websites_-_April_2012.pdf)

<sup>460</sup> HM Government (2014) Digital inclusion strategy <https://www.gov.uk/government/publications/government-digital-inclusionstrategy/government-digital-inclusion-strategy>

26. 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.<sup>461</sup> Statutory guidance exists that outlines obligations for small businesses under the Equality Act 2010, covering the provision of services through a website.<sup>462</sup> However, it is not clear whether small businesses are aware of or in compliance with this guidance, whether it has broader application or whether it is enforceable (or merely illustrative) under the Equality Act.
27. The issue of whether greater clarity is needed is strongly connected to the question of how far service providers are meeting obligations and the reasons for failure to meet obligations. Scope recommends that this is considered as part of any review carried out by the Equality and Human Rights Commission (EHRC) (see paragraphs 28 – 31 below).

**Question 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?**

28. The EHRC’s powers include the power to conduct an inquiry into matters relating to equality and diversity, human rights or good relations between groups.<sup>463</sup> Scope has not found evidence of a review into the impact of the Equality Act 2010 in improving digital accessibility for disabled people having been carried out. **Scope recommends that such a review is carried out.** It is important because based on the limited evidence available, compliance with the Act appears to be inconsistent and because it is unclear what impact EHRC guidance has had in persuading service providers to improve their approach to web accessibility. The findings from such an inquiry would determine the enforcement action or legal clarification necessary.
29. Given that the EHRC has seen significant reductions to its budget in the last five years,<sup>464</sup> **Scope recommends that specific funding is provided for this review.**

**Question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

30. As outlined above, further legislative or non-legislative measures may be identified by an EHRC review into the impact of the Act, which underlines the importance of it taking place.

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<sup>461</sup> Barton, F. et al (2015) Digital Accessibility: A brief landscaping <http://www.citizenonline.org.uk/wp-content/uploads/digital-accessibility-report-a-pdf.pdf>

<sup>462</sup> Equality and Human Rights Commission guidance on the role of small businesses as service providers under the Equality Act [http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Old\\_Guidance/PDFS/Business/ea\\_as\\_a\\_service\\_provider.pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Old_Guidance/PDFS/Business/ea_as_a_service_provider.pdf)

<sup>463</sup> Ibid

<sup>464</sup> Government Equalities Office, Department of Culture, Media and Sport (2013) Comprehensive budget review of the Equality and Human Rights Commission [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/86430/Comprehensive\\_Budget\\_Review\\_of\\_the\\_EHRC\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/86430/Comprehensive_Budget_Review_of_the_EHRC_.pdf)

31. Given that the Government’s Digital Inclusion Strategy has identified poor digital skills as a key barrier, it is crucial that **some of the money already set aside by the Department for Business, Innovation and Skills to fund organisations who train people in this area is specifically targeted at disabled people who have never or very rarely used the internet. It is also crucial that any future funding or programmes around training in digital skills specifically address the needs of disabled people.**

### Section Three: Insurance

32. Insurance protects individuals against financial shocks, which is especially important for disabled people who have lower levels of wealth and savings than non-disabled people and who are more likely to be in debt.<sup>465</sup>

#### **Question 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?**

33. As set out in guidance by the EHRC<sup>466</sup> being refused insurance or charged a higher premium can constitute direct or indirect discrimination unless it can be objectively justified.
34. Research conducted for Scope by Ipsos MORI found that 22 per cent of disabled people feel that they pay more for insurance and a further 8 per cent said they had been turned down for insurance, of whom the majority felt that this was due to their disability or pre-existing health condition.<sup>467</sup>
35. The 2014-2015 independent Extra Costs Commission investigating the costs faced by disabled people found that the insurance industry many cases, did not take disability into account in pricing some types of insurance. However, the Commission also noted that translating percentages into people indicates that there are two and a half million disabled people who feel they pay too much and at least half a million unable to get insurance who attribute this directly to their disability.<sup>468</sup>

#### **Question 9; Could other regulatory bodies with a role in the effective implementation of the Equality Act 2010 play a more significant part?**

36. As noted by the Extra Costs Commission, concerns about the market can only be tested by investigation by a regulator with the powers to obtain evidence that may not be in the public domain. Such an investigation should have high priority, particularly given that

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<sup>465</sup> Ipsos MORI (2013) Disabled people and Financial Wellbeing <https://www.ipsos-mori.com/Assets/Docs/Publications/sri-ews-scope-disabled-people-and-workplace-wellbeing-2013.pdf>

<sup>466</sup> Equality Act 2010 Guidance for Service Providers Volume 2 of 3:  
[http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/service\\_providers\\_business.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/service_providers_business.pdf)

<sup>467</sup> Ipsos MORI (2013) Disabled people and Financial Wellbeing <https://www.ipsos-mori.com/Assets/Docs/Publications/sri-ews-scope-disabled-people-and-workplace-wellbeing-2013.pdf>

<sup>468</sup> Extra Costs Commission (2015) Driving Down the Extra Costs Disabled People Face: Interim Report:  
<http://www.scope.org.uk/Scope/media/Interim-report/Interim-report.pdf>

campaigning organisations representing other groups have raised similar concerns. For example, Macmillan has highlighted similar concerns for cancer patients and those who have recovered from cancer.<sup>469</sup>

37. As the regulator, the Financial Conduct Authority (FCA) should investigate whether disabled people have equal access to the market in terms of insurance products which fairly reflect risk. Appropriate steps should be taken if it is found that there is market failure or a lack of competition in the market.

**Question 11: Are there other legislative or non legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

38. If an FCA investigation finds that the insurance market is competitive for disabled people, the Government should take steps to address lack of access to insurance products amongst disabled people. In particular attention must be paid to the solutions for disabled customers who find their insurance costs as objectively based on risk to extremely high or unaffordable.

**Section Four: Workplace adjustments and flexible sickness absence**

39. Disabled people have unequal access to the labour market. Nine out of 10 disabled people are in work, or have worked in the past. Yet only 48 per cent of disabled people are currently in work compared to 79 per cent of non-disabled people.<sup>470</sup> **The gap between the employment rate amongst disabled people and non-disabled people has remained stagnant for over decade, hovering at around 30 per cent.**<sup>471</sup> Helping prevent disabled people from leaving the workplace unnecessarily through the implementation of appropriate workplace adjustments will be a vital part of addressing this. The Equality Act 2010 can take a strong role in changing this. Therefore we will consider the extent to which disabled people have access to workplaces adjustments and the ways in which discrimination and equality law can improve access to them.
40. Continuing under-implementation of these adjustments remains a significant barrier to disabled people interacting with the labour market in the same way as non-disabled people. This contributes to an overall lack of opportunity within the labour market for disabled people, as seen by the disability employment gap outlined above.<sup>472</sup> Therefore, it is important that the Equality Act 2010 addresses the full range of barriers to work that disabled people face, particularly access workplace adjustments and flexible working arrangements.

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<sup>469</sup> Extra Costs Commission (2015) Driving Down the Extra Costs Disabled People Face: Full Report <http://www.scope.org.uk/Get-Involved/Campaigns/Extra-costs/Extra-costs-commission/Full-Report>

<sup>470</sup> Scope analysis ONS (August 2015) Labour Force Survey. <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/august-2015/table-a08.xls>

<sup>471</sup> Ibid

<sup>472</sup> Scope analysis of Office for National Statistics, Labour Force Survey Five-Quarter Longitudinal Dataset, January 2013 – March 2014



**Question 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?**

**Question 4: Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?**

41. Under **Section 39** of the Equality Act 2010 employers have a duty to implement reasonable adjustments, including flexible working for disabled people. Most employers understand this legal obligation – 96 per cent of employers have a workplace adjustment procedure in place.<sup>473</sup> Despite this, too many employers are not implementing these policies when it comes to supporting disabled staff members to stay in work. There is a significant variation between the adjustments disabled people want and the adjustments that are put in place – only 22 per cent of disabled people have had access to modified hours, compared with 48 per cent who felt that they were important to staying in work.<sup>474</sup>
42. Failure to implement reasonable adjustments can lead to disabled people falling out of the labour market unnecessarily. Only 42 per cent of Employment and Support Allowance (ESA) claimants who had been in work in the last year were offered a reasonable adjustment by their employer before dropping out of the labour market. The importance of flexible working can be seen by the fact that 32 per cent of ESA claimants who had been employed in the last year said they would have been able to stay in work if they had been offered a reduction in their overall workload.<sup>475</sup> A further quarter said that a reduction in hours would have prevented them from leaving the labour market.<sup>476</sup>
43. Greater implementation of the Equality Act 2010 would have supported more of these individuals to remain in the labour market. **More specific guidance on obligations around workplace adjustment accompanying the Act would support employers to understand these obligations better.** This should include information on different types of workplace adjustment as well as the underlying principle of the law. It should also include information on good practice that goes beyond that prescribed under the Equality Act 2010, and support available to implement them- such as Access to Work. Not only would this provide a useful resource to employers, but it would put employees in a stronger position to negotiate with employers for greater flexibility at work. Dissemination of this information could take a number of forms, as discussed in paragraphs 46-49.

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<sup>473</sup> Business Disability Forum (2015) State of the Nation: Retaining and developing employees with disabilities [http://pelorous.totallyplc.com/media\\_manager/public/261/RETAINING%20DISABLED%20TALENT%20STATE%20OF%20THE%20NATION%20REPORT%202%20doc.pdf](http://pelorous.totallyplc.com/media_manager/public/261/RETAINING%20DISABLED%20TALENT%20STATE%20OF%20THE%20NATION%20REPORT%202%20doc.pdf)

<sup>474</sup> Scope Living Standards Survey of 738 disabled adults, run between 28 August and 16 September 2013

<sup>475</sup> Department for Work and Pensions (2015) Understanding the journeys from work to Employment and Support Allowance (ESA) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/436420/rr902-understanding-journeys-from-work-to-esa.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/436420/rr902-understanding-journeys-from-work-to-esa.pdf)

<sup>476</sup> Ibid

44. Given the importance of access to flexible working in enabling many disabled people to stay in work, legislation complimenting **the Equality Act 2010 should be made more explicit on what constitutes a reasonable adjustment in this area**. One workplace adjustment that would particularly benefit disabled people is **part-time sickness absence, or flexible adjustment leave**, which is for disabled people adjusting to changes or fluctuations in their condition.<sup>477</sup> There is an opportunity to make better use of legislation to implement this adjustment as a way to support disabled people to not fall out of employment.
45. Having the option of taking sickness absence on a part-time and temporary basis would give disabled people the flexibility they need to stay in touch with the workplace. Unlike sick leave, the individual is still working, but on a modified basis. Unlike part-time working, this change is intended to be temporary only – it is intended to help an individual “adjust” to a change in their condition. Many employers are already doing this on an ad-hoc basis. Making this an official form of absence – recognised by government, by HR professionals and most importantly, by employers – would prevent unnecessary sickness absence and help disabled people stay in work.
46. It is possible to interpret the Equality Act 2010 as making provision for adjustment leave in **Section 39** as part of an employer’s duty to make reasonable adjustments. However, this requires a high degree of interpretation, which makes it difficult for employers and non-legal experts to identify and implement. Part time sickness absence (other than a phased return to work) is not discussed in statutory guidance accompanying the Equality Act 2010.<sup>478</sup>
47. Therefore in the short term, **Scope recommends that the EHRC revises the guidance for employers on the Equality Act 2010 to include specific examples of flexible sickness absence policies**.<sup>479</sup>
48. In the longer term, **changes to legislation (whether primary or secondary) would make it easier for disabled people to negotiate periods of part-time sickness absence with employers**. This would be a powerful tool to help individuals stay in employment- giving disabled people the confidence that they are supported by and can cite specific legislation to take flexible sickness absence.

**Question 10: Are the current enforcement mechanisms available to private individuals (through Employment Tribunals, County Courts and, in Scotland, Sheriff Courts) accessible**

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<sup>477</sup> Scope (2015) Enabling Work: Disabled people, work and the UK economy

[http://www.scope.org.uk/Scope/media/Images/Publication%20Directory/Landman\\_Report.PDF?ext=.pdf](http://www.scope.org.uk/Scope/media/Images/Publication%20Directory/Landman_Report.PDF?ext=.pdf)

<sup>478</sup> Equality and Human Rights Commission (2015). What equality law means for you as an employer: working hours, flexible working and time off Equality Act 2010. Guidance for employers Vol. 2 of 7.

[http://www.equalityhumanrights.com/sites/default/files/publication\\_pdf/What%20equality%20law%20means%20for%20you%20as%20an%20employer%20-%20flexible%20working.pdf](http://www.equalityhumanrights.com/sites/default/files/publication_pdf/What%20equality%20law%20means%20for%20you%20as%20an%20employer%20-%20flexible%20working.pdf)

<sup>479</sup> <http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/guidance-employers>

**and effective for people with disabilities, employers and providers of goods, facilities and services?**

49. The introduction of employment tribunal fees on July 29th 2013<sup>480</sup> may have had a negative impact on the ability of disabled people to hold employers to account where they breach obligations under the Equality Act 2010. This can be seen in the fact that between Oct 2012 to Sept 2013 and Oct 2013 to Sept 2014, there was a 54 per cent decrease in the number of employment tribunals under the category of “disability discrimination”.<sup>481</sup>

50. As such, **the impact of the introduction of employment tribunal fees on the ability of disabled employees to challenge discrimination should be carefully monitored by the Government** to clarify the relationship between the introduction of employment tribunal fees and the decrease in the number of disabled people taking their claim to court. This is integral to ensuring that the Equality Act 2010 supports disabled people in relation to successful employment outcomes.

**Question 11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

51. As outlined above at paragraphs 37 and 41, Scope recommends the introduction of more specific guidance around obligations to make reasonable adjustments and in particular around part-time sickness absence or flexible adjustment leave as well as changes to primary or secondary legislation to make this explicit. Scope has also recommended at paragraph 43 careful monitoring of the impact of employment tribunal fees.

52. However, legislation and guidance can only effectively influence change if disabled people and employers are aware of it. Therefore **ensuring that disabled people and employers have access to high quality advice, support and guidance regarding the duties and obligations under the Equality Act 2010 is paramount to effective implementation of the Act.** Dissemination of advice and guidance regarding the Equality Act 2010 remains an issue: only 41 per cent of employers are confident they know where to find advice and guidance outside their organisation as it relates to workplace adjustments.<sup>482</sup>

53. Advice and guidance on the Equality Act 2010 is available from a number of different sources, including the EHRC. A very significant source of face to-face and telephone

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<sup>480</sup> More information about fees can be found here: <http://www.walkermorris.co.uk/employment-tribunal-fees-monday-29-july-2013>

<sup>481</sup> Commons Briefing papers SN07081 (2015) Employment Tribunal Fees

<sup>482</sup> Business Disability Forum (2015) State of the Nation: Retaining and developing employees with disabilities [http://pelorous.totallyplc.com/media\\_manager/public/261/RETAINING%20DISABLED%20TALENT%20STATE%20OF%20THE%20NATION%20REPORT%202%20doc.pdf](http://pelorous.totallyplc.com/media_manager/public/261/RETAINING%20DISABLED%20TALENT%20STATE%20OF%20THE%20NATION%20REPORT%202%20doc.pdf)

support is also available from Disability Employment Advisers (DEAs) in Jobcentre Plus, and as part of Access to Work.

54. Because of the important role that DEAs are intended to play in supporting disabled people and employers through advice and guidance, Scope is concerned that the number of DEAs in the UK has fallen.<sup>483</sup> Moreover, Scope's helpline regularly hears complaints from disabled people in work and employers who are told by DEAs that they cannot support anyone who is not claiming out-of-work benefits; however, this is not the case. The Government should address the fact that many DEAs do not fully understand this aspect of their role.

**55. Scope encourages the Government to work with Jobcentres to ensure that DEAs are clear on the full remit of their role. Strengthening and promoting the role of the DEAs is critical to increasing understanding of the Equality Act 2010 amongst disabled people and employers.**

*11 September 2015*

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<sup>483</sup> Hansard: HC Deb, 1 September 2014, c44W

Scope and Mind – Oral Evidence (QQ 52-59)

**Scope and Mind – Oral Evidence (QQ 52-59)**

[Transcript to found under Mind](#)

## **Scottish Disability Equality Forum – Written Evidence (EQD0167)**

Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers to equality and the promotion of independent living for people affected by disability.

We are a membership organisation, representing individuals affected by disability, and organisations and groups who share our values. Our aim is to ensure that the voices of people affected by disability are heard and heeded within their own communities and at a national and political level.

### **Response**

Before completing this response, SDEF polled its members, made up of individuals, organisations and Access Panels, with a shorter version of this consultation. We have used these to help develop our response.

### **General**

#### **1. Has the Act brought together all the other laws on discrimination and made them stronger?**

Members were divided on this matter. Many feel that the Act has not changed life for disabled people. It is felt that there are many difficulties which still exist for disabled people, for example:

- Transport not fully accessible
- ]Welfare Benefit cuts – cost of living is now higher
- Lack of access to buildings and homes
- ‘Accessible toilets’ – not all are accessible

However many of our members believe the Act has brought together all the laws on discrimination and made them stronger. Implementation of the Act varies and being interpreted wrongly especially the law on disability.

SDEF feels that whilst The Equality Act 2010 has strengthened disabled people’s rights, a lack of promotion and awareness around human rights for disabled people still exists. but their rights are not understood and more has to be done about this. The lack of communication/awareness raising around disabled people’s rights must be addressed for these rights to have their full impact across society. We must develop a consistent and perpetual dialogue between disabled people and public bodies to ensure rights and responsibilities meet with each other on a basic level.

**Before the Equality Act there was a separate law on disability.**

**Have things improved or not because disability is now only one of nine groups in the law?**

The majority of our members feel that the law on disability has been lost in the Equality Act. Disability discrimination is being challenged more than ever as many employers are not recognising disability on its own however within the context of the nine characteristics disabled people are losing out on their rights.

SDEF would like the rights and laws to be meaningful and communicated clearly so everyone can understand how to support disabled people equally.

## **2. Are there gaps in the law on treating disabled people equally?**

Our members feel strongly that disability should not be a characteristic on his own, but rather embedded across all in the Equality Act. It is felt that the law is not strong enough to allow disabled people to be equal.

Members suggest that the principle of equity not equality is a better pathway to fairness and justice than equal treatment for all groups.

Equity refers to the qualities of justness, fairness, impartiality and even handedness.

Equality is about equal sharing and exact division.

## **Making Changes**

### **3. Do people know about the sorts of changes that should be made to treat disabled people equally?**

The majority of our members believe that people don't know what is needed especially with regards to making reasonable adjustments. There is a lack of awareness and knowledge of what reasonable adjustments mean and what businesses and employers can do.

SDEF feel more awareness is needed in schools and workplaces to make them understand what reasonable adjustments mean and what they can do to treat disabled people equally.

### **How has this worked in transport, taxis, education and using sports grounds?**

Our members are disappointed that not enough has been done to improve access with transport, taxis, education and sports grounds. Members reported that there is still a large amount of work to be improved on, especially with staff attitudes towards disabled people. Should the law be made clearer about the changes that should be made?

Members believe that the law should be made clearer about the changes.

### **If yes, can you say how?**

Information should be accessible and available in various formats: Easy Read, Plain English, no jargon. More publicity needs to happen in the form of posters, TV / Radio campaigns and social media. Work with Disabled People Organisations to make sure the key messages are communicated clearly to disabled people.

### **What public bodies (like the Government and councils) should do**

### **4. Have public bodies (like the Government and councils) done what they should do to make sure people are being treated equally and fairly?**

Our members generally feel that public bodies haven't done enough and still feel disabled people are being discriminated against.

**Is there anything you have seen that shows they have done or not done this work?**

Aberdeen City Council has produced a medical exemption card for those taxi drivers who are allergic to dogs. This is not generally the case and refusals are common. Hospitals and Ambulance services must have awareness training and symbols to alert staff to the needs of the sensory impaired. Like everyone else, blind people have the right to read and use technology but there is little help from public bodies. Shared surface roadways are dangerous and planning permission to create these is not helpful.

They could have ensured that accessible parking provision, accessibility in general, etc. is a primary (and priority) consideration in all planning and building warrant applications and in all forms of service provision rather than an after thought.

**5. England, Wales and Scotland have done this in different ways. Is there anything you have seen that shows they have done this work better or worse in the different countries?**

The majority of members who responded were unable to compare, however SDEF feels that due to its smaller population relative to England and its separate legal system Scottish Government has more centralised control over disability matters. Our starting point is Scotland's National Action Plan (SNAP), a ready-made roadmap for action to improve disability rights. This Plan raises awareness and understanding of disability rights, and improves practices that affect disabled people in Scotland in important areas such as health, social care, housing, justice and safety. Placing disability rights at the centre of decision-making about priorities for public spending would help to prevent outcomes such as the negative impact of welfare cuts on the disabled.

**Checking what is happening**

**6. Lots of people in Government deal with the law on equality. How well do they work together?**

Yes there are many organisations working with the law on equality, however there is a long way to go to join up working and communications. By working together more consistent information could be communicated to wider groups and have a better understanding of the Equality Act and what it means to them and their stakeholders.

**7. How good has the Equality and Human Rights Commission been?**

Our members tell us that the Equality and Human Rights Commission is regularly responding to Equality and Human Rights issues raised. As it covers all protected characteristics and human rights it presumably has to be selective in where and how it effectively uses its resources. Some of our members have experienced poor advice due to this and feel their enquiry is being selected based on priority.



**Have they helped disabled people to be treated more fairly?**

Our members tell us that more assistance could be provided, especially when the person contacting them is in distress. More support could be offered in especially with inclusive communication, for example, the person may need face to face contact or additional support to communicate.

**8. Could other organisations that check things (like the Care Quality Commission checking services) do more to make sure disabled people are treated equally?**

SDEF feels that every organisation should be including disabled people in all aspects of decision making and ensuring disabled people are treated equally. By working with Disabled People Organisations, they can be fully supported in doing this.

**10. If people think they are being treated unfairly they can go to courts or tribunals. How well have disabled people been able to use these?**

SDEF has been working with the Criminal Justice Advisory Groups and it has been recognized that communication needs to be accessible to ensure disabled people understand the information given to them and the processes involved.

Cost is also a major issue for disabled people. Many disabled people cannot afford to take discrimination cases to court, and many are frightened of the costs that are associated with this.

**11. Are there any other ways we could make the Equality Act 2010 work better?**

SDEF and members suggest the following:

- Greater awareness raising of the Equality Act with the public and employers
- Provide financial support for challenging disability discrimination
- Continue consulting with disabled people

*25 September 2015*

## **Sense – Written Evidence (EQD0122)**

### **About Sense**

1. Sense is a national charity that supports and campaigns for children and adults who are deafblind. Deafblind people have a combination of sight and hearing impairments which cause difficulties in a range of areas including communication, access to information and mobility. For more information see: [www.sense.org.uk](http://www.sense.org.uk)
2. This response is based on analyses of enquiries received by our information and advice line, casework of our legal team and interviews with deafblind people.
3. Key points
  - Deafblind people still face discrimination in all areas of life;
  - Reasonable adjustments concept is not understood well,
  - Existing enforcement mechanisms are not accessible for deafblind people, they don't always achieve a remedy a person wants in individual cases and lack potential to have a wider impact on the advancement of equality for disabled people.

### **Question 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?**

4. The Equality Act 2010 has strengthened the legal framework in particular by clarifying the meaning of discrimination arising from disability, introducing protection from indirect discrimination and placing restrictions on employers from asking questions about health or disability before making a job offer. Disabled people can also experience discrimination based on the other protected characteristics they might have and so consolidating equality legislation helps to promote better awareness of their rights in other areas.
5. However a negative impact of disability becoming one of the protected characteristics is confusion about the way disabled people are protected from discrimination. Disability discrimination requires much more positive action to be taken and treats disabled people differently, rather than the same as everybody else. Deafblind people told us that they often have to explain that treating them like everybody else is not enough.
6. Deafblind people we consulted told us they do not feel the Equality Act 2010 has not improved their experience, quite the opposite, many pointed out that they feel the protection is weaker. Despite the existence of the legislation, deafblind people still struggle to get information in a format they need, they are very rarely offered communication support. Guide Dog owners told us they still are not allowed into some places, such as restaurants, shops, taxis and doctor surgeries.

### **Question 2 Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

7. Deafblind people told us that they feel there is a gap in the regulations about the design and production of goods. Although many goods, especially electronic devices, such as phones, computers or computer software have accessibility options built-in, there are too few of those. Moreover with the introduction of touch screens and touch buttons many goods have become more inaccessible for people with sensory impairments.

**Question 2. 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?**

8. Our casework and the interviews with deafblind people show that disabled people are not aware of what is meant by “reasonable adjustments”. The same applies to many private and some public sector bodies. Reasonable is understood as “reasonable for a person who is making a decision”, not reasonable in objective terms. Deafblind people might require interpreters, information in an alternative format or human support to guide them to access services. Deafblind people we support come across the following problems:
  - Being asked to pay for their interpreters;
  - Being told that a company made adjustments for other disabled people and therefore it is not reasonable to ask it to make adjustments for this particular individual;
  - Service providers saying it is not reasonable for them to provide an adjustment which would cost more than what they will get from a deafblind person for providing a service.
9. The adjustments deafblind people require may be quite costly, and therefore they often have to have an argument about whether or not it is reasonable to make a certain adjustment for them. Due to a poor understanding of the concept on both sides these arguments usually do not help to protect them from discrimination. There needs to be better explanation of how cost is taken into account in deciding what is reasonable. Although there is a lot of guidance on EHRC’s website we consider a service which could talk to both parties and help them come to a conclusion on what is reasonable would improve the situation significantly.
10. Deafblind people who need information in alternative formats told us that government departments and local authorities are the worst in making this adjustment. Public transport remains largely inaccessible for deafblind people, partially because some adjustments, such as the introduction of audio or visual announcements, costs a lot and will not be covered by the reasonable adjustments duty.

**Question 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?**

11. The general equality duty can be very effective in ensuring the impact of decisions on disabled people is considered, as it is possible to dispute the decisions when this has not been done. Some of those decisions could potentially have a very negative impact on deafblind people<sup>484</sup>.
12. Specific equality duties are not helping to advance equality for disabled people. The specific equality duty should help public bodies to take proactive steps to comply with the general equality duty, however the current requirements make specific duties weak. Publishing information and setting an objective is too little. The duty does not require engagement; detailed plan and objectives can be in relation to one of protected characteristics. So there is always a risk that a public body will not have objectives specifically aimed at advancing equality for disabled people for many years.

**Question 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?**

13. Deafblind people we spoke to felt the enforcement mechanisms are not accessible and easy to use, and because of this The Equality Act often fails to offer effective protection from discrimination. The Equality and Human Rights Commission does not offer the same level of support as the Disability Rights Commission did. Disabled people feel like disability is lost amongst the other protected characteristics.

**Question 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?**

14. We believe other regulatory bodies could play a greater role in making sure organisations comply with the Equality Act. The government should consider establishing a Discrimination Ombudsman service or giving powers to existing adjudicators over matters related to the Equality Act in their area.

**Question 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?**

15. Many deafblind people feel like it is left up to them to enforce the Equality Act if they have been discriminated against. When the matter is about access to services the majority of people prefer to walk away and find a service somewhere else. Court proceedings seem to be complicated, inaccessible and costly for them. Many

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<sup>484</sup> See for example *R (W and Others) v Birmingham City Council* [2011] EWHC 1147

deafblind people supported by Sense will require a high level of support to access court proceedings, which most of them do not have. When denied access to services, individuals usually will aim to get a quick resolution, the opportunity to put their views across, and find a solution which would enable them to access service or make it at least easier to do so. In one case where we supported deafblind people at the employment tribunal, they just wanted to get their job back. Unfortunately too often court or even tribunal proceedings don't lead to these remedies. And although compensation can be significant, they are often not sufficient enough to act as a real deterrent.

16. There is a lack of alternative dispute resolution procedures for discrimination cases in service provision at current time and employment tribunals have become very much like a court. Disabled people don't always have the resources to pay for legal advice and are not always comfortable standing up against a team of barristers on the other side. Although EHRC can offer a reconciliation service, none of the people we spoke to have been offered this type of help when they contacted EHRC about the incidents of discrimination they experienced. Sense believes there is a need in more accessible, user friendly and quick mechanism for resolving discrimination disputes related to access to goods and services.
17. We believe there is a limit to what cases brought by individual people can achieve. The impact has been weakened by the removal of Employment Tribunal's power to make wider recommendations, which makes the framework even weaker. Although the EHRC has power to bring strategic cases or intervene in proceedings, the exercise of those powers in our view have not achieved outcomes for deafblind people since The Equality Act 2010 has been in force.
18. Sense also believes that existing time limits for bringing a discrimination claim in the county court or tribunals is too short. It is challenging for people who need support to access information to gather all the information they need and get advice in such a short time. Deafblind people who require interpreters with qualifications, such as hands-on British Sign Language or Deafblind Manual usually have to wait some time before getting an appointment with solicitors or advice agencies. Sense's legal team, which supports deafblind people with discrimination cases, often sees people who seek help at the last minute. In our view extending time limits would significantly improve chances for getting redress for many deafblind people.

**Question 11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

19. We believe that the greatest problem with the Equality Act is the lack of awareness among individuals and organisations about their duties. 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. Despite this, deafblind people tell us that these “little” things remain a big problem for them. Guide dog owners are still denied access in some places, including taxis. We believe these things happen largely because there is lack of awareness of what the Equality Act says. Many organisations have not thought what they need to do as employers or service providers to ensure they comply with the Act. We believe much more work needs to be done to raise awareness.

20. We are also concerned that the equality legislation is increasingly regarded as red tape or a bureaucratic burden rather than something that has potential to significantly improve peoples’ lives and build more coherent society.

*4 September 2015*

## Sheffield Citizens Advice and Law Centre – Written Evidence (EQD0102)

1. I am the Equality Rights Supervisor at Sheffield Law Centre (now Sheffield Citizens Advice and Law Centre)<sup>485</sup>. I advise and represent clients affected by discrimination in the field of goods, facilities & services (GFS).
2. This response therefore focuses on Question 10 – whether the current enforcement mechanisms available to private individuals are accessible and effective for people with disabilities, employers and providers of goods, facilities and services.
3. Sheffield Law Centre was part of the original project, funded by the Disability Rights Commission (DRC), to promote awareness of rights under the Act and to assist with the consequent casework.
4. In evidence to the Select Committee considering the proposed Equality Bill in 2008<sup>486</sup>, I stated,

*“This post was formerly funded by the Disability Rights Commission in partnership with the Law Centres Federation, purely to focus on GFS disability discrimination cases. It was clear that people were finding their way to enforce their rights in the employment context (albeit with difficulty) but only minimally in the GFS field. Very few cases ever reached the courts and those in the higher courts are in single figures.”*

5. I identified the principal obstacles to people enforcing their rights in the GFS field as:
  - 1) *Lack of awareness of their rights*
  - 2) *Difficulties related to disability in carrying through the level of preparation and stress in taking on a court case.*
  - 3) *Actual costs in county court litigation compared to tribunals, where parties bear their own costs*
  - 4) *The risk of overwhelming costs from court litigation, wholly outside the scale of money experienced in practice by individuals.*
  - 5) *The perception of the court - which many people still think of as a place of punishment*
  - 6) *Variability and unpredictability of the likely approach of judges who are not experienced in discrimination cases.*
  - 7) *The fact that individuals are often reacting (e.g. to a dismissal) in employment cases, whereas generally GFS cases require positive action.*

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<sup>485</sup> Sheffield Law Centre merged with a number of advice centres in 2014 to become Sheffield Citizens Advice and Law Centre

<sup>486</sup> [www.publications.parliament.uk/pa/cm200809/cmselect/cmworpen/memo/equbill/eb2202.htm](http://www.publications.parliament.uk/pa/cm200809/cmselect/cmworpen/memo/equbill/eb2202.htm)

8) *Awards are so low that neither legal aid [certificates] nor conditional fee arrangements are generally available for GFS cases.*

9) *Very few solicitors are experienced in, or willing to take, GFS cases.*

6. I also stated that:

*“The consequent lack of experience of the DDA amongst solicitors, advisers, organisations of disabled people and the courts means that few cases are reported in the media. In turn, members the public have little understanding of what is and what is not required by the DDA, despite a generally high level of awareness of its existence.*

*In this respect, awareness of discrimination law (especially the DDA) reflects awareness of the Human Rights Act: understanding of the actual framework of rights is still far lower than the level of misconceptions. This does damage to the validity of the legislation - to the extent that popular stories of people claiming “discrimination” and “human rights” are seen as something that doesn’t apply to “ordinary people”. Given the large proportion of the population who are protected by the DDA (an estimated 20%), further work clearly needs to be done to bring home the reality of everyday rights to those who feel they are unprotected.”*

7. I concluded:

*“I believe the public benefits from seeing actual cases reported in the media. There need to be more cases brought before the courts and positive stories told in the media. These need not be ground-breaking legal battles, just ordinary peoples’ stories of individual needs.”*

8. To a large extent, this remains true. Whilst numbers in the employment tribunals held up - at least until the reduction in legal aid and introduction of tribunal fees – the number of cases in the county court remains low. The barriers to enforcing unlawful discrimination remain very high. A generalised awareness of equality law exists but there is still little understanding by service providers of what they have to do in practice. Few solicitors in private practice are prepared to run discrimination cases.

9. Since then, my work at the Law Centre continued under the Equality Act 2010. The EHRC continued grant funding initiated by the DRC, albeit with some administrative difficulty.

10. In addition, we won legal aid contracts in the newly defined “disability discrimination” sub-category. This meant we could advise and assist eligible members of the public and could obtain legal aid certificates for representation where the merits of the case justified it.

11. In 2012, the Government removed the EHRC’s power to fund voluntary sector organisations like ours. We also lost our legal aid funding in April 2013 after LASPO, when the vestiges of legal aid for discrimination cases were reserved to the mandatory



telephone gateway and the three national firms that could tender to provide this advice. As a local law centre, we were too small an organisation to take on a national contract.

12. Following the loss of these key sources of funding, we were fortunate to retain some funding from Sheffield City Council specifically for discrimination advice. In addition we ran a few cases on low-budget conditional fee agreements.
13. Throughout, our aim was to run “strategic cases” – i.e. to consider how best to bring out wider benefits for society and not just for the individual concerned. The following are some examples of cases I have worked on at the Law Centre and are intended to illustrate our approach in advancing the law:

#### **Royal Bank of Scotland installs wheelchair access after legal action**

14. In Royal Bank of Scotland Group v Allen, we represented a teenager who used a wheelchair. The main branch of the Royal Bank of Scotland was inaccessible as both entrances were up steps. We helped the client bring a claim in the county court and this escalated when the bank resisted. The court ordered an expert surveyors’ report, which the bank was required to pay for. The bank indicated it would not improve its access even if the court found against it, so the court ordered an injunction requiring it to carry out the necessary works identified by the expert report. This case was ultimately funded by the EHRC.
15. The bank appealed unsuccessfully to the Court of Appeal.<sup>487</sup>
16. This was the first time a court had ordered an injunction requiring changes to physical features. The Court of Appeal set out the steps that courts must take when considering a reasonable adjustment case. The Court also confirmed that the test of what comprises a reasonable adjustment is to be decided objectively by the court and is not just a review of the subjective decision of the service provider.
17. The case gained considerable publicity and the consequent reporting of it assisted the negotiation of many other access improvements by Law centres and other activists all over the country.

#### **The anticipatory duty and provision of evidence**

18. The case of Finnigan v Northumbria Police<sup>488</sup> arose from a police drugs raid on a profoundly deaf man whose first language was BSL. The police involved knew him personally and knew him to be deaf but did not engage interpreters.
19. I worked on this case with colleagues at Newcastle Law Centre, something which was assisted by links that LCN had fostered throughout the network. Although the case ultimately failed for the individual client, the Court of Appeal set out an important judgement on the anticipatory duty to make reasonable adjustments and on the correct application of the burden of proof.

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<sup>487</sup> Royal Bank of Scotland Group Plc v Allen [2009] EWCA Civ 1213

<sup>488</sup> Finnigan v Chief Constable of Northumbria Police [2013] EWCA Civ 1191

20. This was a case where the transcript of proceedings revealed the difficulties faced by the court, individuals and representatives when grappling with provisions of the DDA and EA. The trial judge went wrong by losing sight of the anticipatory nature of the duty.
21. The Court of Appeal’s judgement clarified that the court must first identify the policy, practice or procedure (PPP under the DDA, or provision, criterion or practice (PCP) under the EA) before determining what adjustments were reasonable. The duty was on the public body to provide the court with evidence of the PCP and of the adjustments made to it. Arguably, the same will apply to any service provider.
22. On the burden of proof, the Court of Appeal made clear 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 to the defendants”*
23. The court also held, for the first time, that BSL is a separate language in its own right.
24. This case was funded by legal aid.

#### **Court interpreters**

25. In a related case, the client’s appeal was heard soon after the court of Appeal’s decision in Finnigan. Embarrassingly, the court service failed to book BSL interpreters for the client’s appeal hearing, due to the difficulties with the outsourced interpreting contract. The court service agreed to pay £500 to the client plus the wasted legal costs.
26. In the wake of both of these cases, the police force agreed to review its procedures for engaging BSL interpreters.

#### **Thomas Cook and package holidays**

27. We assisted Mrs Campbell in two cases<sup>489</sup>. In both, Thomas Cook failed to make very simple adjustments. In one case, staff required her to stand for a long period in a queue when they could have found her somewhere to sit. In the second, staff failed to arrange accessible transport.
28. Mrs Campbell pointed out that these package holidays provide a basic and popular holiday for thousands of older or disabled people every year, so the need to make such adjustments affects very many people.
29. However, Thomas Cook raised a number of legal issues about the territorial extent of the Equality Act 2010 outside the geographical limits of England and Wales, the interplay with the EU Mobility Regulation<sup>490</sup> and the Montreal Convention, which may prevent a discriminating service provider from having to pay damages in some air travel cases. These were issues where there was no existing authority.

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<sup>489</sup> Campbell v Thomas Cook Tour Operations Ltd [2014] EWCA Civ 1668 and case 2YK74402, Sheffield County Court

<sup>490</sup> Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the Rights of Disabled Persons and Persons with Reduced Mobility when Travelling by Air

30. The holiday company was ultimately unsuccessful in both appeals and Mrs Campbell received the damages she was owed in both cases. In addition, she has taken her custom elsewhere.
31. These two cases were run with the benefit of legal aid. Mrs Campbell had a third holiday case after LASPO came into force, when we could no longer obtain legal aid. This led to particular difficulties getting advice and the claimant never got formal advice on this third case.
32. First, the mandatory telephone gateway was inaccessible to the claimant, who does not use a telephone for disability-related reasons. On a threat of judicial review<sup>491</sup>, the operators relented and agreed to pass her case to the advice providers. However, the remote advice provider required her to provide detailed written statements of case before offering any advice. In the end, Mrs Campbell did not hear anything more from the advice provider and gave up at that point.

### **Concessionary travel and mobility passes**

33. In this PSED case, we represented two disabled clients in a challenge to a decision of South Yorkshire Integrated Transport Authority to cut the discretionary element of concessionary travel<sup>492</sup>. This meant a reduction of early morning (before 0930) travel for disabled people on buses trams and trains across South Yorkshire.
34. The PSED was the sole ground of challenge. The complainants argued that the elected members of the Authority had not been briefed on – and had therefore not taken into account – the legal duties in the PSED in the same way that they had been briefed on their other legal duties. This made the decision defective, notwithstanding that all the elected members had a generalised understanding of equality and a general appreciation of the difficulties affecting their own disabled constituents.
35. Underlying this failure was a sense that the Equality Act was merely a statement of good practice and easily complied with as long as officers and members did their job honestly and fairly.
36. This case came about because Sheffield Law Centre had good contacts with community organisations and was able to react promptly to the decision. We put a detailed letter before action to the Authority so that the case settled by agreement shortly after the claim was formally issued in the High Court. The settlement benefited all 34,893 disability pass holders across South Yorkshire as well as a further 230,385 older people's pass holders.
37. Most significantly, the nature of the challenge meant that the Authority and its officers became much more alert to the need to comply with the PSED and practical steps as to how it was to be done. Since then, advice on the compliance with the Equality Act has

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<sup>491</sup> Sheffield Law Centre still had a legal aid contract in public law.

<sup>492</sup> The English National Concessionary Travel Scheme allows for free concessionary travel between 0930 and 2300 on buses. Local transport authorities have discretion to fund enhancements, such as early morning travel or other modes of transport.

become a standard part of reports to the Authority, with the same status as advice on other legal requirements.

#### **Other cases**

38. In other cases, we have been able to promote positive change for the wide public as a result of litigation action.

#### **ESA sanctions**

39. In a case involving ESA sanctions, the DWP amended its practice by issuing improved guidance<sup>493</sup> to decision-makers, requiring them to take better account of the ways disability affects ESA claimant

#### **Post office account statements**

40. In a case involving payment of social security into post office accounts for claimants with no bank account, the Post Office accepted the need to provide statements at more frequent intervals for some people with mental health problems.

#### **Sheffield City Hall**

41. A case on physical access for wheelchair users led to a range of work improving access at Sheffield City Hall and some positive publicity was arranged in conjunction with the manager.<sup>494</sup>

#### **Discrimination in the Scouts**

42. A case against the Scout Association gained publicity in the national press<sup>495</sup> after an autistic boy was excluded from his local scout group. Following the case, we invited the County Commissioner to consider how the good practice that existed in other local scout groups could be shared so as to avoid such cases in the future.

**Douglas Johnson**

**Equality Rights Supervisor**

**Sheffield Law Centre**

*4 September 2015*

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<sup>493</sup> Decision-makers guidance Memo DMG 2/14

<sup>494</sup> <http://www.thestar.co.uk/news/local/wheelchair-user-wins-city-hall-access-battle-1-4399690>

<sup>495</sup> e.g. <http://www.dailymail.co.uk/news/article-2765357/Autistic-boy-11-banned-Boy-Scout-significant-health-safety-risk-wins-landmark-legal-battle.html>

## **Signature – Written Evidence (EQD0066)**

1. This evidence concerns the effectiveness of the Equality Act in eliminating discrimination against people who are deaf, deafblind or have a hearing loss and whose only or main language is British Sign Language (BSL).
2. Signature is a charity that campaigns to improve the quality of communication between hearing and deaf and deafblind people in the UK. We are the leading awarding body for nationally recognised qualifications in BSL and other deaf communications. We regulate communication and language professionals via the National Registers of Communication Professionals working with Deaf and Deafblind People (NRCPD).

### **Evidence**

3. The issue of access to education, employment, health, information and services in BSL concerns both disability and language. BSL arose as a form of communication between people who are now deemed to have a protected characteristic. But it is also a language of a cultural and linguistic minority.
4. BSL is indigenous to the UK. It is the only or main language of thousands of people. Numbers vary; 15,000 claimed it as their main language in the 2011 Census but the IPSOS Mori GP Patient Survey 2009/10 estimated 125,000 adults and 20,000 children.
5. Despite this, the government has not ratified the European Charter for Regional or Minority Languages in respect of BSL. It has done so for Cornish, which less than a thousand people claimed as their first language in the 2011 Census.
6. People whose only or main language is BSL continue to be treated less favourably than people whose main or only language is English. They are routinely not provided access to public and private services and information in their own language. For example
  - a. in compiling [our evidence for the Political and Constitutional Reform Committee's 2014 inquiry into voter engagement in the UK](#), we found there was no information in BSL about voting on any of the websites of the political parties, the Electoral Commission or Parliament;
  - b. of the 878 videos on the NHS Choices website, around one per cent are available in BSL and very little of the information on gov.uk is available in BSL;

- c. whilst an increasing number of companies provide customer services in BSL via video relay, and [contactScotland](#) has opened up Scottish public services to BSL users, there are currently no UK Government services that provide access in BSL; and
  - d. reports such as [Sick Of It](#) by SignHealth highlight this discrimination and its negative impact on the person, public services and wider society.
7. Such discrimination is illegal under the Equality Act as someone who is deaf, deafblind or has a significant hearing loss is considered to be disabled. But the Human Rights Act also prohibits discrimination on the grounds of language.
8. Whilst people whose only or main language is BSL are able to challenge such discrimination via various legal mechanisms, in practice they are not accessible due to the time and money it takes to bring a case. In the face of discrimination they are effectively left to fend for themselves.
9. However, the situation is improving. For example, the recently published NHS England accessible information standard, which comes into force in July 2016, requires all providers of NHS and publicly funded adult social care to proactively identify, record, keep updated, flag and meet the communication needs of patients and service users (and carers and parents) who are disabled or have a sensory loss.
10. We therefore do not think any new legal mechanisms are required to challenge this discrimination. They already exist and are slowly leading to positive change. But something is needed to increase the pace of that change.
11. The government should
  - a. ratify the European Charter for Regional or Minority Languages in respect of BSL; and
  - b. establish a British Sign Language Commissioner to promote and facilitate the use of BSL so it is treated equally with English, with a role in making sure public and private organisations meet their legal obligations under the European Charter,

Signature – Written Evidence (EQD0066)

the Equality Act and the Human Rights Act with respect to BSL and the people who use it.

*3 September 2015*

Rachel Smalley, Local Government Association, Housing Law Practitioners Association,  
Department for Communities and Local Government – Oral Evidence (QQ 131-140)

**Rachel Smalley, Local Government Association, Housing Law Practitioners  
Association, Department for Communities and Local Government – Oral  
Evidence (QQ 131-140)**

[Transcript to be found under Department for Communities and Local Government](#)



## Carol Smith – Written Evidence (EQD0072)

Written by Carol Smith acting as an individual on behalf of my son.

### 1, Background.

I have a son who is 13; he has Down's Syndrome.

He has a love of performing and drama. He has successfully attended several different mainstream drama groups.

### 2, Issue with my son being discriminated against

In April this year I approached a local mainstream drama group expressing an interest in my son joining. My email was very short, here is an extract.

*3, "My oldest son has Downs's Syndrome. He is very committed to any acting group that he has been in, has loads of stage presence, can learn lines and choreographed dances. He does however have a disability and will never reach the standards of the other children in your group. If he were to join how would you ensure he is treated fairly despite his disability. I see that being in your shows depends on audition, talent and commitment. He would certainly have the commitment but would fall short every time on the other two specifications. I am hoping that this wouldn't mean that he was excluded from all your productions. Do you have an Equal Opportunities Policy and/or a SEN/Inclusion policy? If so please could I have a copy?"*

**4,** The drama group sent a very negative response, mainly outlining all the reasons why their group was not suitable for my son. It was clear from the email that they didn't really want my son to join. Here are some extracts from the Drama group's response.

*5, "For information we don't currently have any members with a disability. This isn't a conscious decision but one that has arisen purely out of circumstance."*

*"We don't have any wheelchair access, the rehearsal room is up a flight of stairs and there is no disabled toilet which makes a physical disability impossible to manage."*

*"We would not be able to offer any additional support during the workshops due to time limitations for the facilitators and space in our rehearsal premises."*

*"My main concern would be whether your son would be able to work at the pace of the rest of the group without any additional support?"*

*"Our facilitators are a mixture of volunteers and professionals. Not all therefore will be used to working with children with a disability."*

*"Our helpers and chaperones are also volunteers and wouldn't necessarily be used to having children who may require some additional support."*

*"We do not have an Equal Opportunities policy or SEN inclusion policy."*

**6,** I replied quoting the Equality Act and pointing out that they should by law make reasonable adjustments to enable my son to participate in their group. I also made it clear that I felt they were discriminating against my son because of his disability.

**7,** They replied, this time there was a change in the tone of the email. Sadly, the end paragraph was, I felt, negative.

*“I am sure that you appreciate that whilst [NAME REDACTED] is very welcome to apply to join xxxx his membership is not guaranteed. His application will be successful based on capacity to accept new members and all parties being assured that [NAME REDACTED] needs can be met along with the needs of all the members in a manner that is agreeable to all.”*

**8,** I replied with:

*“I am a little confused by your closing paragraph and hope that you could explain a little bit more. Assuming that you are accepting new members, the only criteria that I can see on your website is age. There appears to be no other criteria for joining your group. The paragraph above indicates that you would operate an alternative entry criteria based on [NAME REDACTED] disability. Please correct me if I am mistaken in this. I take on board that children have to attend 50% of workshops to be able to audition; [NAME REDACTED] would fulfil this requirement if he decided he wished to be part of your group so that wouldn’t be an issue. Without doubt, [NAME REDACTED] needs could be met, as they have been at Attleborough Players, Total Ensemble and West End Experience; all groups that [NAME REDACTED] has successfully been a part of.”*

**9,** I had no reply, so I emailed again asking for them clarify your membership procedure. Still nothing so I asked a friend to email asking about the membership procedure. She got a response within two hours and was told exactly what their website states. When they did eventually reply to my email (over two weeks later) they did not answer my question.

**10,** A meeting was set up with me and the drama group. I asked them about the membership procedure; interestingly what I was told differed from their website and what my friend was told.

Their website states *‘Applications for membership in September will be taken from July. The membership application form will be available to download here from July.’*

That is also what the drama group told my friend in their email to her. They even went as far as adding:

*“I have been sent many requests for membership so I suggest you apply early in July. It will be first come first served.”*

I was told not to fill in the application form and that they gave places out based on when potential new members first expressed an interest. This contradicts their website and what my friend was told.

I was told to just wait and see if my son got a place.

**11,** Finally on 17<sup>th</sup> August I had an email to say my son had a place.

## **Answers to your questions**

**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?** In this case the Equality Act most certainly helped. There was a clear case of discrimination against my son. Being able to quote the Equality Act I feel helped persuade this group that they should not discriminate against my son.

**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?** It is apparent from the discriminative remarks that this drama group initially made that they were not aware of their duty to make reasonable adjustments

**4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?** Yes. The information on what reasonable adjustments means is not clear. The drama group had made assumptions that physical access would be an issue for my son. The drama group initially didn't attempt to find out more about more about my son or how other groups had successfully included him. Had they of asked to meet us or even phoned us we could of discussed my sons additional needs and the drama group would then of been in a position to decide what reasonable adjustments were required.

**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?** YES. I am aware that the drama group went to their governing body NODA (National Operatic and Dramatic Association). The drama group told me that NODA was unable to offer any advice on inclusion/discrimination. This is not acceptable given that one of the three 'aims' that NODA has is to 'Provide leadership and advice to enable the amateur theatre sector to tackle the challenges and opportunities of the 21st century.' NODA should have held the relevant up to date information on the Equality Act and they should have been in a position to provide up to date relevant information and advice. They could also have information on hand to advice amateur drama groups on how to include people with disabilities and what sort of reasonable adjustments should be made.

*3 September 2015*

## **Thomas Pocklington Trust – Written Evidence (EQD0099)**

Thomas Pocklington Trust is pleased to respond to the House of Lords Select Committee on the Equality Act 2010 and Disability Committee call for evidence.

Thomas Pocklington Trust is a registered charity which offers people who are blind, partially sighted or have sight loss the support they require to lead an independent life, based on their individual requirements.

We believe that the Equality Act 2010 is an important piece of legislation and are concerned that people with disabilities continue to face day to day discrimination irrespective of its existence. Given our role with people who are blind, partially sighted or have sight loss, we wish to focus on four issues which affect people in those circumstances.

1. Communication is a barrier faced by many who are blind, partially sighted or have sight loss. Reading standard text or navigating websites can be difficult or impossible and this ranges across all aspects of an individual's life from education, to employment, to leisure and social activities, to consumer goods and services, and to health and social care provision. Organisations should recognise an individual's communication preferences and be able to meet them. There are some good examples and the introduction of the new NHS England Accessible Information Standard (1) is to be applauded. But should it have been necessary given the Equality Act 2010? Does its introduction signal the need for further action to strengthen the Equality Act 2010?

Additionally, with regards communication, we are aware of issues experienced by those using public transport where audible announcements are not available or are turned off by transport staff. This makes navigating the external environment much harder for people who are blind, partially sighted or have sight loss who, research shows, feel more unable to leave their homes than their sighted peers (2, 3).

2. Assistance dog users face discrimination in accessing services, despite the Equality Act 2010. A report in July 2015 from Guide Dogs for the Blind Association (4) revealed that 75 per cent of all assistance dog users surveyed have been refused access to services at some point because they had an assistance dog with them. Taxi refusals were the most frequent type of refusal for guide dog owners, with this being experienced by 44 per cent of all those who had encountered at least one refusal within the last year. The most commonly cited reasons were religious or cultural reasons, concerns the guide dog would shed hair, be dirty, or damage the car in some way, allergies, and simply stating 'I don't carry dogs'. The legislation is there to prevent these instances from happening but discrimination still occurs.
3. Vision rehabilitation services offer people who are blind or partially sighted or have sight loss opportunities to learn new, or adapt existing, daily living skills to manage their disability. Re-ablement, of which vision rehabilitation is one element, has been shown to offer people effective support (5) yet research commissioned by Thomas Pocklington Trust (6) found that a quarter of those services inappropriately required people who were blind, partially sighted or had sight loss to have a Fair Access to

Care Services (FACS) assessment to determine their eligibility to receive the service. This would seem contrary to the Equality Act 2010.

It is well known that people who are blind, partially sighted or have sight loss are at a higher risk of requiring emotional support than their sighted peers (3) yet the Pocklington commissioned research showed that vision rehabilitation services are less likely to address those needs than issues related to mobility, independent living skills, aids, adaptations and equipment (6). This may reflect poor understanding of the impact of disability. It results in a lack of services.

4. We believe more needs to be done to promote the requirements of the Equality Act 2010 to all service providers, including local government and the NHS, and educational establishments among others. We also believe that more needs to be done to educate and empower people to better understand their rights under the Equality Act 2010 and the actions they may take.

References:

- 1) <http://www.england.nhs.uk/ourwork/patients/accessibleinfo-2/>
- 2) <http://www.rnib.org.uk/knowledge-and-research-hub/research-reports/general-research/sight-loss-UK-2013>
- 3) <http://www.rnib.org.uk/knowledge-and-research-hub/research-reports/general-research/circumstances-of-people-with-sight-loss>
- 4) [http://www.guidedogs.org.uk/media/7868390/access-all-areas-main-report\\_final.pdf](http://www.guidedogs.org.uk/media/7868390/access-all-areas-main-report_final.pdf)
- 5) <http://www.scie.org.uk/publications/briefings/briefing36/> and <http://www.york.ac.uk/inst/spru/research/pdf/Reablement.pdf>
- 6) <http://www.pocklington-trust.org.uk/researchandknowledge/publications/rf46visionrehab>
- 7) <http://www.rnib.org.uk/knowledge-and-research-hub-research-reports-general-research/living-sight-loss> <http://www.rnib.org.uk/knowledge-and-research-hub/research-reports/general-research/sight-loss-UK-2013>

*3 September 2015*

## **Thurrock Coalition – Written Evidence (EQD0068)**

### **About Thurrock Coalition**

1. Thurrock Coalition is the User-Led Organisation for Thurrock. We are a company that has been set up to ensure that people who live in Thurrock have access to all the information they may require to get the support and care that they need.
2. Thurrock Coalition is an 'umbrella' company that consists of 4 organisations, all of which follow the Social Model of Disability and aim to improve the lives of disabled and older people living in Thurrock by seeking to remove environmental, attitudinal and physical barriers that exist in society. We connect to over 1500 individuals and organisations with an interest in disability issues. Thus, we have a direct interest in the work of the House of Lords Select Committee and welcome the opportunity to provide input and evidence of individual lived experiences in the context of the Equality Act 2010.

### **Summary**

3. A meeting of our Consultation and Campaigning Partner Organisation – Thurrock Diversity Network, a registered Community Benefit Society, was called, and our members consulted and views were gathered around the key themes relating to how well the Equality Act 2010 is working for Disabled people. The feedback appears below.
4. Overall, it was felt that things have not improved for Disabled people now that Disability is only one of nine groups protected under the Equality Act 2010. Furthermore, people felt that the protection has been watered down and that the previous laws, for example, the Disability Discrimination Act 1995 (as amended) was more specific and targeted.
5. The lived experience of our members has seen no real change on the ground, for a variety of reasons, relating to a range of different stakeholders and providers. These are dealt with in turn.

### **Gaps in the Law on treating Disabled People Equally**

6. In terms of gaps in the law on treating Disabled people equally, members of Thurrock Diversity Network made the following observations:

### **Access to Justice and Legal Aid**

7. Changes to Legal Aid and access to Legal Advice has been greatly reduced, meaning that the ability of Disabled people to become aware of and to be empowered to exercise their rights under the law relating to discrimination has been made into an additional challenge and barrier to achieving justice.

## Access to and Provision of Healthcare for Disabled People

8. Our members felt that although legislation stipulates that there should be Equality for Disabled people – lived experience shows that this is being denied to Disabled people in terms of access to and provision of Healthcare. Locally there is an alarming problem around access to Healthcare and health checks which is disproportionately affecting Disabled people, their families and carers.
9. The Healthcare sector needs a more robust Duty placed upon providers to ensure Equality. The focus upon the Medical condition, fails to see the individual through an holistic person-centred approach, and instead sees just a label or impairment.

## Formal Equality & Substantive Equality

10. The Equality Act could be strengthened if Public Authorities, providers of goods, services, education, transport and the like, recognised the limitations of formal equality<sup>496</sup> and understood the value of Substantive Equality and Equality of Outcomes, particularly in relation Reasonable Adjustments, Positive Action<sup>497</sup> and Disabled People. For example, the feedback we received from Thurrock Diversity Network members highlighted the view that some elements regarding physical access to the built environment, such as ramps and handrails, have become increasingly commonplace adjustments, whereas procedures and understanding of policies and schemes such as Access to Work, as well as staff training, awareness and attitudes are either still under-developed or have not moved on at all following the coming into force of the Equality Act 2010.

## Education Provision

11. In relation to Education providers – barriers to equality of access remain - getting assessments of learning needs/support is still a barrier because of funding difficulties (often because education do not want to pay).

## Transport Provision

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<sup>496</sup> The idea of formal equality can be traced back to Aristotle and his dictum that equality meant “things that are alike should be treated alike”. This is the most widespread understanding of Equality today. Formal equality promotes individual justice as the basis for a moral claim to virtue and is reliant upon the proposition that fairness (the moral virtue) requires consistent or equal treatment. See:

<http://www.equalrightstrust.org/ertdocumentbank/The%20Ideas%20of%20Equality%20and%20Non-discrimination,%20Formal%20and%20Substantive%20Equality.pdf>

<sup>497</sup> Positive action means offering targeted assistance to people, so that they can take full and equal advantage of particular opportunities. Positive discrimination means explicitly treating people more favourably on the grounds of [a Protected Characteristic]. See, Department for Communities and Local Government, “Discrimination Law Review, A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, a consultation paper”, 2007, p.61.

12. Cuts to Local Authority funding for Specialist transport has reduced locally resulting in increased social isolation, loneliness and adverse effects upon the workforce and the local economy, transport usage and pollution, as well as access to healthcare and local amenities.

### **Access to Goods, Services, Facilities, Clubs & Associations**

13. Access at sports grounds is still poor, especially given the value and enormous spending power of the English Premier League.

### **Attitudes towards Disabled People**

14. From a broader Human Rights perspective, we have seen that attitudes towards Disability and Disabled people in general are hardening, which has adversely impacted upon Disabled peoples 'civil, political, economic, social and cultural rights. Incidents of Disability Hate Crime have increased 14% between 2010 and 2012<sup>498</sup>, along with hardening political ideologies towards Disabled People, rhetoric about the "deserving poor" coupled with the Welfare Reform agenda. We have seen the need for increased Hate Crime Awareness training to counteract increases in Disability Hate Crime. .

### **The Duty to Make Reasonable Adjustments**

15. The practical weaknesses of the Duty to Make Reasonable Adjustments are twofold:
- i) Lack of awareness of the scope and applicability of the Duty on the part of Disabled people, how to enforce it and remedies available.
  - ii) Misunderstanding and misconception including a lack of awareness of the scope and applicability of the Duty on the part of providers and Public Authorities.
16. Illustratively, Disabled people have lived experience of local transport and bus service providers not making Reasonable Adjustments, particularly facing attitudinal barriers from drivers and staff around provision of ramped access, allowing sufficient time for individuals with mobility difficulties to locate a seat safely as well as and priority seating on board. In addition, fully wheelchair accessible taxis are few and far between and when they are available, disabled people face an added costs penalty and are often charged a higher sum than their non-disabled colleagues for identical journeys.
17. In terms of requests for Accessible documents, including EasyRead, even when such documents are provided, the process is often carried out with no consultation, or meaningful thought and therefore it does not make sense.

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<sup>498</sup> The Independent - Hate crimes against disabled people soar to a record level:  
<http://www.independent.co.uk/news/uk/crime/hate-crimes-against-disabled-people-soar-to-a-record-level-7858841.html>



18. For people with visual impairments – information should be readily available in Audio format as default. Such provision would be useful for people with learning difficulties, people who are unable to read and/or write and many others.

### **Improving the strength and effectiveness of the Duty to Make Reasonable Adjustments**

19. The law should be made clearer and stronger in this regard. The enforceability of the Duty to Make Reasonable Adjustments must be strengthened; too many stakeholders to whom the Act applies view the Duty as an “optional extra”. Penalties should be put in place where a failure has occurred, without the need to resort to litigious action. We suggest a compulsory Reasonable Adjustments Protocol be drafted and a new Enforceability mechanism be given to the Equality & Human Rights Commission or a specific Ombudsman should be created.

### **Public Bodies, Equality & Fairness**

20. Public Bodies have largely not done all that could be done to ensure equality & fairness, often using resources as a “catch all” excuse and continuing abrogation, obfuscation and denial of responsibility under the Equality Act 2010.

### **The Public Sector Equality Duty**

21. There appears to be a lack of transparency in relation to Public Authority documentation and official reports. All too often reports to various Overview & Scrutiny Committees state that “Equality & Diversity Implications” have been “verified” and/or that a specific approach will be “fully compliant” with the Equality Act, with no further explanation or detail as to how or when this is or has been achieved, particularly in terms of Equality Impact Assessments and the appropriate discharge of the Public Sector Equality Duty.

### **Effective Partnership Working**

22. It is not clear whether those government departments dealing with Equality work effectively together. Operational and Strategic Approaches should be User-Led and sufficiently resourced to increase effectiveness and to ensure sustainability.
23. In terms of Public Bodies (Local and National) including the Judicial system and Police – officials are too often not capable, adequately trained or structured to be able to deal with compound/multiple Characteristics, for example, offering appropriate support for Disabled women & girls who have been the victims of sexual violence. A further example of the need for support for people with multiple Characteristics is highlighted by the fact that parents with learning difficulties are far more likely than

other parents to have their children removed from them and permanently placed outside the family home.<sup>499</sup>

24. The 9 Protected Characteristics within the Equality Act 2010 often “compete” with one another, with some Characteristics dominating the social, cultural and media agendas. Awareness of multiple Characteristics and the need to protect Vulnerable people in a person-centred and holistic manner should be increased under the Equality Act 2010.

### **The Equality & Human Rights Commission**

25. The general powers of the Equality & Human Rights Commission<sup>500</sup> should be widened, to go further, so that it is permitted to bring proceedings against employers in its own name on any issue, and not just those issues pertaining to Human Rights under the Human Rights Act 1998.
26. Resources to publicise and to raise the profile of the Equality and Human Rights Commission’s Equality Advisory Support Service (EASS) would be beneficial so that Disabled people become aware of it and utilise its services whenever they require specialist expert information, advice and support on discrimination and human rights issues and the applicable law. The provision of such specialist advice is even more important when it cannot be provided by general advice agencies and local organisations, who are themselves likely to be facing funding difficulties.
27. The role of the EASS should be broadened to include provision of legal advice, representation in any legal proceedings, and advice on court or tribunal procedures once a claim has been issued. It should be permitted to advise on the strength of a case or the evidence needed to prove a case, provide advice to employers, solicitors and other professional advisors

### **Use of Other Organisations to ensure that Disabled people are treated equally**

28. The Care Quality Commission and the Local Government Association could both be utilised in ensuring that Disabled people are treated Equally through the existing checks, powers of enter and view, Peer Reviews and similar mechanisms, this is particularly important in relation to the Public Sector Equality Duty so that it is fulfilled and seen to be being fulfilled.

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<sup>499</sup>See What happens when people with learning disabilities need advice about the law? University of Bristol, July 2013, p.12  
<http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Legal%20Advice%20Learning%20Disabilities%20Final%20Report.pdf> and Risk & Resilience Work - Review of research literature on the cost of families with issues, p.6. Available At:

<http://www.essexinsight.org.uk/mainmenu.aspx?cookieCheck=true&JScript=1>

<sup>500</sup> See: <http://www.equalityhumanrights.com/about-us/about-the-commission/our-vision-and-mission/our-strategic-plan/our-duties-and-powers>

## Use of Courts & Tribunals

29. If the role of the EHRC and EASS are broadened, strengthened and the services publicised more widely then the numbers of people who are empowered and aware of how to exercise and enforce their rights through the appropriate avenues, courts and Tribunals will in turn increase.

## Conclusion

30. It is evident that the aim of the Equality Act 2010 was to “simplify legislation and harmonise protection for all of the characteristics covered in order to help Britain become a fairer society, improve public services, and help business perform well.”<sup>501</sup> However, the practical application, and lived experiences of the gaps in the enforcement of the Rights of Disabled people and Duties of Public Bodies highlight the areas that would benefit from improvement. to ensure that Disabled people are treated Equally throughout daily life.
31. The opportunity to contribute to the Call for Evidence from the Committee is welcome. We look forward to the reading the recommendations and conclusions of the Committee in due course.

*1 September 2015*

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<sup>501</sup> EHRC - What is The Purpose of the New Act? See: <http://www.equalityhumanrights.com/private-and-public-sector-guidance/guidance-all/faqs>

## **Rebecca Thursby – Written Evidence (EQD0098)**

### **Planning Policy on Housing for the Disabled and Severely Disabled in Wiltshire**

#### **White Paper**

3<sup>rd</sup> September 2015

Written by Rebecca Thursby MEng(Hons), PGDipSurv

#### **Executive Summary**

1.1 Strategic objective 3 of Wiltshire’s Core Strategy relates to the provision of everyone with access to a decent affordable home; however it does not consider housing for disabled people. This omission goes against the aim of the Equality Act 2010 and should be addressed urgently or could place the local authority at risk of legal action.

1.2 In 2013/2014 the government spent £180m<sup>502</sup> in Disabled Facilities Grant (DFG) funding. If the recommendations identified within this report are followed a substantial saving could be made with no cost to the government. Furthermore, facilitating the development of specialist housing will allow people with disabilities to do more for themselves and become less reliant on carers. This would see a knock on effect saving in other areas such as funding spent on care for disabled people.

1.3 Consideration must be given at the planning stage and policies should specifically address housing for disabled people in order to provide decent homes for people with disabilities, and the families with which they live. It is not enough to rely on part M of the building regulations to fulfil this need, as this only fulfils a minimum requirement and does not meet the broader requirement.

#### **Introduction**

2.1 Wiltshire’s Core Strategy (WCS) was adopted in January 2015. It provides up-to-date strategic planning policy for Wiltshire and covers the period to 2026. Whilst the Core Strategy has largely been well thought through, it is considered there is a short coming in its inclusivity with specific regard to housing for disabled people and severely disabled people.

2.2 In the context of this document, a severely disabled person is any person whose needs exceed the minimum requirements set out in Part M of the building regulations 2015 edition<sup>503</sup>.

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<sup>502</sup> DCLG, The Disabled Facilities Capital Grant Determination 2013 to 2014

<sup>503</sup> Part M of the building regulations is based upon a wheelchair user who is able to manually propel them using a standard upright wheelchair approximately 635mm wide.

2.3 In reviewing Wiltshire’s Core Strategy - Delivering strategic objective 3: to provide everyone with access to a decent affordable home, there are policies to cover:

- a. Providing Affordable Homes (CP 43)
- b. Rural Exception Sites (CP 44)
- c. Meeting Wiltshire’s Housing Needs (CP 45)
- d. Meeting the needs of Wiltshire’s Vulnerable and Older People (CP 46)
- e. Meeting the needs of Gypsies and Travellers (CP 47)

2.4 None of these policies specifically address meeting the needs of Wiltshire’s disabled people. Indeed when you search the entire 493 page document the word ‘disabled’ appears 3 times (none of which are with reference to meeting the housing needs of Wiltshire’s disabled people). By contrast Affordable Housing appears 83 times.

2.5 I believe this oversight has arisen largely because planners have not recognised that this need must be specifically addressed at the planning stage and have relied upon building regulations to address this issue.

2.6 This is echoed in the government’s National Planning Practice Guidance (PPG) (March 2014). This sets out a number of key points to take into account when considering disabled people under the heading ‘Planning should promote access and inclusion’.

*“Inclusive design acknowledges diversity and difference and is more likely to be achieved when it is considered at every stage of the development process, from inception to completion. However it is often mistakenly seen as a Building Regulations issue, to be addressed once planning permission has been granted, not at the planning application stage. The most effective way to overcome conflicting policies and to maximise accessibility for everyone is for all parties to consider inclusive design from the outset of the process. This is particularly important when considering historic buildings and conservation, and highways. Thinking at the design stage about how the completed building will be occupied and managed can overcome many barriers experienced by some users. Too often the needs of users, including disabled people, older people and families with small children, are considered too late in the day.”* (Paragraph: 012 Reference ID: 26-012-20140306).

2.7 Following on from the above, under the heading ‘What are the links between health and planning’, the PPG states:

*“The range of issues that could be considered through the plan-making and decision-making processes, in respect of health and healthcare infrastructure, include how... the healthcare infrastructure implications of any relevant proposed local development have been considered...[and]...access to the whole community by all sections of the community, whether able-bodied or disabled, has been promoted.”* (Paragraph: 002 Reference ID: 53-002-20140306).

## Reliance on Part M of the Building Regulations and Lifetime Homes

3.1 The following problems arise in relying on Part M of the building regulations alone or on lifetime homes to meet the housing needs of disabled people:

- a. No obligation is placed on developers to exceed the minimum category 1: Visitable Dwellings Part M building regulation or to meet the Lifetime Homes design criteria.
- b. There is no financial incentive to encourage developers to exceed the minimum category 1 requirement or meet the Lifetime Homes Standard. In fact it would result in additional expense and may even result in the end property value being lower<sup>504</sup> than if they simply met category 1: Visitable dwellings.
- c. Part M is based upon a wheelchair user who is able to manually propel themselves using a standard upright wheelchair approximately 635mm wide and has no complex medical needs. Part M does not consider or address the following:
  - i. People who use motorised wheelchairs or need significant additional postural support requiring a wheelchair that is reclined.
  - ii. Spatial provision necessary for specialist medical and physiotherapy equipment in the home.
  - iii. Many homes for severely disabled people will become places of work for specialist carers who may need to be accommodated within the home particularly when dealing with life threatening conditions. Typically a minimum of 2 carers will be required to carry out lifting severely disabled people in the home safely.
- d. As a result dwellings built to meet category 3: Wheelchair user dwellings, will not meet the needs of severely disabled people.
- e. The Lifetime Homes standard is a set of 16 design criteria that provide a model for building accessible and adaptable homes. Lifetime Homes is referenced in the sub-text to Policy CP46. Whilst the design criteria go beyond certain current Part M requirements they do not consider spatial provision for severely disabled people who require a significant amount of additional medical and physiotherapy equipment. Furthermore the design criteria do not consider spatial provision for carer's access in and around specialist equipment such as standing frames. The Lifetime Homes standard provides a broadly adaptable home which whilst meeting the majority of disabled people's needs, will not meet the needs of the severely disabled.

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<sup>504</sup> Incorporating additional space for lifts and increased bathroom sizes etc. will result in the net loss of useable space in the dwelling for family members. This will result in a less desirable property and hence lower its value.

## The National Planning Policy Framework (NPPF)

4.1 The National Planning Policy Framework (NPPF) reinforces the importance of inclusive design. It states:

- a. **Paragraph 7:** Sustainable development has a social role “*supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being.”*
  
- b. **Paragraph 50:** “*To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should: plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes)”*
  
- c. **Paragraph 57:** “*It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes.”*
  
- d. **Paragraph 58:** “*Planning policies and decisions should aim to ensure that developments establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit”;*
  
- e. **Paragraph 61:** “*Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.”*
  
- f. **Paragraph 159:** “*Local planning authorities should have a clear understanding of housing needs in their area. They should prepare a Strategic Housing Market Assessment to assess their full housing needs... The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes)”;*

4.2 Wiltshire’s core strategy has not made specific spatial allocation or written policy for housing for disabled people and hence is currently not compliant with the paragraphs identified above.

4.3 **Conclusions.** In order to meet the need of Wiltshire’s disabled people, Wiltshire’s Core Strategy should develop policy specifically to meet their needs and create an environment whereby developments to meet the wider disabled community are encouraged. For reasons identified in this document it is not enough to rely on Part M of the building regulations to address this issue, as this only addresses a minimum requirement.

## Recommendations

5.1 In order to comply with the guidance identified in the NPPF in this report and meet the needs of Wiltshire’s disabled people, the following recommendations for amendment to current policy should be made:

a. Wiltshire’s Core Policy 46 currently addresses meeting the needs of Wiltshire’s vulnerable and older people. **Recommendation:** Amend the policy title as follows:

i. Policy 46 – Meeting the needs of Wiltshire’s disabled, vulnerable and older people. Reason: To include and address the needs of Wiltshire’s disabled members of the community within Wiltshire’s Core Policy

b. Policy 46 currently states: Provision of homes and accommodation for vulnerable people will be supported, *including but not limited to:*

*iv. people with learning disabilities*

*v. people with mental health issues*

*vi. homeless people and rough sleepers*

*vii. young at risk and care leavers.*

**Recommendation:** Amend the text as follows:

i. Provision of homes and accommodation for disabled people and vulnerable people will be supported, including but not limited to:

*iv. people with learning disabilities*

*v. people with mental health issues*

*vi. homeless people and rough sleepers*

*vii. young at risk and care leavers.*

*viii. disabled people, particularly those whose requirements exceed the minimum standards detailed in Part M of the current building regulations.*

Reason: To include and provide additional support for disabled people with a requirement for a specialist home.



- c. Policy 46 currently states: In exceptional circumstances, the provision of specialist accommodation outside *but adjacent to the Principal Settlements and Market Towns will be considered, provided that:*
- viii. a genuine, and evidenced, need is justified*
  - ix. environmental and landscape considerations will not be compromised*
  - x. facilities and services are accessible from the site*
  - xi. its scale and type is appropriate to the nature of the settlement and will respect the character and setting of that settlement.*

**Recommendation:** Amend the text as follows:

- i. In exceptional circumstances, the provision of specialist accommodation will be considered at settlements defined as Local Service Centres, Large and Small Villages (Core Policy 1), and those not identified within the settlement strategy, provided that:*

- viii. a genuine, and evidenced, need is justified*
- ix. environmental and landscape considerations will not be compromised*
- x. facilities and services are accessible from the site*
- xi. its scale and type is appropriate to the nature of the settlement and will respect the character and setting of that settlement.*

Reason: To provide a greater level of freedom in spatial planning terms, which will be on a par with that given to affordable housing in Core Policy 44 – Rural Exception Sites. This will, for example, allow a family caring for a severely disabled child the possibility to build within a small village close to family support.

**5.2 Planning Conditions.** With reference to accommodation for dependent persons Policy H33 of the Salisbury Local Plan 2011 requires that the planning permission will either be subject to a restrictive occupancy condition or, if the site is outside a housing policy area, the applicant will be expected to enter into a legal agreement with the Local Planning Authority to ensure that the ancillary accommodation is not let or sold separately from the main dwelling. This has led to the following recommended planning conditions/legal ties that could accompany planning applications allowed to proceed under Core Policy 46 of the WCS:

- a. Applications for disabled people should have the design approved by a member of the National Register of Accessibility Consultants. **Reason:** This will ensure that a suitably qualified professional agrees that the design will meet the needs of the disabled person now and in the future.
- b. Applications submitted under exceptional circumstances in settlements not identified within the settlement strategy (Rural exception sites) could tie the property to use by a family with a severely disabled relative for a minimum of 10 years. **Reason:** To prevent the applicant taking advantage of the exemption for financial gain.

- c. Wiltshire Council could place a nomination on certain applications to find another suitable person/family with a similar need to purchase the home. If within 6 months the council could not find a suitable person/family they would have first refusal to purchase the home at market value determined by an RICS accredited surveyor and then subsequently rent the home to a suitable family. If Wiltshire Council did not want to purchase the home it could then be sold on the open market. **Reason:** To preserve the specialist home for the benefit of other people with a similar need in the future. This would also secure the continued future use of specialist funded equipment such as ceiling mounted hoists (which come under a separate budget to the DFG) saving the government further money.

### **Spatial Provision**

6.1 Spatial provision must be made to ensure a percentage of the large scale developments are set aside for custom built housing for disabled people. Earlier this year the Government passed the Self-Build and Custom House Building Act 2015. The register kept by Wiltshire Council as a result of this act should be used as the basis for the number of self-build plots currently required. Planners should then specify that developers must set aside an appropriate number of plots for purchase by families wishing to self-build. Priority should be given to disabled people on the register.

6.2 Reason: This will allow Wiltshire Council to fulfil its obligations under the Self-Build and Custom House Building Act 2015. It will simultaneously enforce spatial provision is made for disabled people in Wiltshire.

6.3 **Planning Conditions.** The following planning conditions should be placed on these building plots:

- a. The Building plots should be sold at a value stipulated by an accredited RICS surveyor to those on the register. **Reason:** To ensure building plots are sold for an appropriate price to those on the register.
- b. The purchaser of the building plot must occupy the property for a minimum of 5 years. **Reason:** To ensure building plots are purchased by families and not developers. This will also ensure that families do not take advantage of this policy for financial gain.

### **Benefits of this Reform**

7.1. The amendment to the Wiltshire Core Strategy would bring it into compliance with the NPPF in relation to providing housing for those with disabilities, and ensure it is inclusive and hence run with the aim of the Equality Act 2010. In addition, the recommended changes would remedy some of the issues highlighted in the Wiltshire Core Strategy Development Plan Document Partial Review Scoping Consultation Document (April 2015).

7.2. Facilitating self-building of custom built homes for disabled people will allow designers to optimise the use of space available which cannot be done or would incur

significant expense when adapting an existing home. Accommodating equipment, access and manoeuvrability in an existing home for a disabled person results in the net loss of useable space for other family members. Self-build opportunities provide better value for money and would aid the family in maintaining their standard of living.

7.3. Self-build opportunities provide better value for money consequently more families will be able to afford to meet their own housing needs and not reliant on financial assistance from local government via affordable/social housing.

7.4. New build housing does not qualify for DFG funding. This will save local government up to £30,000 per property that would otherwise need to be adapted. In 2013/14 the government spent £180m<sup>505</sup> on DFG funding. Families can build the house 'right first time' and ensure it is fit for purpose rather than adapt a home to meet a purpose for which it was never intended.

7.5. Severely disabled people can place considerable stress on family caring for them. In certain evidence based circumstances exemptions may allow specialist housing to be built close to other direct family support in locations where it would not otherwise normally be considered. This will in turn reduce the burden placed on local government for specialist care and respite care and in certain cases may even prevent a child being given up into full time care.

### **Risks of this Reform**

8.1 The main risk to the suggestions made in this document will be those that will try and take advantage of this reform. This risk has been considered within this document and can be mitigated with the use of suitably worded planning conditions/or obligations contained in the corresponding legal agreement.

### **Case Study**

9.1 One family in Wiltshire has a child who is almost blind, has hypotonia (low muscle tone), and suffers from severe epilepsy including apnoeic seizures (stops breathing) often requiring resuscitation. These disabilities have the following spatial impact on an appropriate home<sup>506</sup>:

- a. Severe visual impairment makes the child unaware of surroundings often kicking out whilst being pushed in the wheelchair. Corridor widths therefore need to be increased beyond minimum Part M requirements to prevent the child from striking the walls and incurring injury. Door widths must similarly also be wider.

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<sup>505</sup> DCLG, The Disabled Facilities Capital Grant Determination 2013 to 2014

<sup>506</sup> Please see Physiotherapist's letter detailing equipment and size needed in the home included in Appendix A

- b. Hypotonia means that a significant amount of additional physiotherapy equipment will need to be accommodated within the home including, in the future, hoists.
- c. The child's future lifting requirement will dictate that 2 carers must be present to lift the child safely into and out of equipment. Therefore the home needs to provide a suitable working environment for 2 carers during times of respite care.
- d. Severe epilepsy requires a safe space to be identified which must be accessible at all times to prevent the child from injury during seizures and where resuscitation can be carried out.
- e. The family requires space to accommodate a nurse who occasionally will care for their child in the home at night during times of seizures.

9.2 These spatial requirements must be met in order for the family's child to be safely cared for within the home<sup>507</sup>. The family has substantiated to Wiltshire Council that they cannot afford a property of a size that will meet these minimum spatial requirements to keep their child safe in the home and accommodate all the specialist equipment required. The family, if able to gain planning permission in the village where one of the parent's grew up, would be able to build their own home fit for purpose and meet their own housing need without any additional resource from the government. They would also gain vital family support in caring for their disabled child and their first young child.

9.3 If this minimum spatial requirement cannot be met the family will not be able to receive full respite care, as a parent will have to be present in order to carry out the activities assessed as being unsafe by the caring agency.

9.4 The family has searched for the last 2 years since the birth of their disabled child to find a building plot to build a specially adapted home. In this time only 2 suitable plots have appeared on the open market. On both occasions the family were unsuccessful in their bids losing out to developers making a full cash offer which was lower than the family had made.

9.5 Without reform the following costs may/will be incurred by local government:

- a. The government will spend £30,000 in DFG funding to adapt a home that will not be suitable for the future need of their child.

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<sup>507</sup> See supporting risk assessments carried out by the Julia's House nursing staff in Appendix B.

b. Government loses tax income from one parent: Once the child has grown and the newly adapted property is no longer suitable one parent will have to give up work in order for their joint income to drop to a level allowing them to qualify for affordable housing.

c. The government will spend a further sum in DFG funding adapting the Housing association's property to meet the child's needs. Housing associations cannot access DFG funding until the property is occupied by its intended user. It would therefore be built in its un-adapted form. Once occupied by the family the government would spend up to £30,000 in DFG funding to install the adaptations needed. This could bring the total spent on DFG funding to £60,000.

d. Wiltshire Council may be burdened with the cost implications in providing substantial childcare, respite care or may have to take the child into full time care: The stress the family will face in dealing with their housing situation and with the loss of employment for one parent in order to qualify for affordable housing is likely to result in the parents no longer coping with their child's care. If the child is taken into fulltime care this will cost Wiltshire Council approximately £139,828.00 per annum<sup>508</sup>.

9.6 **Conclusion.** If the recommendations identified in this White Paper are implemented this will allow the family to meet their own housing need at no cost to the government. It will also allow both parents to continue to be employed providing significant psychological benefit, and minimise any future care costs that local government may have to fund.

**Professional Remarks [REDACTED]**

**Appendix A [REDACTED]**

**Appendix B [REDACTED]**

*3 September 2015*

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<sup>508</sup> Living in Children's Residential Homes – Research Report DFE-RR201 by Department for Education

Justin Tomlinson MP, Rt Hon Nicky Morgan MP, Andrew Jones MP – Oral Evidence (QQ 174-192)

**Justin Tomlinson MP, Rt Hon Nicky Morgan MP, Andrew Jones MP – Oral Evidence (QQ 174-192)**

[Transcript to be found under Andrew Jones MP](#)

## **Justin Tomlinson MP – Supplementary Written Evidence (EQD0198)**

I would like to clarify an answer I gave when appearing before the Committee on 15<sup>th</sup> December and draw the Committee’s attention to my response to the two questions that Baroness Campbell of Surbiton asked about the White Paper announced by the Chancellor in his Autumn Statement (page 20). I did not hear the subtle difference between the two questions and consequently answered the first question and not the second.

When I answered the first question, “Will enforcement be part of that White Paper?” I had in mind my previous statement about employers and the importance of ensuring employers meet their duties under the Equality Act which I would expect to be part of the White Paper. So my answer to Baroness Campbell’s first question should still stand as yes. This, as I am sure you will understand, is subject to decisions by ministers across government about the exact content of the White Paper.

Had I responded to Baroness Campbell’s second question “Will enforcement of the Equality Act in all areas be part of the White Paper?” my answer should have been no. The White Paper is not about Equality Legislation, in general, so I would not expect it to cover enforcement for the whole Act.

I hope that clarifies the position. I would like to apologise for any misunderstanding caused.

Kind regards

Justin Tomlinson MP  
Minister for Disabled People

*11 January 2016*

## **Toucan Diversity – Written Evidence (EQD0144)**

### **The concept of Reasonable adjustments and how well it is implemented**

Toucan Diversity was set up in 2013 as a Social Enterprise. We are a user led organisation based in Portsmouth and offer Equality Training, with a particular focus on disability. Our speakers have direct daily insight of the issues they discuss in their training sessions. We believe that the Equality Act 2010 has been ineffective in protecting the rights of disabled people in the UK. For this reason, when we became aware of the House of Lord Committee's call for evidence, we felt that it was vital for us to contribute.

For this report, we will discuss how well the concept of 'reasonable adjustments' is understood and implemented in practice.

The evidence that we have collected, is largely based on issues that are present in the city of Portsmouth. It is relevant to mention here, that the findings in this report, are based on observations made by a group of physically disabled people at our organisation.

### **Reasonable adjustments and accessibility**

For the purposes of this report, we have been looking at various public buildings within Portsmouth, paying particular attention to how effective their access arrangements are.

- 1) Firstly, it is clear that venues are not under pressure to make sure that they provide appropriate access in the first place. In Portsmouth, a café based in Southsea, a clear example. We complained about their inaccessible entrance (in writing), but have yet to hear a response from them, or to see any adjustments being made to their venue. Another example, would be a new restaurant in the same area with no level access. We seem to find now daily new inaccessible establishments.
- 2) In addition, a local primary school that has only very recently been refurbished with a new building attached. Here the observations are: heavy doors, no lift to upper floor, signing in system is inaccessible for a wheelchair user. This is indirect discrimination towards potential new parents, teachers as well as children.
- 3) A further point we would like to raise, is that the overall problem seems to lie with the term 'reasonable adjustments' itself. From our findings, it is clear that venues are made 'accessible' in a tokenistic way. This is particularly true for cafes, pubs and restaurants. For example, these venues may have a side entrance, but often you get to the door only to find that it is locked, or that the 'assistance bell' has been switched off. Also, side entrances are sometimes blocked by tables and chairs.
- 4) In Kingston upon Thames, Surrey, a retail premises was previously fully accessible. However, they recently changed to a different company providing fast food and they now have a step into the premises. Although they have a disabled side entrance, the door is kept locked and the bell switched off. The issues raised paragraph 3 and 4 make it unnecessarily difficult for independent wheelchair users.
- 5) London should be accessible for all, but it isn't. It is difficult to find disabled toilets and the majority of (Chinese) restaurants in Soho are not wheelchair accessible.



Finally, the term ‘reasonable adjustments’ in practice, does not efficiently cover or consider how appropriate venues are from the inside. Apart from the issue of chairs/tables blocking entrances, little thought is put into what facilities are available. You often find, that disabled toilets are not appropriate, or that lifts are being used as storage areas!

### **CONCLUSION**

From this evidence, it is clear that public buildings are no longer under any pressure to make sure that they accommodate the needs of potential service users with disabilities. Therefore, from our observations, we have come to the conclusion that effective access has gone backwards over the last couple of years. We feel strongly that local governments/councils need to ensure implementation and are accountable to an ombudsman. It needs a body of some kind to take control of the overall implementation and enforcement of facilities and accessibility.

(Please note, that if photographic evidence is needed to support this report, we will be able to provide this.)

*8 September 2015*

## **Transport for All – Written Evidence (EQD0116)**

### **Who we are**

Transport for All is a London wide pan-impairment organisation representing capital's disabled and older transport users. We work for an accessible transport system everyone can use with freedom and independence.

[www.transportforall.org.uk](http://www.transportforall.org.uk) / [contactus@transportforall.org.uk](mailto:contactus@transportforall.org.uk) @Transportforall

### **Summary**

Every day, transport providers breach the Equalities Act in discriminating against disabled people and failing to make reasonable adjustments. 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. This is because the Act and how to use it is little understood by disabled people; and because cost barriers and the difficulty of taking a case deter those people who *do* understand how to use the Act.

### **Has the Act achieved its aims?**

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.

## **Disabled people's exclusion from the transport network**

### **1. Inaccessible stations**

Because of inaccessible infrastructure, notably a lack of lifts, most of the rail and Tube network is out of bounds to people with mobility impairments. For example, three quarters of the Tube and four fifths of the rail network is out of bounds to people who cannot manage stairs<sup>509</sup>; and 42% of taxis are inaccessible to wheelchair users.

Thanks to a seminal case brought under the Act, *Roads v. Central Trains*, it was established that when a station is inaccessible to a disabled person, rail companies must provide alternative transport to the nearest accessible station, most often a taxi. But this is very little known among disabled people. Rail companies hide it in the small print of their Disabled Person's Protection Policy. We would like to see rail companies advertise this on posters at every station. Similarly, TfL have a policy to provide alternative transport such as a taxi to the nearest accessible station when a lift is out of service. Again, there is very little knowledge of this among disabled passengers and TfL do not publicise it on the posters they put up on out-of-service lifts, we have taken cases where disabled people who *do* know their rights have had to argue vociferously with TfL staff who do not know that this is a reasonable adjustment under the law.

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<sup>509</sup> <http://www.theyworkforyou.com/wrans/?id=2013-10-23b.172082.h>

## **2. Inaccessible street infrastructure**

The Equalities Act has been successfully used to challenge boroughs using introducing discriminatory street design in terms of tactile paving<sup>510</sup>. But there are still hundreds of pedestrian crossings across the country which lack the audio and tactile signals to make them accessible to blind and partially sighted<sup>511</sup>; and Shared Space schemes which are inaccessible to blind and partially sighted people<sup>512</sup>. To the best of our knowledge, no-one has yet used the Act to challenge these, because of the barriers to using the Act discussed below.

There are bus and coach stops across the country which are inaccessible to wheelchair users; I do not know of any coach companies which advertise alternative forms of transport such as a taxi as a reasonable adjustment for passengers who cannot board or disembark at such stops; and know of only one bus company (Brighton and Hove buses) who advertise provision of alternative transport if a wheelchair user is prevented from using their buses.

## **3. Wheelchair priority**

It is very common for wheelchair users to be refused onto a bus, most often when there is a buggy in the wheelchair bay and the driver does not request the buggy user to move. Some companies even have signage (unlawful in our opinion) that what the PSVAR regulations have deemed the wheelchair space is, in fact, a 'buggy zone' or 'buggy priority' (see photos).

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<sup>510</sup> <http://www.leighday.co.uk/News/2012/November-2012/Decision-to-depart-from-national-guidance-on-tacti>

<sup>511</sup> <http://glalibdems.org.uk/en/article/2014/0893446/why-are-blind-and-partially-sighted-people-waiting-25-years-for-london-s-pedestrian-crossings-to-meet-minimum-national-safety-standards-caroline-pidgeon>

<sup>512</sup> [http://www.theargus.co.uk/news/1539443.street\\_a\\_nogo\\_zone\\_for\\_the\\_blind/](http://www.theargus.co.uk/news/1539443.street_a_nogo_zone_for_the_blind/)

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The Equality Act makes it an offence for a taxi and PHV drivers to refuse an assistance dog (Section 170). We would like to see refusing a wheelchair user without requesting a buggy user to move explicitly an offence, similarly.

### **Less favourable treatment**

We are **treated less favourably** on the transport modes which we can use.

#### **1) Lack of audio-visual information on buses and trains**

**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<sup>513</sup>. We believe it is a reasonable adjustment for drivers on buses without audio-visual information, and indeed drivers on trains without audio-visual information, to make an announcement at each stop.**

### **Providers discriminate against us in the terms of the service.**

#### **1) 24 hours booking for rail assistance**

In England, every rail company (with the honourable exception of c2c and TfL rail services) request that we book 24 hours in advance if we wish to have assistance to get on a train (e.g. a ramp). Our members tell us that in practice, this 'request' can sometimes be a requirement, when a station is unstaffed at certain times of day or

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<sup>513</sup> <http://www.guidedogs.org.uk/supportus/campaigns/talkingbuses/how-you-can-help-the-talking-buses-campaign/#.Veh5hLBRFdg>

when rude staff simply refuse to assist. In Scotland, only four hours' notice is requested. Coach company National Express request that disabled people book 48 hours in advance, recently doubling this requirement from their previous policy of requesting 24hours.

The impact of not being able to travel with spontaneity as non-disabled people do, to change plans if we are enjoying time with friends or if there is not a fixed end-time to a meeting, significantly erodes our freedom. We do not believe that the 24-hour booking policy is reasonable.

### **Assistance quality**

The reliability of the assistance is shockingly poor. A recent Passenger Focus survey found that less than half (45 per cent) of disabled people who used Passenger Assistance said that felt the service 'fully matched' (a reduction on 47 per cent in 2010). Despite all of the passengers booking in advance, on one in three occasions station staff were unprepared for them. Only 79 per cent of passengers were assisted off the train by staff.<sup>514</sup>

### **Gaps in the Equality Act**

#### **Section 165**

The most glaring gap in the Equalities Act is that Section 165, imposing a duty on taxi and PHV drivers to carry wheelchairs and not charge a higher fare for doing so, has never been brought into force. In 2010, the then-Minister, Norman Baker, said that the delay in enforcing the law would allow time for drivers to apply for exemptions, if they had a health condition that meant they were not fit enough to assist wheelchair users. But five years later, and 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<sup>515</sup>. When wheelchair users in London report being refused, TfL only issue a warning to the driver<sup>516</sup> 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 guidedogs, which include fines and having their licences revoked.<sup>517</sup> Bringing Section 165 into force is long overdue.

#### **Mobility scooters and wheelchair size**

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<sup>514</sup> Passenger Assist, 2014, Passenger Focus

<sup>515</sup> Unpublished DfT report 2014, <https://twitter.com/lgalicensing/status/613275008312451072>

<sup>516</sup> <http://carless-care-less.blogspot.co.uk/2013/10/the-loss-of-job-versus-loss-of-right.html>

<sup>517</sup><sup>517</sup> [https://www.whatdotheyknow.com/request/licences\\_revoked\\_for\\_not\\_accepti](https://www.whatdotheyknow.com/request/licences_revoked_for_not_accepti)

The Equality Act, where it relates to transport, refers to wheelchairs, for example, the obligation for rail and bus vehicles to be made accessible under the RVAR and PSVAR regulations. However, disabled people who use mobility scooters have very little explicit protection as passengers under the Act. There is therefore an odd situation where some transport companies (e.g. Northern Rail, Gatwick Express) ban *all* mobility scooters (including small ones) and accept wheelchairs (including very large ones); and do not have a policy of offering alternative accessible transport such as a taxi. While we accept that it is not reasonable for large (class 3) scooter users to board trains and buses, we believe that it is unfair that wheelchair users are afforded legal protection that is not enjoyed by scooter users. There has been a successful case where a scooter user has won against disability discrimination<sup>518</sup>, yet it does not seem to have had an impact across the industry. Furthermore, the PSVAR regulations (Section 174) base their regulations for the carriage of wheelchairs on coaches and buses on the ‘reference wheelchair’ which is far smaller than almost all the wheelchairs in use today. The effect is that some transport providers refuse those who use larger wheelchairs. For example, the coach company National Express advertises that it uses wheelchair accessible vehicles but in fact, they told us that they only accept 54% of the wheelchair users who approach them, telling the rest that their chairs are not safe for carriage (due to size or not being crash-tested), and nor offering alternative transport as a reasonable adjustment. Similarly, the Taxicard scheme, a door-to-door scheme in London, recently wrote to users of powerchairs telling them that they would no longer be able to use black taxis because their chairs could not be safely secured, but failing to provide a reasonable adjustment which would provide the same spontaneity as a taxi. These are examples of where overzealous application of ‘health and safety’ is used to discriminate against disabled people.

#### **Barriers to enforcement of the Act**

- 1) **Knowledge.** There is very little knowledge of the rights and duties conferred by the Act among disabled people. For example, most visually impaired people accept it as a fact of life that very few cafes offer a large print menu; most hearing impaired people accept that few shops have a hearing loop; most wheelchair users accept that few cafes have a ramp. Yet all of these service providers have an anticipatory duty to provide such reasonable adjustments. Among those who learn that such discrimination is unlawful, a smaller proportion understand how to proceed.

This is partly because those who do successfully win a settlement are frequently pressured to sign a non-disclosure agreement which prevents success stories reaching other disabled people.

- 2) **Confidence.** Taking legal or pre-legal action is intimidating.

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<sup>518</sup> <http://www.unity-law.co.uk/our-work/disability-discrimination/transport.htm>



- 3) **Funding.** Cuts to legal aid and costs protection insurance have made the cost of representation prohibitive for most disabled people.<sup>519</sup>

### **Could other regulatory bodies play a role in the effective implementation of the Equality Act?**

Under the Equality Act only an individual can take legal action regarding discrimination. We would like to see changes in the law to make it possible, and affordable, for an organisation such as EHRC to take legal action, either on behalf of a group or individual, or where there is reason to believe a policy or practice is unlawful. The failure of the Equalities Act to have made much impact on disability discrimination is largely because the burden of taking a case (significant in time and emotional energy) presently is borne by individuals.

Transport for All regularly hears from disabled people who have faced unlawful discrimination from a transport provider, and would welcome the opportunity to take legal action against transport providers which have policies we believe are unlawful (e.g. the three rail companies refusing mobility scooters<sup>520</sup>) or which have a record of failing disabled people time and time again (e.g. bus companies on whose services time and time again, drivers are failing to ask buggy users to make way for wheelchair users).

We would also like to see regulatory bodies and public bodies take a more proactive approach to enforcing the Equalities Act.

There are good examples of where this has happened: for example, 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. London Travelwatch, the statutory body representing London's passengers, blocked planning permission to Transport for London to redevelop Bank station until they agreed to make it step-free, arguing it was a reasonable adjustment. (Conversely however, London Travelwatch's objection to the major redevelopment of Alexandra Palace station without stepfree access referred to the Equalities Act in their argument but was unsuccessful<sup>521</sup>). Councils, where applications are made to licensing and planning departments, should be taking this opportunity to remind shops, cafes etc. of their duties to be compliant with the Act, e.g. in terms of stepfree access, accessible toilets etc.

However, the Office of Rail Regulation is currently missing opportunities to compel or remind rail companies of their legal obligations to disabled passengers. For example, Grand Central Rail requests that disabled passengers book 48 hours in advance before travelling<sup>522</sup> although ORR's own guidelines state that requesting more than 24hours notice is unreasonable<sup>523</sup>. At the moment, there is little risk that a disabled individual will take a legal challenge and so little deterrent to transport providers to adhere to their obligations under Act. Action from regulatory bodies such as the ORR, with real penalties (not simply a request

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<sup>519</sup> <http://www.unity-law.co.uk/files/file/Equal%20Justice%20Final%2008.07.15.pdf>

<sup>520</sup> <http://www.rica.org.uk/sites/default/files/documents/pdfs/mobility/mobility-scooters-and-trains.pdf>

<sup>521</sup> [http://www.londontravelwatch.org.uk/documents/get\\_lob?id=3631&age=&field=file](http://www.londontravelwatch.org.uk/documents/get_lob?id=3631&age=&field=file)

<sup>522</sup> <http://www.grandcentralrail.com/customer-service/travel-assistance/disabled-persons-protection-policy/>

<sup>523</sup> [orr.gov.uk/\\_\\_data/assets/pdf\\_file/0015/.../how-to-write-your-dppp.pdf](http://orr.gov.uk/__data/assets/pdf_file/0015/.../how-to-write-your-dppp.pdf)



to change a policy or practice) would incentivise service providers to fulfil their duties to disabled people. We also believe the EHRC should take more strategic litigation.

*4 September 2015*

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Transport for All, Department for Transport, Disabled Persons Transport Advisory Committee  
– Oral Evidence (QQ 79-90)

**Transport for All, Department for Transport, Disabled Persons Transport  
Advisory Committee – Oral Evidence (QQ 79-90)**

[Transcript to be found under Department for Transport](#)

## Transport for All – Supplementary Written Evidence (EQD0178)

- 1) Is the solution more proactive enforcement of the existing legislation or is a new legislative approach needed?

We support both a more proactive enforcement of the existing legislation and tweaks to the current legislation to make it easier to take a case, for example by allowing a non-disabled person or organisation to take a case. This would mean that a discriminatory practice or policy could be legally challenged, even if the person who was directly affected by it was not willing or able to take a case themselves.

- 2) On Section 165: In 2010, the then-Minister, Norman Baker, said that the delay in enforcing the law would allow time for drivers to apply for exemptions, if they had a health condition that meant they were not fit enough to assist wheelchair users. In our view, there is no reason five years should be needed for drivers to apply for an exemption under health grounds from carrying a wheelchair; when no delay was considered necessary to allow for drivers to apply for exemption under health grounds (e.g. an allergy) from carrying an assistance dog.
- 3) On local authorities using their powers to make sure new and existing transport is accessible: often, local authorities have the power but do not use it. For example, some local authorities (e.g. Stroud) use their licensing powers to drive access, by halving the licensing fees for wheelchair accessible minicabs. Not enough local authorities use their licensing powers in this way. In fact, some are using their powers to push back accessibility. Guilford council recently voted to remove the [requirement for new taxis to be wheelchair accessible](#),<sup>524</sup> despite a [shortage](#)<sup>525</sup> of wheelchair accessible cabs in the area.

In addition, some local authorities are using their powers to make bus stops accessible: for example, Kingston recently made 100% of their bus stops accessible. Other boroughs have not set targets or invested in this. Similarly, investment and commitment in tackling pavement parking and repairs is very patchy, as [research](#)<sup>526</sup> from Guidedogs has shown.

If the Bus Bill passes, this will give local authorities more powers regarding the licensing of buses. We would like the Bill to give local authorities duties to make licensing a bus route conditional on accessibility criteria such as Talking Buses; quality disability equality training; and signage and passenger communication that supports wheelchair priority.

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<sup>524</sup> <http://taxileaks.blogspot.co.uk/2015/11/guildford-bc-to-remove-wheelchair.html>

<sup>525</sup> <http://www.cabdirect.com/surrey-wheelchair-accessible-taxi-shortage/>

<sup>526</sup> [https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC4QFjACahUKEwijnC-3ip3JAhWJ0xQKHfTSCSo&url=https%3A%2F%2Fwww.guidedogs.org.uk%2Fmedia%2F5816677%2Fcracking-under-pressure-pavement-repairsexecutivesummary22nov2011.doc&usg=AFQjCNHsv14jOh9-3IPSIGNw8W00V\\_EvBg&sig2=lanqGfK9bTX\\_DkTRAYNzCg&bvm=bv.107763241,d.d24&cad=rja](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC4QFjACahUKEwijnC-3ip3JAhWJ0xQKHfTSCSo&url=https%3A%2F%2Fwww.guidedogs.org.uk%2Fmedia%2F5816677%2Fcracking-under-pressure-pavement-repairsexecutivesummary22nov2011.doc&usg=AFQjCNHsv14jOh9-3IPSIGNw8W00V_EvBg&sig2=lanqGfK9bTX_DkTRAYNzCg&bvm=bv.107763241,d.d24&cad=rja)

- 4) On bus driver training: this is in place in London bus not across the UK, and it is not mandatory, as the UK opted out of EU law on this matter.. Furthermore, in those areas which have disability equality training for bus drivers, the quality is sometimes dubious – we believe that DfT is investigating this.
- 5) On mobility scooters: Three train companies (Northern Rail, Gatwick Express and Grand Central) currently ban ALL mobility scooters; which we believe is unlawful. There are other transport providers too who ban them, e.g. [Edinburgh Transport](#).<sup>527</sup> In addition, many transport providers put a set of metaphorical hurdles in front of scooter users who wish to use transport, e.g. getting a card, getting training, filling out a [complicated form](#).<sup>528</sup> Gwynneth herself has about six Mobility Aid cards she carries in her wallet: it should not be necessary to collect so much paperwork to travel. This is despite the fact that many scooters are smaller than some powerchairs; and wheelchair users are rarely challenged about getting on a train or bus if the space is unoccupied.

While we accept that the largest scooters are not appropriate for transport, we would like to see clear and sensible guidelines based on size. Twenty years ago, wheelchair users were routinely told they were not allowed into buildings or transport as they posed a fire risk or a health and safety risk. Wheelchair users face this attitude now much more rarely but scooter users still often are told they are a health and safety risk.

- 6) On Uber: We do indeed provide Disability Equality Training to some Uber drivers. We would like such training to be mandatory for all drivers. We feel that if it goes alongside regulation from the licensing authority that sets a quota for accessible vehicles in the PHV and taxi fleet, Uber can be compatible with an accessible transport network.
- 7) On Turn Up and Go assistance, technically companies cannot ‘insist’ disabled people book ahead, but in practice, it is often an insistence, because sometimes there are not staff at a station unless one has booked, and often a staff member will refuse assistance unless one has booked. Technically, this is unlawful: as the ORR [guidelines](#)<sup>529</sup> state, companies can only ‘recommend’ booking and *must* ‘provide assistance to disabled passengers who arrive at a station and require assistance to allow them to travel, but assistance has not been arranged in advance, where reasonably practicable. Operators would be expected to provide clear and

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<sup>527</sup> <http://www.edinburghnews.scotsman.com/news/transport/call-to-review-tram-mobility-scooter-ban-1-3803188>

<sup>528</sup> [https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAAahUKewJi6aPkj3JAhWftRoKHeBGBWs&url=https%3A%2F%2Fwww.gwr.com%2F~%2Fmedia%2Fgwr%2Fpdfs%2Fassisted-travel%2F2013-fgw-scooter-card-application-form.pdf%3Fla%3Den&usg=AFQjCNEAQUvOeZm8e5JSPDsKpSz-825wQg&sig2=m\\_P63uoeff3ZVKn9zTjxQQ&bvm=bv.107763241,d.d2s&cad=rja](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAAahUKewJi6aPkj3JAhWftRoKHeBGBWs&url=https%3A%2F%2Fwww.gwr.com%2F~%2Fmedia%2Fgwr%2Fpdfs%2Fassisted-travel%2F2013-fgw-scooter-card-application-form.pdf%3Fla%3Den&usg=AFQjCNEAQUvOeZm8e5JSPDsKpSz-825wQg&sig2=m_P63uoeff3ZVKn9zTjxQQ&bvm=bv.107763241,d.d2s&cad=rja)

<sup>529</sup> [http://orr.gov.uk/\\_data/assets/pdf\\_file/0015/5604/how-to-write-your-dppp.pdf](http://orr.gov.uk/_data/assets/pdf_file/0015/5604/how-to-write-your-dppp.pdf)

reasonable justification to passengers where assistance cannot be provided for any reason.’

In addition, ORR’s guidance states that ‘Operators are also expected to make the following commitments in their DPPP’s in relation to providing passenger assistance: not require passengers to give more than 24 hours’ notice when booking through APRS’; arguably because this is not *reasonable* under the terms of the Act.

However, ORR enforces this very poorly, a very quick Google search finds train companies ignoring this (<http://www.crosscountrytrains.co.uk/customer-service/travel-assistance>; <http://www.grandcentralrail.com/customer-service/travel-assistance/disabled-persons-protection-policy/#arranging-a-journey>) and TfA has observed a large poster at Victoria Station for many months asking passengers to book assistance 48hours in advance, ironically, during the [‘Turn Up and Go’ trial](#)<sup>530</sup> which Victoria station is part of.

19 November 2015

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<sup>530</sup> <http://www.disabledpersons-railcard.co.uk/news-offers/news/2015/05/08/london-turn-up-go-trial/>

## Trades Union Congress (TUC) – Written Evidence (EQD0055)

### **1.1 Q1 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?**

1.1 The TUC was one of the organisations that campaigned for a single Equality Act to replace the complex mass of legal provisions that had previously existed and which had developed in a piecemeal way over many decades. We believed that having a single Act with common principles and definitions across the protected characteristics would improve understanding of equality law by employers and individuals. We also saw it as an opportunity to strengthen the law and level up in some instances. However, where there were strong reasons for treating a protected characteristic differently then, we argued, unique provisions should be retained like the reasonable adjustment duty and the asymmetric protection for disability.

1.2 As a result of harmonising the law, the concept of indirect discrimination was extended to disability. This enables a more collective approach to tackling provisions, criteria and practices that are likely to put groups of disabled people at a disadvantage rather than purely relying on the individualised approach of the reasonable adjustment duty. The harmonised definition of direct discrimination made clear that discrimination by association with a disabled person was possible (incorporating the ECJ's decision in the *Coleman v Attridge Law* case). It also meant that someone who was perceived as being disabled could bring a direct discrimination claim whereas previously this was not the case. This helps challenge the prejudice disabled people face too. Other benefits from harmonisation include extending the protection from disability-related harassment beyond the employment field to areas like education and goods and services provision.

1.3 The Act also strengthened the law for disabled people in a number of ways, for example, it replaced the previous 'disability-related discrimination provision' that had been weakened by the very narrow interpretation given to it in the *Malcolm v Lewisham Borough Council* case with a new 'discrimination arising from disability' provision and it introduced a ban in s.60 on asking health-related questions at recruitment stage except for a limited range of circumstances.

1.4 The area where we believe the move to a single act weakened the law for disabled people was in the creation of the single public sector equality duty (the change in the political and economic climate also harmed public authorities' implementation of the PSED – see response to Q5). The specific duties legislation introduced by the coalition government in 2011 for England and GB-wide public authorities 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 there is no longer a requirement to involve disabled people in plans to promote equality. The response of one local union officer to the TUC submission to the PSED Review in 2012 sums up the views of many: *"The specific duty to involve disabled people that was in the Disability Equality Duty was particularly important for making sure some of the most excluded people in society were able to fully participate in consultation and*

*engagement processes... [T]he cuts to the public sector and reduced duty means it is not always carried out as effectively as previously."*

**2.1 Q2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

2.1 UK ratification of the UN Convention on the Rights of Persons with Disabilities means that domestic law needs to be read to comply with it. There should be a review of existing legislation to ensure that it is amended where necessary to ensure such compliance and that it is taken into account when developing public policy. 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. While the TUC believes that twenty years of judicial interpretation and the new structure imposed by having a single equality act have led to some reduction in the distinction in practice between medical and social model approaches, nonetheless the EA 2010 replicates the medical model approach. Under the current definition, some disabled people struggle to prove they are disabled, especially those with fluctuating conditions such as many mental health conditions. Replacing the definition with a social model approach would have many benefits both for individual disabled people and for challenging prejudices that lead to discrimination in wider society. Article 1 of the UNCRPD has the following definition: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." The TUC has also recently produced guidance for trade unions to promote the social model approach (<https://www.tuc.org.uk/equality-issues/disability-issues/trade-unions/union-issues/new-guide-will-help-unions-promote>).

**3.1 Q3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?**

3.1 Although there are examples of good practice, the TUC knows of many cases in the field of employment that demonstrate that understanding of the duties is at best patchy and sometimes absent, leaving disabled workers facing the stress of a prolonged legal battle as the only way to assert their legal rights. Problems often arise at line management level where managers have not been trained properly, rather than at higher level where policy is agreed.

3.2 One union's survey of disabled members found cases where: (a) there were delays in implementing, or a failure to implement, reasonable adjustments; (b) there was no effort to understand that each disabled worker's impairment may be unique; and (c) disabled workers were being pressurised to go part-time rather than deal with the barrier/disadvantage that they were facing. Two examples from disabled members to highlight the kind of issues arising:

*I have a number of chronic conditions... my request for reasonable adjustments was viewed as "annoying". There was no solution on offer so I had to move to a part-time contract. My 40% deafness makes my work more tiring... as I have to strain my attention to teach [or]... at meetings. I have never received formal support from my manager or HR.*

3.3 Another union has collated examples where its members were entitled to reasonable adjustments and where Occupational Health had made recommendations but the employer was not co-operating in implementing them. One example among many to highlight the problem:

Member had spinal surgery... OH recommended suitable chair, trolley for folders, car parking space close to school... [employer] declined to implement any recommendations ... [and] seeking to dismiss on grounds of capability.

3.4 The TUC has collected many examples of employers failing to make appropriate adjustments for people with mental health problems. These examples are from every sector of the economy but are particularly common in high-stress professions such as teaching. Every education union has produced numerous case studies showing a high percentage of staff face or have faced mental health issues arising from their work or from domestic crises. The cases show employers failing to react in a timely fashion to consider what adjustments could be made to remedy the disadvantage and avert a crisis. In many of these cases, had it not been for the intervention of the union, the situation would have deteriorated and led to loss of employment. People with mental health conditions have very low employment rates (see p.21 of TUC report on ‘Disability and Employment’

<https://www.tuc.org.uk/sites/default/files/DisabilityandEmploymentReport.pdf>) and face considerable prejudice. Most workers are fearful of revealing mental health conditions to their actual or a potential employer and failing to comply with a request for a reasonable adjustment, just adds to the fear, stress and stigma associated with these impairments.

3.5 Thousands of individual cases have also been reported by unions on the failure of employers to make adjustments to their sickness absence policies for disabled workers. Employers’ failure to distinguish between absence resulting from sickness and absence related to disability results in many workers being dismissed. This is because disability-related absence is added to sickness absence which triggers disciplinary proceedings against the worker. This is despite the statutory Code of Practice on Employment mentioning “disability leave (or disability adjustment leave)” in its list of possible adjustments that would enable workers to return to their jobs after treatment and recovery rather than be dismissed. One union reported that an employer in the prison service was time limiting reasonable adjustments to aid return to work to 12 weeks, regardless of the circumstances of the individual case.

3.6 Unions have also reported employers failing to adjust their appraisal and performance management systems, for example, by adjusting targets to account for disability-related absences. This results in disabled employees being marked down or not being promoted despite achieving high ratings for required levels of skill.

#### **4.1 Q4. Should the law be made more explicit on what constitutes a reasonable adjustment? If so, in what way?**

4.1 In trade unions’ experience the reasonable adjustment duty is one of the most important provisions in EA 2010 but employers and sometimes members of the judiciary seem to struggle with the concept of treating disabled people more favourably to achieve equality in practice. A social model approach to defining disability may help change the mindset that equality is about treating everyone the same. One thing the TUC has campaigned for in terms of amendments to the EA 2010 is for it to be made explicit in the Act itself that disability leave constitutes a reasonable adjustment in the employment context rather than it just being in the Code of Practice. In addition, much more resource needs to go into training and raising awareness of the reasonable adjustment duty and the funding available to support adjustments through Access to Work.

#### **5.1 Q5. 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?**



5.1 In the TUC's view the PSED and the predecessor duties were a very important and welcome advancement in equality law. Trade unions know how difficult it is for individual victims of discrimination, particularly those who are disadvantaged or in a minority in a workplace, to assert their rights and ensure compliance with the law. The PSED clearly places the onus on organisations to take steps to prevent or stop discrimination and to advance equality without individuals having to make retrospective complaints.

5.2 The TUC surveyed public sector unions shortly after the introduction of the Disability Equality Duty in 2007 and received responses from representatives in employers representing a quarter of a million workers. At this early stage the evidence was that where the employer had taken the duty seriously and had engaged with disabled people, and with trade unions, there had been significant positive progress in making changes to employment practices and service provision. Where the employer had not taken the duty seriously, or had ignored it, there had been little change.

5.3 In responding to the PSED Review in 2012, the TUC received many examples from trade unions who were frustrated that an organisation was not complying with the PSED and there seemed to be little that they could do to make them comply. There were a few examples where unions were able to successfully use the new PSED to challenge existing or proposed practice and to get change. For example, one union reported how they had used the PSED to push a civil service employer to analyse why disabled employees were more likely to get stuck in a redeployment pool and to agree that changes be made, in this case more central funding for reasonable adjustments, so that other parts of the organisation were more open to taking disabled people from the pool. However, it has to be said that such examples were rare, especially in a climate where people perceived the PSED to have less force because of the weaker specific duties legislation introduced under the coalition government in 2011, the attacks on the PSED and related practices like equality impact assessments by the Prime Minister and by local government ministers, the weakening of judicial review and the cuts in resources and weakening of the EHRC.

**6.1 Q8 How effective has the EHRC 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?**

6.1 The EHRC has used its powers to advance disability equality. For example, it has carried out an important inquiry into disability-related hate crime, it has intervened in the Independent Living Fund judicial review and in Unison's challenge to employment tribunal fees, and it has supported the recent PCS case on reasonable adjustments and sickness absence (*Griffiths v Secretary of State for Work and Pensions*).

6.2 However, the EHRC has not been as proactive as the former Disability Rights Commission. It has had greater pressure on its resources with a much wider remit and funding cuts. When the DRC was in existence, its helpline was well advertised and received over 100,000 calls a year (e.g. see DRC Annual Report 2006-07). A Government Equalities Office review of the EHRC helpline in 2011, found that it received about a quarter of the volume of disability calls (although these still made up more than half of all calls received) that the DRC's had. The same level of resource had not gone into advertising and promoting the EHRC helpline. The EHRC's helpline was closed in 2012 and the coalition Government commissioned a new Equality and Advisory Support Service. There are no public statistics on the actual number of calls received by EASS but publicly available data on the breakdown of calls shows that disability still makes up the majority (EASS Engagement Newsletters). The decision of the Coalition Government to close the EHRC's helpline has undermined its

strategic casework and litigation as it no longer has the direct contact and easily accessible intelligence from dealing directly with victims of discrimination

**7.1 Q10. Are 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?**

7.1 Disabled claimants seeking to use Employment Tribunals face additional obstacles that are not always understood. In particular, as unions have informed us, members with mental health issues may require adjustments to the process to enable them to secure a fair hearing. Such adjustments are not always made. The consequence of this, and the prospect of cross examination by a lawyer, can deter a claimant with mental health problems from pursuing a justified claim. Unions have also drawn attention to problems with physical access at some offices.

7.2 The introduction of fees of £1,200 to get a discrimination case lodged and heard at tribunal has contributed to a large fall in claims. Comparing Q1 2013 with Q1 2014, the number of disability claims going to tribunal halved, while as all other evidence suggests, there has been no similar reduction in cases of disability discrimination. The TUC has argued repeatedly that ET fees are a major barrier to justice and must be scrapped.

8.1 Q`11 Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

**8.1 Continuing reductions to entitlement to in-work benefits have impacted severely on many low-paid workers and these include disabled workers with support needs. The changes to eligibility criteria for higher rates of Disability Living Allowance being implemented through the switch to Personal Independence Payment have caused hardship for many disabled workers.**

8.2 Despite the promises made in 2011, when the government accepted the recommendations of the Sayce review of specialist disability employment programmes, there has been only a modest increase in the funds allocated to Access to Work. The TUC argues for a substantial increase in funding for AtW, recognising that this is a cost-effective route to ensuring that more disabled people can access work or remain in work, generating tax revenues as a result, instead of becoming recipients of benefits. Alongside the limited extension of funding, AtW has this year initiated a system of capping grants paid out, with significant negative impact on a relatively small number of workers who relied on AtW to fund sign language interpreters and workers who need to use taxis to get to and from the workplace. The justification is that this enables the fund to be spread among more people: despite the fact that DWP statistics for use of the fund suggest very little change in the average number of recipients of funding.

8.3 There is continued evidence of a lack of awareness among many employers of the potential of AtW to assist them to recruit and retain disabled workers. But an awareness raising campaign must necessarily be accompanied by a commitment to increase the size of the fund, a step that would generate more revenue than it would cost.

8.4 The power that was introduced in s.124 of EA 2010 enabling employment tribunals to make recommendations following a finding of discrimination that would benefit others who might be at risk of discrimination should be reinstated. The Coalition Government repealed this power following its 'Red Tape Challenge' despite the fact that in the short time it was in operation employment tribunals had used it to make sensible recommendations that employers change their practices and learn lessons from discrimination cases, for example,

by ensuring that line managers and HR staff are trained on the requirements of EA 2010 and disability (e.g. see *Crisp v Iceland Foods*). 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 EA 2010 and could have been remedied by introducing stronger enforcement mechanisms for recommendations rather than repealing the power altogether.

8.5 The TUC would also like to see the statutory discrimination questionnaires that were in s.138 of EA 2010 (with similar provisions in the preceding discrimination legislation) reinstated. In responding to the coalition Governments consultation on repealing these questionnaires the TUC provided examples from unions of how they were relied on by individuals to help them establish whether or not they had a discrimination claim that was worth pursuing at tribunal. The questionnaires also often prompted employers to settle claims once they had been served with a questionnaire and considered the evidence they were being asked to provide. For example, the shopworkers union Usdaw gave us this example:

*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.*

*2 September 2015*

Trades Union Congress, Association of Convenience Stores, Barclays Bank, Business Disability Forum – Oral Evidence (QQ 72-78)

**Trades Union Congress, Association of Convenience Stores, Barclays Bank, Business Disability Forum – Oral Evidence (QQ 72-78)**

[Transcript to be found under Association of Convenience Stores](#)

## UK Learning Disability Consultant Nurse Network – Written Evidence (EQD0149)

### *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? **Yes, to a degree. Disability is better recognised by public services as potentially requiring ‘Reasonable Adjustment’. However, this is more often evidenced in policy than it is in practice**
2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation? **Not sure.**

### *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 sportsgrounds? **Not necessarily in all areas of disability, particularly Learning Disability. There are issues around transport that affect other groups (elderly) such as free passes only being valid at certain times of day which presents a barrier to other areas such as employment, education and training etc. there are certainly problems in other areas such as health services, particularly access to Mental Health services**
4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way? **Yes! Current focus is on ‘access to service provision’ where as a focus on ‘equality of outcome’ would bring about more effective change.**

### *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? **Again, impact is more noticeable in public sector policy than it is in public sector practice – the tendency is to focus on physical access to services whereas ‘cognitive’ access to services is seldom considered such as easy read information, longer appointment times, support through services etc.**
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? **Not sure**

### *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? **Yes. The current fragmentation means responsibilities are diluted and dissipated**
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? **I am not aware that a lack of reasonable adjustment – specifically for people with learning disabilities – has ever been followed up or rectifying action enforced**
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? **Yes, whilst there has been some progress by CQC in this area it is limited and patchy in its**

**implementation and effectiveness. Consideration needs to be given by all inspectorates and ombudsmen to be more proactive in this area**

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? **Not for people with learning disabilities**

11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability? **Greater enforcement of 'Reasonable Adjustment' and a greater focus on marginalised groups such as people with learning disabilities, autism etc. More focus on Outcomes and practice rather than policy and process**

*10 September 2015*

## **Unity Law – Written Evidence (EQD0127)**

1. Unity Law was founded in December 2010, corresponding with the introduction of the Equality Act 2010. From the outset, the firm has undertaken work for disabled customers and service users seeking to achieve reasonable adjustments in order to access services. As a founding Partner in the firm my legal background had focused on achieving compensation for people (typically industrial workers in and around Sheffield) who had been damaged by occupational diseases through work. Many lawyers tended to focus on achieving a compensation cheque rather than also recognising that lifelong diseases often create further difficulties for the Claimants' day to day lives, which might also warrant further assistance. I became aware of the work which the Sheffield Law Centre was doing to help achieve reasonable adjustments for disabled service users using the Disability Discrimination Act 1995 and developed an interest in incorporating that into my own practice. The first case which I undertook was for a profoundly deaf student in Darlington who developed a stress reaction as a result of being unable to complete her University Degree course because of a failure to make reasonable adjustments. This case was essentially a cross-over between Personal Injury law and discrimination law. Awareness of that case spread as did requests for help.
2. I was struck by the amount that many disabled people simply put up with, and believed that with more information about the extent of their rights, more could be done to improve lives and culture in a real way. Founding Unity Law meant that I could focus on doing that. We have always done so on a Conditional Fee basis, and we have taken on cases which have made a positive difference to policies even when the cases themselves have failed.
3. We run a range of discrimination cases, mostly disability discrimination, covering access to pubs, restaurants and theatres, banks, post offices and even a polling station. We have a number of higher education cases. We take transport cases, including the case of Paulley, which is now to be heard by the Supreme Court in 2016. We are also looking at a number of cases related to "shared space" road layouts on behalf of disabled people, particularly those who are visually impaired.
4. Our response address enforcement – Questions 9 and 10. We comment specifically on case funding and how it affects enforcement of the individual rights under the Equality Act.

### **(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?**

5. We do not think it is appropriate to expect Ombudsmen to take on an Equality Act jurisdiction but regulatory authorities could have greater regard to the PSED.

6. There are a range of Ombudsmen, with varying degrees of independence. Some are created by statute, such as the Local Government Ombudsman. Others are really only trade bodies.
7. Our experience of Ombudsmen is that they are loathe to get involved with discrimination cases as they – quite correctly – see that as the role of the courts. In Maxwell, R (on the application of) v The Office of the Independent Adjudicator for Higher Education [2011] EWCA Civ 1236, for instance, the Court of Appeal found that there was no duty on the OIA to make a finding on an allegation of disability discrimination and that this was a matter only for the courts.
8. We believe there is good reason for this and we accept the court’s view that:

“In the overall context of dispute resolution, it is, in my judgment, difficult to see how a "finding" can be other than one that is arrived at by any process other than the kind of court or tribunal process to which I have referred.”<sup>531</sup>
9. Whilst an Ombudsman may be helpful to resolve some complaints about poor practice, a finding as to whether an education or service provider has breached the law is a completely different task and one which has to remain in a judicial forum just as much as any other legal claim.
10. A similar approach applies to regulatory bodies. However, as public bodies subject to the PSED, there is scope to consider the extent to which each regulatory body is complying with this duty. We are aware the EHRC has previously conducted formal inquiries into areas like Fitness to Practice, where regulatory bodies within the healthcare professions were found to fall short. No doubt more could be done here.

**(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. We believe there should be greater clarity that Qualified One-Way Costs Shifting (QOCS) applies to discrimination cases in the county court and we also believe the time limit for claims should be harmonised with the 3-year time limits in personal injury cases. We also think there could be greater clarity about assessors.

**Application of QOCS to Equality Act cases brought in the County Court  
What is the Problem?**

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<sup>531</sup> Maxwell, R (on the application of) v The Office of the Independent Adjudicator for Higher Education [2011] EWCA Civ 1236 at para 19, in which the Court described the county court procedure as “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.” Note also that Ms Maxwell has an on-going County Court action some years after her Judicial Review, in respect of which Unity Law is instructed.



12. Cases under the Equality Act 2010 claiming discrimination outside employment, for example, where a disabled person has been refused access to a shop or a bus, are brought in the county court. This also applies to higher education cases. This can be a very expensive process – particularly if faced with having to pay the costs of the Defendant if you lose. The nature of discrimination claims is that the claimant is an individual and the defendant is usually a large corporation or institution with a consequent imbalance in resources between the two. The starting point is therefore inequality of arms.
13. Legal aid is available in only the smallest number of cases – in 2013-14, only 4 certificates were issued – and the number of solicitors who can offer it is minimal. In any case, this only assists people who can prove ever more rigid eligibility for legal aid.
14. Up until April 2013, Unity Law began to develop talking these cases as Conditional Fee Agreements in the same way as personal injury cases. These cases could be brought because people who had suffered discrimination would take out After the Event (ATE) insurance, to protect them from having to pay the costs of the Defendant if they lost. Then, if they won their case, they could claim back the cost of the premium from the Defendant as part of their winnings. A typical premium was significantly higher than the compensation that would be awarded because of the rarity and uncertainty in these cases. If the Claimant lost, the insurance policy would pay for the premium as well as the Defendant's costs.
15. However, section 58C of the Courts and Legal Services Act 1990 (as amended by section 46 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 – LASPO) bans recovery of ATE premiums from Defendants in most civil cases. This means that, even where a claimant successfully proves that a defendant has discriminated, the defendant cannot be ordered to pay the costs of the insurance premium. In consequence, ATE insurance is unaffordable so claimants must do without it.
16. In conventional personal injury cases, this is balanced by the Qualified One-Way Costs Shifting (QOCS) scheme. An unsuccessful PI claimant cannot be made to pay more defendants' legal costs unless the Claimant has been dishonest or fraudulent. This has the effect that Claimants will not be landed with a costs bill at the end of a case and therefore they can afford to take the risk of legal proceedings. Overall, corporate defendants benefit because they no longer have to pay out the very high costs of ATE premiums. In this context, it is important to note that the vast majority of cases settle by negotiation where both parties are legally represented.

17. The difficulty is that the QOCS rules apply to a “claim for damages for personal injuries”<sup>532</sup> and do not state they apply to discrimination cases. Whilst some commentators say that a claim for compensation for injured feelings<sup>533</sup> amounts to a claim for personal injury, this has not yet been clarified by the courts at appellate level. Given the costs consequences of doing so, it seems unlikely that will change any time soon.
18. These reforms challenge the viability of this work altogether. Unless change can be achieved, and quickly, we cannot easily advise a disabled Claimant without very significant financial resources, no matter how strong his or her cause of action is, to commence legal proceedings against their University, Transport Company or local authority because of the very substantial financial risk they face if they lose – or even, in some cases, even if they succeed in proving unlawful discrimination. This lack of protection also applies to a litigant in person or to pro bono advice and representation.
19. The Court of Appeal has recently considered the issue. On 09/07/2014, Clarke, LJ refused a costs capping application in a test case (Black & Others v Arriva North East Ltd, Case No: B2/2013/1841), on grounds that, although there appeared to be a “lacuna” in respect of funding and costs protection in Equality Act cases following implementation of LASPO, the Claimant’s case was not “exceptional”, since her position was allied with all other disabled Claimants.
20. This case was granted permission to appeal but had to be abandoned because the Claimant could not afford to bring her case. Unity Law even agreed to pay her premium; acting pro bono in the appeal as a result. Unity Law agreed to pay £41,000 for a policy to protect against £50,000 of adverse costs. The Claimant’s damages would have been under £3,000, according to the Trial Judge. As noted at the court, Unity Law would be the substantial losers if the appeal were successful.
21. On disclosure of that information, Arriva responded with a costs estimate of £147,000 to the appeal hearing, which prompted the application for the cap.
22. Clarke LJ suggested only two options would assist the claimant; funding by the Equality & Human Rights Commission (who also refused because of the potential costs liability), or for Claimants to bring cases through the Small Claims Track where neither party is entitled to recover costs. However, the small claims track is not suitable for cases which may last for longer than one day, where expert evidence might be needed. In any case, it is not the Claimant’s choice but the court’s. And without legal assistance Claimants will not have parity of arms, the Court system will be full of litigants in person and appeals, and good claims will not be brought. In practice these cases are all fast-track or multi-track cases. In addition, the small claims track will not provide a thorough written judgment which can serve as a tool for systemic change.

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<sup>532</sup> CPR 44.13(1)

<sup>533</sup> The main remedy for unlawful discrimination, as provided for in EA s.119(4)

Some Defendants deliberately apply to allocate them to those tracks to make Claimants personally liable for costs.

23. In everyday cases now, defendants' solicitors often refuse to deal with breach of duty issues until Claimants can provide evidence that they have the financial resources to pay costs if the claim fails. Such has been highlighted in Parliamentary debates concerning inaccessible transport, by Louise Elman MP on 9<sup>th</sup> January 2014<sup>534</sup>, where she stated at Column 156WH:

*"I want to raise one more important issue, concerning the ability of disabled people to claim their rights. The Equality Act 2010 is a piece of civil law. In practice, making sure that transport operators comply with Government requirements for equal access to transport has too often required individuals to pursue civil court actions. Disabled users of transport are rarely wealthy enough to pay the legal fees of their solicitors and risk funding those of the transport operator should they lose their case. Most challenges to transport operators under the Equality Act are undertaken as pro bono work by solicitors, who take out insurance to cover the costs if the case is lost. However, the civil justice reforms enacted last year will change that. As a result, cases might not be pursued and transport operators might not believe that breaches will be challenged in court.*

*Is the Minister aware of these concerns, and will he raise them with colleagues in other Departments? Does he have any suggestions for mediation that could prevent legal action?"*

24. That means that large service providers can effectively ignore their legal duties to make reasonable adjustments for their disabled customers or service users, with immunity from Court action. Why should they bother complying with the Equality Act at all then?

### **Risk of breach of International obligations**

25. We believe that the impact of LASPO on disabled Claimants may put the UK Government in breach of the UN Convention on the Rights of Persons with Disabilities, as follows:

### **Article 5 - Equality and non-discrimination**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

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<sup>534</sup> [www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140109/halltext/140109h0001.htm#1401094800001](http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140109/halltext/140109h0001.htm#1401094800001)

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

#### **Article 12 - Equal recognition before the law**

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

#### **Article 13 - Access to justice**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

#### **What could be done?**

26. No principled objection to including Equality Act cases in the QOCS scheme has been identified and it simply appears that such cases are too infrequent to have been considered by the Civil Procedure Rule Committee. It would be relatively simple to amend the Civil Procedure Rules, by Statutory Instrument, by the insertion, after CPR 44.13(1)(c), of:

##### **(d) under section 114 of the Equality Act 2010**

27. The Civil Procedure Rule Committee has power<sup>535</sup> to make rules and amendments to rules. There have been 80 updates since the rules were first published in 1998.

28. An alternative solution is to restore recoverable ATE to Equality Act cases. However, this would require primary legislation, for instance to amend s. 46 of LASPO to bring Equality Act cases in line with clinical negligence cases. Restoring ATE premiums would also increase the costs of proceedings to defendant, against the aims of the Jackson reforms. In addition, on policy grounds we would prefer that money applied

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<sup>535</sup> Civil Procedure Act 1997, section 2

to ATE premiums should instead be allocated to the cost of making reasonable adjustments.

29. Unity Law produced a campaign report to highlight the case for an extension of QOCS to Equality cases, titled the “Equal Justice” Report<sup>536</sup>, which has received wide ranging support, and which we understand has been referred by the Ministry of Justice to the Civil Justice Council (CJC) as part of an assessment of extending QOCS beyond personal injury cases generally. Copies can be made available to the Committee.

### **Time limits**

30. The time limit of 6 months to issue a claim in the county court is too short and causes frequent difficulty. It should be harmonised with personal injury law and extended to three years from the date of the incident instead of 6 months.
31. The time limits of 3 months to issue in the employment tribunal and 6 months in the county court were inherited from the legacy statutes and reflected the historical nature of discrimination cases. These were predominantly established in the workplace in an industrial setting in the 1970s and therefore reflected ongoing workplace relationships with interpersonal disputes depending on oral evidence. Where disputes were about individual conduct and precise memories of conduct and tone of voice were often crucial, this demonstrated a need only to admit very recent cases.
32. This does not reflect the modern practice when information is routinely and digitally documented and stored. It is also less relevant to disability cases where the claim often relies on an organisation's internal systems which give rise to failures to make reasonable adjustments.
33. The time limit is particularly difficult as we commonly run combined discrimination and personal injury cases, with different limitation periods arising from the same incident. The pre-action protocol for personal injury claims expects that a claimant will allow a defendant a 3-month period to provide a full response to their letter of claim. This is effectively incompatible with the 6-month time limit when the difficulty of disabled people to understand they may have legal rights, find a suitable solicitor, the time taken to obtain medical reports and to draw up a letter of claim is considered.
34. It is commonplace for defendants to argue, almost as a matter of course, that a claim is out of time, even though such defences rarely succeed. What the short time limit does do, however, is to work against the prospects of resolving a case by negotiation.

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<sup>536</sup> [http://www.unity-law.co.uk/media\\_area/media.htm?id=1](http://www.unity-law.co.uk/media_area/media.htm?id=1)

35. We do not believe there would be significant prejudice to defendants if the time limit were extended to 3 years. It is unlikely to lead to an increased burden of record-keeping since 6 years is already standard. If it leads to an increase in claims, this will only be because discrimination is being addressed. It is not likely to disadvantage Defendants in having to answer a case where evidence is stale because the initial burden of proof is still on the claimant, notwithstanding then provisions for the reversal of the burden of proof once the claimant has established a prima facie set of facts.

### **The Need for Assessors in County Court Matters**

36. County courts hearing discrimination cases must appoint assessors “unless the judge is satisfied that there are good reasons for not doing so.”<sup>537</sup>
37. The Court of Appeal considered assessors in Cary v Commissioner of Police of the Metropolis (Equality and Human Rights Commission Intervening) [2014] EWCA Civ 987. It was stated [26] that, in contrast to the position under the previous legislation, under the Equality Act,
- “(1) the appointment of an assessor or assessors is mandatory in all cases covered by the Act in the absence of good reasons not to do so; and (2) the persons who are to be appointed are those with “skill and experience in the matter to which the proceedings relate”, that being the criterion under section 63 of the County Courts Act 1984”.
38. There is a practical problem with the appointment of Assessors however; there is no central list, or transparent rigour applied to identification, qualification or suitability to those likely to be called to be assessors. In addition our experience is that there is considerable uncertainty at county court level as to whose role it is to appoint one, whether to adopt a ‘single joint expert’ formula or how the costs are to be paid.
39. Frequently the question of assessors is simply ignored but the following examples show the degree of inconsistency.
40. In Elliott v Arriva North East Ltd 1DL01859 at first instance, His Honour Judge Bowers identified the assessor by referring to the Employment Tribunals for assistance. At paragraph 3 of his Judgment he explained that,

*“I have had the advantage of sitting with Mr J Burdess as an assessor. He has wide experience of discrimination cases sitting in the First Tier Tribunal and has been of great assistance to me in identifying and explaining discrimination issues. However, the parties agree that the final assessment of the factual evidence and the ultimate decisions are matters for my sole judgment.”*

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<sup>537</sup> S. 114(7) EA

41. In another County Court case of Andrew Chipperfield-Taylor v Virgin Media Limited 2YK76252, District Judge Lloyd Jones thought it the responsibility of the parties to find and agree an Assessor between them. After some persuasion she wrote that,

*“the Court is considering the appointment of one of the following assessors (see attached) to advise of the issues of compliance with the Equality Act and the range of suitable adjustments. The Court believes that the proposed assessors are both,[sic] being members of the Employment Tribunal.*

*The parties are to satisfy themselves that the proposed assessors are appropriate to the case and to notify the court if they have any objection to the appointment of either one of the precise terms of the advice to be sought no later than 4pm on the 25<sup>th</sup> February 2013”*

42. In a more recent case, (currently subject to an appeal), the District Judge stated;

*“Well I think there are good reasons not to appoint an assessor when it all hinges on the finding of fact. The assessor’s appointment is going to be irrelevant if the finding of fact is against the Claimant”*

43. This variation shows there seems to be a distinct lack of guidance available to the judiciary on where or how to find appropriate assessors, whether parties are to be involved in the process and to what extent, and also who is to bear the costs. A central register of assessors which is regularly reviewed would be useful. Given that the aim is to assist Trial Judges who may not have any or only modest experience of discrimination (goods and services) cases, it would be sensible to ensure that the list is small to ensure that the assessors themselves have appropriate experience for consistency.

44. We trust this evidence is of benefit to the Committee.

*4 September 2015*

## University of Leeds – Written Evidence (EQD0125)

**Written Evidence submitted jointly by:  
The Centre for Disabilities Studies, University of Leeds and  
The Centre for Law & Social Justice, University of Leeds.**

The Centre for Disability Studies, University of Leeds, draws together academics and postgraduate students from a wide range of disciplines across the University. We have a long history of working across disciplines, and with disabled people and their organisations, to expose disabling barriers and work towards more inclusive approaches and enabling systems. Many of our members are also members of other University centres, including the Centre for Law and Social Justice.

The Centre for Law & Social Justice, School of Law, University of Leeds supports scholars, activists, organisations and practitioners who are interested in and engage with issues of equality, welfare, and social justice. Our work considers the extent to which law can address these inequalities and help ensure that resources are shared more equitably. One focus of the work of the Centre is disability rights and equality law.

Report Authors: Alex Pearl and Anna Lawson

Date: 4 September 2015

### **Executive summary**

We recommend the following key issues for consideration by the Select Committee:

- The definition of disability and the need for the current specific exclusions from it.
- Gaps in protection for volunteers and air passengers.
- Lack of implementation of important provisions (including taxi accessibility regulations, common parts and dual discrimination).
- Evidence of on-going lack of implementation of reasonable adjustment duties and confusion about the anticipatory reasonable adjustment duty.
- The value of a new code (or codes) of practice specifically on reasonable adjustments.
- Strengthening codes of practice by returning to the former practice of making them 'statutory'.
- Making reference, in codes of practice, to existing standards as (partial) guides to 'reasonableness'.
- The potential negative impact on the Public Sector Equality Duty general duty of recent changes to judicial review cases
- The fact that the general duty to have 'due regard' is rather weak unless accompanied by strong specific duties and the relative weakness of the specific duty in England
- Considering whether there would be value in introducing a quick, low cost and accessible mechanism for arbitrating on violations of the Equality Act 2010.



**Full responses to the Select Committee’s questions:**

**A. 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?***

**(1)** The Equality Act 2010 (EqA) has strengthened and harmonised disability discrimination law in important respects, including by:

- Introducing discrimination arising in consequence of disability.
- Introducing indirect discrimination.
- Harmonising and strengthening justification defences.

However, we have some concerns about the effectiveness of the Act. These are set out at relevant points throughout this submission. Our concerns about the definition of disability – a gateway to the EqA for disabled people – are not relevant elsewhere and are therefore discussed here.

**(2)** We are disappointed that the Equality Act retained, in what is now s 6(1)(b), the requirement that, to qualify as ‘disabled’ for purposes of the Act, a person must have an impairment which ‘has a substantial ... adverse effect on [their] ability to carry out normal day-to-day activities’. We believe this requirement is inconsistent with EU law – namely the Court of Justice’s interpretation of ‘disability’ (for purposes of the Employment Equality Directive 2000/78/EC) in cases such as *Ring and Werge, Z v A Government Department and the Board of management of a community school*, and *Kaltoft*. Before these cases, EU law had included a similar condition to that now found in s 6(1)(b) EqA, but a different approach was adopted in order to achieve consistency with the UN Convention on the Rights of Persons with Disabilities (CRPD). Thus, there are obvious questions about the consistency of the EqA’s definition of disability with the CRPD as well as with EU law.

**(3)** Section 6(1)(b) EqA also requires that the ‘adverse effects on normal day-to-day activities’ should be ‘long term’. This element of the definition has caused some difficulties in practice and seems to operate particularly harshly for people with mental health conditions. For example, in the case of *Mullen* [2015], a woman was not able to bring a disability discrimination claim against her employer because her ‘impairment’ was not judged to be sufficiently long term – due to uncertainty about when her depression and anxiety might return and how long it might continue.

**(4)** We urge the Select Committee to recommend that the requirement in s 6(1)(b) of the EqA be repealed.<sup>538</sup> Examples of disability equality legislation with definitions of disability which do not include such a requirement can be found in Ireland<sup>539</sup> and in Australia.<sup>540</sup>

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<sup>538</sup> See calls for similar amendments made in Disability Rights Commission, *Consultation on Definition of Disability in Anti-Discrimination Law* (London, DRC, 2006).

<sup>539</sup> Irish Employment Equality Act 1998, s 2(1).

Further, even in the EqA, there are situations where the requirement for a substantial adverse effect does not apply – eg in cases of severe disfigurement<sup>541</sup> or where there has been a diagnosis of HIV infection, cancer or multiple sclerosis.<sup>542</sup> Removing this requirement for all cases would make disability discrimination claims available to people who experience discrimination because of impairments with only very minor effects on their daily lives or because of an impairment which might affect them in the future (due, for instance, to a genetic predisposition<sup>543</sup>).

**(5)** We are concerned that the specific exclusions from the meaning of the EqA (contained in the 2010 Regulations) may be operating unfairly to exclude disabled people from the EqA and potentially therefore conflict with the CRPD. A recent example is *X v GB of a School*,<sup>544</sup> where it was held that a 6 year old girl with Autism was not disabled because she had a ‘tendency to physical abuse’. Because of this, she was unable to challenge her exclusions from school as disability discrimination. We recommend that the purpose of and need for these exclusions is reconsidered, in light of the CRPD.

## **2. Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?**

**(6)** In relation to the definition of disability, we have identified a number of gaps above, where people who experience disability discrimination would not be able to challenge it using the EqA. In particular:

- Discrimination because of future disability (eg genetic discrimination);
- Discrimination because of a condition which cannot be shown to have ‘long term’ or ‘substantial’ effects on day-to-day activities; and
- Discrimination because by somebody who falls within one or more of the specific exclusions in the 2010 Regulations.

**(7)** In addition, there are important gaps in the reach of the EqA in relation to:

- Volunteers – *X v Mid Sussex CAB*
- Air passengers – *Stott v Thomas Cook Air Tours*

**(8)** There are also important gaps because certain provisions in the EqA have not yet been brought into force. We are particularly concerned that the following have not yet been implemented or acted upon:

- The provisions on taxi accessibility regulations;
- The provisions on common parts; and

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<sup>540</sup> Australian Disability Discrimination Act 1992, s 4.

<sup>541</sup> EqA, sch 1, 3.

<sup>542</sup> See EqA, sch 1, 6.

<sup>543</sup> For criticism of the omission of this issue from the EqA, see RH Wilkinson, ‘The Single Equality Bill: A Missed Opportunity to Legislate on Genetic Discrimination?’ (2009) 3 *Studies in Ethics, Law, and Technology*.

<sup>544</sup> [2015] UKUT 0007 (AAC).

- The provision on dual discrimination.

## B. Reasonable Adjustment

### 3. *Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them?*

(9) A range of studies highlight inadequate implementation of reasonable adjustments. While lack of understanding seems to be an important factor, there are others and the relative significance of lack of understanding in causing poor implementation is not always evident. Some of these studies are outlined in paragraphs 10 – 16 below.

(10) In the employment context, Mark Bell has recently drawn attention to a trend toward more narrow and restrictive judicial interpretations of the reasonable adjustment duty and the difficulties this causes for workers with mental health conditions.<sup>545</sup>

(11) In the local authority context, Rupert Harwood argues that, although reasonable adjustment practice was generally good across the 33 local authorities he studied, there was evidence this was deteriorating because of spending cuts.<sup>546</sup>

(12) In the services context, research by MA Rankin found that business focus on disability had deteriorated between 2008 and 2013 and that there was a perception amongst interviewees of poorer accessibility and poorer implementation of anticipatory reasonable adjustment duties.<sup>547</sup>

(13) A number of studies have drawn attention to barriers to healthcare resulting from inadequate implementation of reasonable adjustment duties in the health system.<sup>548</sup>

(14) In the education context, several studies raise concerns about the adjustments and support being made for disabled pupils.<sup>549</sup>

(15) In the justice context, various studies draw attention to the barriers to accessing and participating in the justice system on an equal basis with others because adjustments are not made.<sup>550</sup>

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<sup>545</sup> M Bell, 'Mental Health at Work and the Duty to Make Reasonable Adjustments' [2015] *Industrial Law Journal* 194.

<sup>546</sup> Rupert Harwood, 'The dying of the light': the impact of spending cuts, and cuts to employment law protections, on disability adjustments in British local authorities' (2014) 29 *Disability and Society* 1511, 1517-1518.

<sup>547</sup> M-A Rankin, 'Missing Out' (Really Useful Stuff, December 2013).

<sup>548</sup> See generally A Roulstone, S Woodin, A Lawson and M Priestley, *United Kingdom ANED Country report on Accessibility to Healthcare* (ANED, 2015) available at <http://www.disability-europe.net/content/aned/media/ANED%202014%20-%20Task%203%20-%20UK%20-%20final.doc> accessed 4 September 2015.

<sup>549</sup> See eg C Kulz, 'Mapping the Exclusion Process: Inequality, Justice and the Business of Exclusion' (Communities Empowerment Network, March 2015); and Department for Education, 'The Special Educational Needs and Disability Pathfinder Programme Evaluation: Final Impact Research Report' (London, July 2015), 15, 97.

**(16)** Although we have not been able to find any research on this, we are aware of considerable confusion amongst duty bearers, disabled people and others about the anticipatory reasonable adjustment duty. In particular, there is a tendency to attribute any anticipatory power to the Public Sector Equality Duty (PSED) and totally to overlook the existence of the anticipatory reasonable adjustment duty. The fact that breach of the anticipatory reasonable adjustment duty, unlike the PSED, amounts to discrimination under the EqA is generally not understood.

**4. *Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?***

**(17)** We believe that guidance in codes of practice could be strengthened. Alongside the current codes, which integrate guidance on reasonable adjustments into more generic guidance, we suggest that there is a need for a separate code on reasonable adjustments – or possibly one on anticipatory reasonable adjustment and one on reactive reasonable adjustment.

**(18)** We are concerned that the profile and impact of the guidance in the newer codes of practice has been seriously damaged by the fact that they have not been endorsed by Parliament – and thus not become statutory codes. We recommend this is changed and that new codes of practice are laid before Parliament.

**(19)** We recommend that, in new codes of practice on reasonable adjustment, reference is made to standards (where they exist). There could, for example, be a statement that compliance with such standards will help satisfy anticipatory reasonable adjustment duty, whilst making it clear that more may sometimes be needed.

**(20)** We are excited by the introduction of the Accessible Information Standard by NHS England. The impact of this on enhancing accessible interaction and communication should be monitored with a view to recommending the rolling out of similar approaches in other sectors.

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<sup>550</sup> See eg National Appropriate Adult Network, 'There to help: Ensuring provision of appropriate adults for Mentally Vulnerable People Detained or Interviewed by the Police', (August 2015); C Paskell et al, CLA Mandatory Gateway: Findings from interviews with users, *MoJ Analytical Series*; P Swift, K Johnson, V Mason, N Shiyyab and S Porter, *What Happens when People with Learning Disabilities Need Advice about the Law?* (Nora Fry Institute, 2013); and A Lawson, 'Disabled People and Access to Justice: From Disablement to Enablement?' in P Blanck, E Flynn and G Quinn (eds) *Disability Law* (Ashgate, forthcoming).

### C. 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?*

**(19)** One of the core strengths of the Equality Act 2010 is the move towards transformative equality contained in the PSED.<sup>551</sup> There has been some uncertainty in the case law regarding the degree of analysis required of decision-makers in order to comply with the Duty.<sup>552</sup> We hope that the more robust standard of review adopted by the Court of Appeal in *Bracking*<sup>553</sup> will be influential. Recent cases have focused on challenging proposed cuts and the focus of the PSED case law has thus been on the ‘elimination of discrimination’ ground.<sup>554</sup> Given concern about intensifying negative attitudes toward disabled people and disability harassment, there is potential for more use of the PSED’s grounds of advancing equality and fostering good relations.

**(20)** We are concerned about the potential impact on the PSED and its enforcement of enhanced court fees and the requirement in the Criminal Justice and Courts Act 2015 that in order to bring a judicial review case it must be ‘highly likely’ that proper consideration of the PSED would change the outcome for the applicant.<sup>555</sup> This high threshold, coupled with increased costs of litigation, is likely to operate as a disincentive. Similarly, a cap on recoverable costs may prevent applicants from bringing cases<sup>556</sup> and the imposition of costs on interveners may have a chilling effect on the ability of non-governmental organisations and the EHRC to intervene in proceedings.<sup>557</sup>

**(21)** The general duty to have ‘due regard’ is rather weak – particularly if not accompanied by strong specific duties. We are very concerned that the specific duties in England are weaker than those accompanying the Disability Equality Duty and that the removal of the requirement to ‘involve’ disabled people is a retrogressive step when judged against Article 4(3) of the CRPD.

**(22)** We welcome the full review of the PSED due in 2016 and urge that care is taken to ensure that the independence and rigour of that review is beyond reproach. We note Aileen McColgan’s concerns that the composition of the 2012 ‘Independent Steering Group’

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<sup>551</sup> Bob Hepple, ‘Equality Law Under the Conservative Government’ (Keynote presentation, ‘The Equality Act 2010: Five-years On’ Conference, Chester University 22 June 2015) <http://www.chester.ac.uk/node/31620> accessed 26 August 2015.

<sup>552</sup> Aileen McColgan, ‘Litigating the Public Sector Equality Duty: The story so far’ (2015) 35 *Oxford Journal of Legal Studies* 453, 473.

<sup>553</sup> *R (on the application of Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 (CA)

<sup>554</sup> Aileen McColgan, ‘Litigating the Public Sector Equality Duty: The story so far’ (2015) 35 *Oxford Journal of Legal Studies* 453, 479.

<sup>555</sup> Criminal Justice and Courts Act 2015 s 84.

<sup>556</sup> Criminal Justice and Courts Act 2015 s 88.

<sup>557</sup> Criminal Justice and Courts Act 2015 s 87.

originally tasked with evaluating the PSED was composed largely of people who could ‘reasonably be regarded as having an interest in the evisceration of the duty.’<sup>558</sup>

**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?**

**(23)** The specific duties in England are very light-touch and we are concerned that this significantly hampered the progress that had been made under the Disability Equality Duty. The Scottish<sup>559</sup> and Welsh<sup>560</sup> Regulations go much further in prescribing what public bodies must do to meet their equality obligations.<sup>561</sup> Unlike the English Regulations, the Welsh and Scottish Regulations require public authorities to conduct equality impact assessments in respect of new or amended policies or practices and to take these assessments into account in decision-making.<sup>562</sup> Research by the EHRC has shown that the PSED Regulations in Wales are working well by raising the profile of the equality agenda, providing clarity about what must be done to implement the duty, and showing that all organisations involved in the research were able to demonstrate at least one example of evidence showing progress towards the general Duty.<sup>563</sup> By contrast, 2012 research conducted by the EHRC on implementation of the PSED in England showed only 50% of public authorities had met their obligation to publish equality information on their workforce and service users.<sup>564</sup>

**(24)** A further significant issue of concern is the failure of the English Regulations to specify the need for public authorities to involve or engage with stakeholders when determining their equality objectives as is required under the Scottish and Welsh Regulations.<sup>565</sup> The need for involvement of disabled people in setting equality objectives was a key strength of the preceding Disability Equality Duty.<sup>566</sup> Further, as noted above, ‘involvement’ of disabled

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<sup>558</sup> Aileen McColgan, ‘Litigating the Public Sector Equality Duty: The story so far’ (2015) 35 *Oxford Journal of Legal Studies* 453, 454.

<sup>559</sup> The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 SI 2012/162.

<sup>560</sup> The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 SI 2011/1064 (W.155).

<sup>561</sup> (Scotland) Regulations 2012 SI 2012/162 s 3-5; (Wales) Regulations 2011 SI 2011/1064 (W.155) s 3-4.

<sup>562</sup> (Scotland) Regulations 2012 SI 2012/162 s 5; (Wales) Regulations 2011 SI 2011/1064 (W.155) s 8.

<sup>563</sup> EHRC ‘Review of the Public Sector Equality Duty (PSED) in Wales’ (EHRC, NatCen, 2014) 5,

<<http://www.equalityhumanrights.com/publication/review-public-sector-equality-duty-psed-wales-full-report>> accessed 27 August 2015

<sup>564</sup> EHRC ‘Publishing equality information: Commitment, engagement and transparency: Assessment of public authorities’ implementation of the specific duty to public equality information’ (EHRC, December 2012)

<<http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/public-sector-equality-duty/monitoring-and-enforcement>> accessed 27 August 2015

<sup>565</sup> (Scotland) Regulations 2012 SI 2012/162 s 5; (Wales) Regulations 2011 SI 2011/1064 (W.155) s 4(2).

<sup>566</sup> Disability Discrimination Act 1995 s 49A, as amended by the Disability Discrimination Act 2005. For research showing benefits of involvement see Caroline Gooding ‘Promoting Equality?’: Early Lessons from the Statutory Disability Duty in Great Britain’ in Gerard Quinn and Lisa Waddington (eds), *European Yearbook of Disability Law*, Volume 1 (Hart Publishing, Oxford 2009) 39-41; and J Ferrie et al, ‘An In-Depth Examination of the Implementation of the Disability Equality Duty In England – Executive Summary’, (Office for Disability Issues, December 2008), <<http://socialwelfare.bl.uk/subject-areas/services-client-groups/adults-disabilities/officefordisabilityissues/indepth08.aspx>> accessed 27 August 2015.

people in decisions and policy-making affecting them is required by Article 4(3) of the CRPD and there is therefore an argument that the new specific duties represent a retrogressive step in UK progress toward CRPD implementation.

#### **D. 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?***

**(25)** We would urge the Committee to take note of Article 33 of the CRPD when considering this issue, in particular, its requirement for a ‘focal point’ and effective co-ordination mechanism across government.

**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?***

**(26)** We are very concerned that the introduction of Employment Tribunal fees after 29 July 2013 has had a significant impact on disabled (and other) people. We are also seriously concerned about the impact of changes to entitlement and application methods for legal aid. An indication of some of these impacts is provided in an EHRC report on the subject due to be published in September 2015.

We urge the Committee to reflect on quick, low cost and accessible methods being used in other countries (eg Norway) to enforce equality claims and consider recommending action on this issue in the UK.

*4 September 2015*

## **Brian Wakeling – Written Evidence (EQD0008)**

1. The Equality Act 2010 has not succeeded in strengthening and harmonising disability discrimination. There are still parts of the Act that are not Enacted (such as Section 165), and as such are unenforceable. Without every part of the Act Enacted, the Equality Act 2010 has failed in its' basic premise.

2. There needs to be coverage in Equality Act regarding permanent and/or lifelong disabilities, and the requirement to re-assess the effects of them on a regular basis. There are many disabilities, both mental and physical, that are incurable, whose symptoms will not improve or be alleviated with any treatment, and affect people for their whole lives. Those people so affected need the assurance that they will **not** be re-assessed for medical care, state benefits, care and support, etc, every few months/years for bureacratic purposes. I am acquainted with someone who has spina bifidia, and another with Ehlers-Danlos Syndrome, both of whom are confined to wheelchairs for these permanent crippling conditions, and yet they are still required to undergo medical re-assessment on a regular basis to see if they have "got better".

3. Reasonable adjustment duties may not be fully understood by employers and service providers in the case of people with "hidden" disabilities, particularly learning disabilities.

5. Public Sector Equality Duty would be a wonderful thing, if it were also a mandatory requirement of the private sector. For instance, I have Asperger's, a learning disability. I know several other people with various other "hidden" disabilities, including others with Asperger's. From conversation between us, I have found that we have all experienced discrimination from private sector employers when appyling for jobs. No matter how inconsequential a person's disability to their ability to a particular job, a private sector employer will choose someone with no disabilities over someone with disabilities, assuming similar levels of experience and qualification.

10. There is almost no accessible information available to people, particularly people with learning disabilities, on how to address problems of discrimination. Hate Crime Reporting centres are few and far between and largely un-publicised, the police are generally uninterested, there are rarely easily-visible leaflets or other sources of information available in town halls or community centres, the Citizens' Advice Bureau is often difficult to get to and/or open at inconvenient hours, and many people are not aware of where the nearest CAB office is. Other places that people may go to to get help for addressing problems of discrimination, where that sort of information is not on hand to give out, include JobCentres, churches, medical centres and doctors' surgeries. When a person is a member of a support organisation, and experiences discrimination from within that organisation, they often do not have another channel through which to get advice and help on the matter.



11. Enact, and therefore make enforceable, every section of the Equality Act 2010. Without that key and basic step, there are people who are still unprotected from discrimination and have no redress against it.

*14 July 2015*

## **Louise Whitfield – Written Evidence (EQD0090)**

I am a partner at Deighton Pierce Glynn, Solicitors, where I specialise in Judicial Review claims, particularly those involving the Public Sector Equality Duty. I also bring a small number of private law claims in relation to disability discrimination. I am a founding member of the Deaf and Disabled People's Organisations Legal Network and work closely with a number of organisations including Inclusion London and DPAC. I do not undertake any employment law casework and am therefore limiting my response to the Committee's questions on those matters in which I have direct experience, namely the Public Sector Equality Duty and private law discrimination claims in the field of goods, facilities and services. These submissions have been prepared by me in a personal capacity, rather than on behalf of my firm, and they represent my view, rather than those of Deighton Pierce Glynn.

### **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?**

- (a) Based on my experience of litigation in this area over the last eight years, I think the Public Sector Equality Duty has been fairly effective in practice. It has led to a change in mindset for many public authorities, who now take far more seriously the need to adopt a proactive approach to considering equality and the impact on people with protected characteristics, at the point at which they are developing policy or making decisions that will have far-reaching consequences. Many public authorities have been successful in embedding the equality duty in everything they do. Whilst there has been some confusion over the legal requirements to meet the duty (such as whether an equality impact assessment is mandatory or not), in my view many public authorities are now taking very seriously the need to think ahead and consider the impact of their actions on disabled people.
- (b) Unfortunately, there are a number of public authorities who do still get this wrong, but over the last few years, in my experience, I have witnessed a sea change of behaviour amongst public authorities when I have been instructed by individuals affected by a possibly unlawful decision involving a potential breach of the Public Sector Equality Duty. Whereas previously, public authorities would seek to vigorously defend such claims, I have had a number of cases in the last four to five years where we have successfully persuaded a public authority to withdraw the unlawful decision and take it again, complying with the Public Sector Equality Duty and reinstating services in the meantime, without us having to issue proceedings. This is largely because of the availability of Legal Aid and solicitors expert in this field, and well-educated groups and campaign organisations who are aware of the equality duty, aware of the role of solicitors and the courts, and the availability of funding for such litigation.
- (c) One example that comes to mind is that of a specialist project run for Deaf people with mental health problems and learning disabilities, and funded by the local authority, which was due to be closed with no consultation and no compliance with the PSED. On the basis of two letters from me written on behalf of a service-user and funded by Legal Aid, the council agreed to withdraw their decision, immediately

reinstating all the cut services and then carrying out a full consultation exercise and complying with the equality duty. Although the council went ahead with some changes to the service provision, these were not nearly so drastic, nor so detrimental to the client group, once the consultation exercise had been completed and the PSED complied with. As with most cases like this, the referral came from a local branch of a national charity which included an individual who was supporting the affected service-users, but had also been to a training session that I ran for voluntary sector organisations on the PSED. This illustrates the fact that education of the voluntary sector is essential to make the equality duty work so that they can inform individuals of their rights. Similarly, it is essential that Legal Aid remains in place for such challenges, and that there is the expertise in the legal profession to continue to litigate in this area.

- (d) Despite a number of successes at the pre-litigation stage, and an increasing awareness in some public bodies of the need to meet the duty and take it seriously, I have not seen the same attitude adopted by central government. It is unclear why this is the case, and may be as a result of local authorities or smaller public authorities making decisions that they are happy to withdraw in the face of the threat of expensive litigation. Central government seems more inclined to plough on regardless, particularly in terms of the austerity programme which has included the disastrous closure of the Independent Living Fund.
- (e) I was one of the solicitors for the Claimants in the successful Court of Appeal ILF case, which, whilst strengthening the law in this area and quashing the initial decision to close ILF, was then overtaken by a fresh decision by central government to close the Fund in any event. We were unsuccessful in a judicial review of that fresh decision. I still firmly believe that the Minister for Disabled People did not meet the equality duty, did not understand how the duty was meant to operate and, if he did, simply took a decision because, regardless of the outcome, the Government was determined to close ILF. This illustrates the limitations of the Public Sector Equality Duty which is of course simply a procedural duty which does not necessarily consider the substance or merits of a decision. 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. However, it seems worryingly easy for a public body to tick the boxes, as it were, and still reach a conclusion that they can go ahead with a policy such as closing ILF, even when the Court of Appeal has described the consequences as having an *“inevitable and considerable adverse effect ... particularly on those who will as a consequence lose the ability to live independently”*.
- (f) Thus, although overall I think that the Public Sector Equality Duty has been effective up to a point and contributed well to the aims of the Equality Act 2010, there is still this fundamental gap in central government thinking and a lack of understanding of officials within particularly, for example, the Department for Work and Pensions. I have been involved in a number of cases in relation to, for example, applications for disability benefits by particular groups of claimants and have been astonished at the lack of engagement by the DWP officials in response to concerns being raised –

by me and other advocates - in terms of breaches of the PSED and the impact on particularly vulnerable groups of disabled people. There appears to be little desire within the DWP to engage properly on such matters, unless litigation is threatened.

- (g) Lastly in terms of the PSED, I think there is a gap in the understanding of organisations that exercise public functions but are not included in the Act's Schedule as being bound by section 149(1). Under section 149(2), a person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in sub-section (1). A public authority is a person who is specified in Schedule 19, and in my experience those public authorities are well aware of their duties under section 149. Unfortunately, there are a large number of organisations not listed in Schedule 19 who should be complying with the duty because they are exercising public functions.
- (h) By way of example, I have previously advised on a case at the pre-litigation stage in which a particular organisation is administering a very large grant on behalf of central government to provide particular services to disabled people; they are clearly exercising a public function and are therefore bound by the duty. In pre-action correspondence, they have shown a level of ignorance of the Public Sector Equality Duty which I have not seen for many years. Given their remit, this seems astonishing and of particular concern in the circumstances. It is even more worrying when the Government is increasingly outsourcing its functions to private companies. Other than litigation (which is often the best way to educate both public and private organisations), I have no immediate answer as to how these organisations should be educated to establish that the duty applies to them. There is some guidance from the EHRC about commissioning processes, and the need for public authorities to ensure that the duty is being met when functions are carried out on their behalf. However, this appears to be inadequate in the circumstances and there may well be breaches of the duty on the part of the public authorities in question if they are then devolving their functions to a private company or charity which then fails to meet the duty on their behalf.
- (i) It is difficult to estimate how widespread a problem this is, as I obviously only see a small number of cases that happen to be referred to me by the most clued-up individuals or those in touch with the organisations mentioned above or others who refer cases to me. However, I think this is an issue that needs to be addressed or the effectiveness of the PSED will be severely undermined as the move towards privatisation of much government decision-making extends to more and more areas.

**10. Are the current enforcement mechanisms available to private individuals accessible and effective for people with disabilities, employers and providers of goods, facilities and services?**

- (j) There is a very significant problem with the current enforcement mechanisms which generally are not available nor accessible and effective for disabled people. There is virtually no Legal Aid available and no effective alternative by which such cases can be funded. This has led to a dearth of expertise in this area and is reflected in the

fact that hardly anyone is bringing these cases, even though the rights are readily available in the Act and even though access to goods and services for disabled people is astonishingly poor.

- (k) I am **attaching** to this submission an article written by me and Douglas Johnson (then of Sheffield Law Centre) [article not published] where we attempted to address the issues involved and I will not repeat the contents here. However, the key points are that disabled people can only get advice via a very restricted mandatory telephone gateway, which is run by three organisations with specific Legal Aid contracts to provide discrimination advice. My firm was not in a position to bid for those contracts because we do not have the resources, nor would it fit with our work, to provide a telephone gateway service. However, the Legal Aid Agency set up the contracts so that you can now no longer get a Legal Aid Certificate for an individual goods and services claim if you are not a gateway firm. This means that there is essentially a monopoly and considerable restriction on who disabled people can approach for advice. Although I ran a very small number of these cases before the gateway was introduced, I am now turning away a number of referrals and having to refer people to the gateway which, as I understand it, is not a very effective mechanism if hardly any Legal Aid Certificates are being granted and very few cases being brought (as explained in the attached article).
- (l) The concomitant problem is that you can now no longer recover success fees from a Defendant if you win, nor recover the insurance premium for after-the-event insurance cover. This means that disabled people (who are not eligible for legal aid or cannot find a legal aid provider to take on their case) have either to pay a prohibitively expensive insurance premium or risk being ordered to pay the Defendant's costs if they lose their case, and solicitors are having to run cases with no costs protection and no possibility of a success fee from the Defendant. They would need to take it from the Claimant's damages and given the normal low level of damages in such cases, this makes the claims unviable; success fees were introduced to balance out the losses of cases that were unsuccessful; taking them out of a client's damages works for high value personal injury but not for low value discrimination cases. Personal injury cases also benefit from qualified one-way costs shifting (QOCS) which provides costs protection now that ATE premiums can no longer be recovered from the Defendant; it is unclear whether QOCS applies to discrimination claims on that basis that they are a claim for damages for injury to feeling.
- (m) As explained in the attached article, it is vital to widen the scope of Legal Aid and for there to be confirmation that the QOCS regime applies to disability discrimination cases, or the rights set out in the Equality Act 2010 are meaningless. It is self-evident from the experience in other fields (including employment cases and the PSED) that litigation is a very effective way of getting reluctant private companies (or public authorities) to change their behaviour. As set out in the article, there are plenty of examples of the impact of litigation and the change in behaviour once a company has been taken to court over disability discrimination.

**11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?**

- (n) As referred to above, the Legal Aid regime needs to be changed so that disabled people are not limited to only three legal aid providers and are not forced to go through the telephone gateway to access Legal Aid and legal advice for a goods and services challenge. Furthermore, it needs to be confirmed that the QOCS regime applies to discrimination claims so that disabled people can bring cases with the costs protection that they need. This would still create difficulties for solicitors' firms who do not wish to take success fees from disabled people's modest damages, but if we are prepared to take that hit, we would at least have the costs protection to enable us to advise our clients about proceeding with a claim with no risk to themselves, and my firm and others can take a view as to the financial viability of running such cases. This would greatly improve access to justice for disabled people and make the enforcement mechanisms accessible and effective.
- (o) This would also enable DDPOs to educate disabled people about their rights to access for goods, facilities and services with the additional clout of being able to refer people to experienced solicitors able and willing to run the cases. Many of the PSED cases I have been involved in (from the first disability equality duty case of *R (Chavda) v L B Harrow* in 2007 onwards), have come out of voluntary sector organisations attending training on public law and the PSED; a vital part of any such training has to include signposting to legal experts if the offending party does not respond to what disabled people are saying. There is now hardly anybody bringing goods and services cases (Douglas Johnson now at Unity Law being a notable exception), so even if DDPOs train up members on their rights to goods and services, if letters and complaints do not work, then disabled people have nowhere else to go and their rights cannot be enforced. This must change.

3 September 2015

## **Kate Whittaker – Written Evidence (EQD0160)**

### **Response to Call for Evidence from Kate Whittaker, trustee on the Management Board of Disability Sheffield Centre for Independent Living, and consultant solicitor at Scott-Moncrieff & Associates Ltd.**

1. This evidence addresses the following questions:-  
Q2: Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?  
Q10: Are the current enforcement mechanisms available to private individuals accessible and effective for people with disabilities, employers and providers of goods, facilities and services?  
Q11: Are there other legislative or non-legislative measures that would improve implementation of the Equality Act in respect of disability?
  
2. I am a trustee on the Management Board of Disability Sheffield Centre for Independent Living, which is a Disabled People’s User-Led Organisation (DPULO). We are a membership and user-led organisation, run and controlled by disabled people, with a majority of the trustees having a disability. We work to promote independent living for disabled people in Sheffield, by which we mean disabled people having the same freedom and rights to exercise choice and control over their own lives as any other person. <http://www.disabilitysheffield.org.uk/>
  
3. Disability Sheffield has contributed to this Inquiry on the Equality Act and Disability as part of the written submission by Reclaiming Our Futures Alliance (ROFA) which is an alliance of disabled people’s organisations and grassroots groups who have come together to defend disabled people’s rights and fight for an inclusive society: <http://www.disabilitysheffield.org.uk/blog/rofas-submission-to-the-lords-select-committee-inquiry-on-the-equality-act-and-disability-2015-09-08>. Disability Sheffield hosted a ROFA conference in July this year, ‘What Now for Disability Equality?’, which is part of ongoing work we and ROFA are doing to collect lived experience from disabled people in Sheffield and across the UK as to how disability equality is faring in light of recent government policy and other factors, and to work together to protect and promote disabled people’s rights including their right to independent living as set out in Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
  
4. I qualified as a solicitor in 2003 and since then have specialised in advising and representing disabled adults and children and their families, in relation to community care, mental health, mental capacity, disability discrimination, education and human rights issues. I was employed for over 10 years at a large firm, Irwin Mitchell, and for

the last 4 years I have been a self-employed consultant solicitor at Scott-Moncrieff & Associates Ltd. My legal work has included:-

- 9) judicial review cases in the High Court and higher UK appeal courts
  - 10) tribunal cases including special educational needs appeals and claims of disability discrimination in education
  - 11) proceedings in the Court of Protection in relation to welfare matters (such as residence, care and contact), deprivation of liberty and other issues
  - 12) appeals to the Mental Health Tribunal on behalf of detained patients
  - 13) social security cases for example regarding housing benefit for disabled people and issues about tenancies for people who lack capacity
  - 14) claims for breach of human rights in the county court and High Court including for severely disabled clients who have been unlawfully removed and detained away from their homes and families
  - 15) proceedings in the European courts.
5. I have brought legal challenges to local authority and central government consultations and plans to cut budgets and support for disabled people, on grounds including breach of the Equality Act 2010 PSED and breach of the UK's obligations under the UNCRPD). This has included acting for severely disabled claimants in challenges of two separate decisions to close the Independent Living Fund: [www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2013/1345.html&query=bracking&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2013/1345.html&query=bracking&method=boolean) and [www.bailii.org/ew/cases/EWHC/Admin/2014/4134.html](http://www.bailii.org/ew/cases/EWHC/Admin/2014/4134.html)).
6. My main focus in legal casework is on community care issues, particularly social care but also healthcare, with an emphasis on promoting disabled people's equality and human rights including the rights set out in the European Convention on Human Rights (ECHR) and the UNCRPD. The primary legal framework that I rely on in my day-to-day work in relation to social care issues is now the Care Act 2014, which has consolidated and to some extent updated the previous community care legislation. I am also able to draw on provisions of:-
- 9) the Human Rights Act 1998, through which the ECHR applies directly in UK law, and specifically all public bodies must act compatibly with ECHR rights – s6 of the Human Rights Act)
  - 10) the UNCRPD, which contains international legal obligations that must inform the actions of the UK Government and public bodies even though the UNCRPD has not yet been incorporated directly into UK law: see eg the Supreme Court case of Cameron Mathieson, [www.supremecourt.uk/cases/docs/uksc-2014-0166-judgment.pdf](http://www.supremecourt.uk/cases/docs/uksc-2014-0166-judgment.pdf), which was brought by my colleague at Scott-Moncrieff & Associates, Mitchell Woolf



11) the Equality Act 2010 including the PSED

12) the Mental Capacity Act 2005

7. However in my experience there have been and remain major limitations in the ability of disabled people to assert and enforce their social care and other welfare rights in practice, and in the ability of community care practitioners like me to support them to do so. This is for a variety of reasons, which are complex to describe. I would be happy to provide more details of these if it would assist the committee. However the factor that I believe dominates and indeed overwhelms everything else in terms of disabled people's ability to access the social care they need and assert their human rights in this regard (including the right to independent living and other rights under the UNCRPD), is the cataclysmic level of funding cuts that have been made particularly since 2010 to local authority funding which is having a progressively more devastating impact on front line social care support for disabled adults and children. See recent Local Government Association analysis of the unprecedented level that the cuts have already reached and the indication of what impact further cuts will have on adult social care and other areas of spend: [www.theguardian.com/society/2015/sep/01/local-government-association-cannot-cope-further-cuts](http://www.theguardian.com/society/2015/sep/01/local-government-association-cannot-cope-further-cuts); [www.local.gov.uk/documents/10180/6869714/L15-359+Smarter+Spending\\_02.pdf/7d5e2993-9495-46dc-be67-873e8606e57b](http://www.local.gov.uk/documents/10180/6869714/L15-359+Smarter+Spending_02.pdf/7d5e2993-9495-46dc-be67-873e8606e57b); <http://www.local.gov.uk/documents/10180/5854661/Adult+social+care+funding+2014+state+of+the+nation+report/e32866fa-d512-4e77-9961-8861d2d93238>
8. One area of casework for disabled people that I have done very little of is claims of discrimination in relation to goods, facilities and services (GFS). I think it is fair to say that the cases that I do in relation to community care and related issues (as outlined above) are generally difficult to bring for a variety of reasons including their technical complexity and many practical obstacles, and there are to my knowledge only a handful of lawyers in the UK who are really actively working in this area. But I would say that GFS discrimination claims are even more beset by practical difficulties, to the extent that I really only know of one practitioner that really deals with them in any number – Douglas Johnson of Unity Law/ Sheffield Law Centre. I refer to the submission to the Select Committee by Douglas Johnson on behalf of Sheffield Law Centre where he sets out a number of factors that he thinks makes these cases difficult to bring, and I agree that those factors are a real obstacle to disabled people exercising their rights under the Equality Act and have contributed to this being an area of work that I have not managed to pursue effectively though it would fit well with my overall focus on disability rights work.
9. If there is one recommendation that I think is most important and relevant for the Select Committee to consider, it is to incorporate the UN Convention on the Rights of

Persons with Disabilities into domestic law. Article 19 (right to independent living, including having the support that is necessary to be properly included and have equal choices as others over where to live and with whom) is a case in point, and it is a particular travesty that the opportunity was missed to expressly incorporate this in English law via the Care Act, but the whole Convention needs to be incorporated.

10. 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. ‘Due regard’ is not strong enough – the UNCRPD (along with the ECHR and other international obligations) requires progressive realisation and avoidance of retrogression, i.e. substantive results not just process obligations. And the Care Act is incapable of protecting people in the face of the level of cuts to local authority budgets (and other public services – all of which disproportionately affect disabled people) because it doesn’t ensure an approach based on fundamental disability rights, rather it is based on welfare allocations which are overwhelmingly affected by resource considerations.
11. The UN Committee on the Rights of Persons with Disabilities does periodic reviews of how the UK is getting on with implementing the Convention, and I understand it has recommended incorporation.
12. I refer to the following evidence in support of my view that incorporation of the UNCRPD into domestic law is essential to plug gaps in existing disability legislation (including the Care Act as well as the Equality Act), to comply with the UK’s duty to take legislative and other steps to progressively realise the rights under the UNCRPD and to prevent major regression in disability equality and disabled people having the social care and other support they need to make equality a reality:-
  - 9) The JustFair report ‘Dignity and opportunity for all’ from last year about UK’s compliance (or not) with its obligations to secure disabled people’s human rights as required under international law including the UNCRPD: [http://just-fair.co.uk/hub/single/dignity\\_and\\_opportunity\\_for\\_all/](http://just-fair.co.uk/hub/single/dignity_and_opportunity_for_all/). I gather this has just been updated and JustFair will be sending the Select Committee a copy
  - 10) The Joint Committee on Human Rights report from 2012 (reference in the JustFair report)
  - 11) The decision of the UN Committee on the Rights of Persons with Disabilities to investigate the UK for alleged ‘grave or systemic violations’ of disabled people’s human rights through the welfare reforms amongst other things: <http://www.independent.co.uk/news/uk/politics/un-to-investigate-uk-over-human-rights-abuses-against-disabled-people-caused-by-welfare-reform-10478536.html>. **The UK is the first country to be investigated for this.**

- 12) The 2014 shadow report by Reclaiming Our Futures Alliance (ROFA - a network of UK Disabled People's Organisations) on the UK's progress in implementing the UNCRPD: <http://www.rofa.org.uk/the-united-nations-convention-on-the-rights-for-disabled-people/>.
- 13) The 2012 joint submission by Disability Rights Watch UK to the UN periodic review of progress by the UK on the UNCRPD: <http://www.disabilityaction.org/fs/doc/publications/upr-submission-drwuk-june-2012.doc>. Both of these contrast with the UK Government's own report on progress in implementing the Convention in 2011 (which it is required to do periodically, another one is due in October) which effectively ignored the welfare reforms and their potential impact on disabled people
- 14) There were also findings by the Council of Europe last year that local authorities were breaching the European charter of local self-government because cuts were preventing them from providing 'essential public services' including health, social and elderly care: <http://www.theguardian.com/society/2014/mar/07/britain-european-austerity-cuts-councils-local-authorities>.
- 15) I believe that the reports on the failure of the post-Winterbourne View transformation programme are a particular indictment on how underfunding of social care is preventing progress on getting people with learning disabilities out of inappropriate hospital placements and into the community, contrary to Article 19, despite a major Government commitment to do that – budget cuts and the closure of the Independent Living Fund mean that there is a perverse incentive on local authorities to leave people funded by the NHS. See eg National Audit Office report: [www.mencap.org.uk/news/article/mencap-and-challenging-behaviour-foundation-respond-national-audit-office-report-government-progr](http://www.mencap.org.uk/news/article/mencap-and-challenging-behaviour-foundation-respond-national-audit-office-report-government-progr); [www.nao.org.uk/report/care-services-for-people-with-learning-disabilities-and-challenging-behaviour/](http://www.nao.org.uk/report/care-services-for-people-with-learning-disabilities-and-challenging-behaviour/) My views in this regard are based on my own experience of acting for many people with learning disabilities in relation to community care issues including inappropriate placements and denial of the support needed to live independently and be included in the community, combined with my work acting for people who have received support from the Independent Living Fund but are now facing cuts to their support that will undermine their ability to stay living independently, contrary to their rights under Article 19 UNCRPD. The Care Act is not strong enough to ensure that these rights are respected and actively advanced – the rights need to be directly enforceable by individuals in the UK.
- 16) See also the evidence referred to in the ROFA written submission for the current Select Committee (attached), and reports like the Scope one on 'The other care

crisis’

<http://www.scope.org.uk/Scope/media/Documents/Publication%20Directory/Th e-other-care-crisis-1.pdf?ext=.pdf>) as to some of the developments in terms of impact of social care and other cuts on disabled people and their ability to live independently.

13. Thank you for your consideration

*11 September 2015*

## **WOWpetition/campaign – Written Evidence (EQD0006)**

### Call for Cumulative Impact Assessment cuts Disabled

I am writing to you as a member of the WOWpetition/campaign team who collected over 104 000 signatures on an E petition. We secured a debate in the House of Commons on the 27th February 2014, and in theory won our call for a cumulative impact assessment all cuts to disabled.

Following this Mike Penning made a statement in the House of Commons, claiming the IFS said a CIA couldn't be done. The IFS has subsequently said they had never made this comment, and a CIA could be done. The EHRC and Social Security Select Committee have also made calls for a CIA.

Obviously we feel that having worked hard to get the signatories and more importantly we don't want to let people down. We followed the political process and have subsequently been ignored.

DEMOS report estimated £28.3 billion cut to disabled without all impeding cuts taken into account. We feel the political process and request British public has been ignored and further cuts announced in the budget heap even more cuts to the disabled. That a Government would refuse to see the full impact of cuts on the disabled before cutting again we feel violates a Government duty of care towards disabled. To continue to implement cuts to disabled without full CIA is dangerous policy given cuts at a local level.

*12 July 2015*

## **Robert Wright – Written Evidence (EQD0013)**

### Access To Public Transport

Government policy emphasises the importance of people taking more control over their own lives in terms personal responsibility for good health, gaining employment and of reducing the role of the state. However, thus far and in the future there is likely to be a number impediments to implementation so far as access to public transport is concerned.

I write specifically with visually impaired people in mind though there are clearly implications for other disabled people also.

I list below some specific concerns bearing in mind that **visually impaired people cannot drive.**

#### 1. Reduced transport subsidies

Inevitably these will result in reduced and/or more expensive bus and train services. The consequences for visually impaired people in terms of self reliance for employment opportunities and access to services will be severe and will place visually impaired people in an even less place than they are today.

#### 2. Access to buses and trains

It seems that every bus and tube train in London 'talks' (an audible and visual (for deaf people) giving current location, next stop and the terminus. Provision of this facility in other parts of the country is extremely patchy. The previous government declined to require transport providers to install this technology on all new buses. Visually impaired people and other disabled people are being discriminated against. Clearly some of the larger public transport providers have lobbied successfully to avoid compulsory installation on all new vehicles. A new double decker bus costs approximately £250,000 - 'talking' technology £2,500. Hardly a bank breaker.

#### 3. Staff training.

Bus drivers in Coventry are trained to check at bus stops to see if a person needs the bus they are driving and are deterred from driving past another bus at stop is someone fails to flag them down.

Training in the care of disabled people should be mandatory and 'ofsted' assessed for all transport providers.

**If the Government means what it says in terms of its general policy, it needs to ensure that public transport is effective for quality and access for disabled people.**

*23 July 2015*

## **Catherine Yates – Written Evidence (EQD0155)**

### ***Submitted in the personal capacity of being carer to two disabled family members 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?***

I am carer to my husband and son both of whom are disabled. It has been our experience that Equality Act is very clear in its explanation of the expectations of everyone when addressing the issues faced by disabled people. It has also been our experience that although the information within the Act is clear there are people and organisations who choose to ignore their responsibilities under the law. This fact is clearly demonstrated in the failure to adhere to organisational policies which reflect the requirements of the Equality Act. It is a sad truth that some organisations do not adhere to the law because to do so would cause inconvenience for them when their focus is solely on the financial aspects of the company instead of their disabled staff. This is a truth that applies when the cost of a reasonable adjustment is minimal or nothing at all.

**2. *Are there gaps in the law and equality not covered by the Equality Act 2010 or other legislation?***

I have noticed that organisations do not take the Equality Act seriously as a law. Indeed a manager within a company told me that he considered the Equality Act to be a “concept” to be manipulated to suit himself. This was a cause of great concern for me because this means that for this company, the intention is not there to do everything in order to ensure that a disabled person can access their services and that they considered the Equality Act a law that can be ignored if they chose to with no real consequences. Perhaps a stronger statement at the beginning of the Act making clear the potential consequences for people who ignore it or break the law thinking that there will be no penalty for doing so.

### ***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 specific cases of public transport, taxis education and access to sports grounds**

The term reasonable adjustment is clearly explained within the Act however it has been our experience that organisations deliberately respond as if the meaning is not clear and then use this as an excuse to break the law with the caveat that either they didn't "understand" or were not aware of the full meaning of the clauses within the Act. This of course is nonsense but it is a way of claiming that the law is not clear in the hope that it will lessen the issues raised and to quote the vernacular phrase "get them off the hook".

**4. Should the law be more explicit as to what constitutes a reasonable adjustment? If so in what way?**

The word reasonable is used generically within the Equality Act and therefore is reliant on two points. The first that the organisation of which the reasonable adjustments are asked is fully cognisant of the meaning of the word reasonable. Which includes the concepts of fairness, appropriateness and rationality. The second point is that the point of these concepts is aimed at the disabled person in terms of making either physical adjustment to the workplace, conditions of service. Policies, Practices and Procedures or any other related issue. The problem seems to be again twofold. First that organisations have an ethos where the disabled person is expected to operate as able bodied and that any adjustments to achieve this are viewed as favouritism as opposed to a necessity, even though the Act explicitly states that reasonable adjustments are mandatory in order that a disabled person can access life expectations on a par with the able bodied. Secondly that 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. The assumption of disruption and financial loss seems to act as a deterrent and sense, fairness and rationality become an example of an idiom and evaporate into the ether.

**Public Sector Equality Duty**

**5. How effective is the public sector Equality Duty been in practice? How do you assess its contribution to the aims of the Equality Act 2010**

I have observed the Equality Duty not being effective for both my husband and son. They are both disabled, my husband's disability is physical, and my son has learning difficulties. They have both experienced situations where they have been unlawfully discriminated against, harassed and victimised and yet when this has been brought to the attention of the relevant organisations or authority no action has been taken to eliminate it.

My son's disability is not visible and in fact we have worked very hard as a family in order that he has been taught coping strategies so that he can function very well in his daily life. That being so, this has led to him being overlooked and judged as able bodied. In fact his disability is severe he just copes very well, he has many superb qualities that have been ignored and therefore his access to opportunities have become limited which is a constant source of frustration for him. This response to his disability is I believe because there is not enough understanding or information regarding the spectrum of disabilities possible. Also that people are very judgemental and often think that they understand disability when they clearly don't, part of this problem is that disability appears still to be stereotyped in the collective psyche in terms of that all disabilities can be seen.

I do not think that the Equality Act will reach its phenomenal potential until we provide the myriad of understanding on a countrywide basis.

**6. What has been the impact of 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?**

It has been our experience that the Equality Duty is clear but that it is convenient for organisations to ignore it and there is no immediate local "body" of people that the disabled can go to for immediate assistance should an issue arise. There are lots of

organisations but there are so many that it could take a lot of time to find the one you need. Processes in order to enforce the Equality duty are too laboured and slow when there is a serious issue that is impacting on the life of a disabled person.

***Oversight and enforcement***

***7. Does the division of responsibilities between Ministers and government departments affect the implementation of the Equality Act 2010 in respect of disability?***

I do not think that it affects the implementation of the Act. However I do think that there could be a more streamlined approach. Being disabled is hard work particularly as society, for the most part is focussed on the able bodied. A one stop shop for all disability needs would be practical for the disabled and most useful to carers.

***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 on people with disabilities.***

I cannot comment on the Commission in terms of its effectiveness as I have never had occasion to engage with them. However I would like to offer a comment regard the accessibility of their website for people with learning difficulties. I was unable to find an appropriate section where a disabled person with learning difficulties would have information presented in a more appropriate way. There are vast amounts of information and help available but in my opinion this would be frustrating and information overload for people experiencing Specific Learning Difficulties. I am aware that a carer may access the site for them but there is still information overload and perhaps some thought as to the language level when adapting it may be useful.

***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 role?***

Yes. In my opinion Ofsted, CQC, Police Crime Commissioners could include in their inspections how disabled staff are accommodated in the workplace or indeed generally. Also each of the ombudsmen services could take a more favourable line

towards the disabled and a more punitive line towards organisations that deliberately disadvantage disabled people through “mis-selling” or incorrect billing or a whole host of other incorrect actions.

***10. Are the current enforcement mechanisms available to private individuals (through Employment Tribunal, County Courts and, in Scotland Sheriff Courts) accessible and effective for people with disabilities employers and providers of goods facilities and services?***

No, I do not think these mechanisms are particularly accessible. It is difficult being disabled and it is my opinion that when the Equality Act is broken, the reaction to make reparation should be much simpler and swifter. Being disabled is tiring and stressful, having to follow endless procedures to achieve an outcome only adds to the exhaustion and stress. A simpler more streamlined system where stress levels are kept to a minimum and an agreeable outcome more forthcoming and less time consuming would be much better.

***11. Are there other legislative or non- legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?***

A government campaign re-enforcing the message that the Equality Act is a law, and that means that it is not optional or for manipulation but that it must be adhered to would be helpful. Also that some punitive measure are not only taken but seen to be taken against people who choose to ignore the Equality Act.

*11 September 2015*

## **York People First – Written Evidence (EQD0067)**

We would like to thank you for the opportunity to tell you our feelings and experience in regards to Equalities. For hundreds of year's people with a learning difficulty have been hidden, and locked away in institutions with no voice.

Silent Minority

<https://www.youtube.com/watch?v=az2fTYud0us>

When Valuing People 2001 was launched we thought the world was going to change, we thought we were going to become equal citizens, we started up York People First – A self-Advocacy Charity for people with learning disabilities, run by people with learning difficulties, we were very involved, everybody wanted to know what we thought.

We are now 14 years on, and we feel like Valuing People, and Valuing People Now has gone. All of the public money that was spent, yet not a lot changed for the majority of people with a learning difficulty.

### Communication and Equalities

In January 2015 City of York Council carried out an Equalities Peer Challenge, in which they asked voluntary sector organisations to discuss how we think the council involve us in their work.

In preparation for this they held 'briefing sessions', where we were to discuss with council employees what we will talk to the independent assessors about, prior to this 'briefing session', organisations were sent out six documents of between 4 and 6 pages each, full of jargon, statistics and abbreviations noting the work that they carry out in the City. When we were sent this information we replied and told them that the information they have provided us with was completely inaccessible, our reply was: 'We apologise for this not being in the correct format for the person attending, and that he didn't really need to know what they documents said for the session.'

The following week we attended the sessions with the assessors, we were in a group that were very able to speak up for their organisations, we however left feeling we had not had our say. We did leave a sheet of paper in which we had outlined our issues on, and left this with the assessors.

As an organisation were very concerned when a week later we learned that City of York Council had been awarded Excellent in the area of Equalities, we feel like it is just another time which we weren't listened to.

York People First are partners with Healthwatch York, yet we are rarely consulted, on several occasions we have been left out of the publications they produce.

This frustration is highlighted by the fact that we have provided information, about The Norah Fry Institutes research into, The confidential inquiry into premature deaths of people with a learning disabilities.

[www.bristol.ac.uk/cipold/](http://www.bristol.ac.uk/cipold/)

This research shows that people with a learning difficulty are dying significantly earlier from curable illnesses than the rest of the population, and that Healthwatch should be tackling this as a priority.

We find inaccessible information that we receive from the council a major difficulty, letters that concern our money, and housing, all come in a format that we cannot understand, and need somebody to help us with, this means that in our society we are not equal, and are not allowed to live informed independent lives.

### Courts

During our work with parents who have a learning difficulty, we have witnessed how difficult it is to be informed with the process, it has been impossible, parents with a learning difficulty are fighting to be able to keep their children, and courts are extremely inaccessible. There are so many people involved, and then each one has a solicitor, all the information is in legal language meaning that the parents don't know what is being said, or what documents that are to be signed say. We know of one mother that thought that the word 'Adoption' meant that someone was going to teach her how to look after her baby and be a good mum.

### Law

We believe the law should be made clearer about the changes that should be made to treat disabled people equally, we think that they should be made clearer, and this should happen by local members of parliament knowing about equality for disabled people, and those with a learning difficulty, if you haven't got a strong family to speak up for you, and help you then you are not made to feel equal.

### Support

A large amount of people with a learning difficulty use personal assistants, these are paid for by a direct payment, given to individuals by the local authority and are in lieu of social services, this then makes the person receiving a direct payment an employer.

We have found the problem people have with personal assistants is that there's a lack of training available.

Care agencies and residential homes are inspected by the Care Quality Commission to ensure vulnerable peoples safety, yet under a direct payment there are no standards set to

be upheld and no inspections to ensure they continue, another problem is that this then leaves the personal assistant left alone, with no support to deal with the problems and pressures they face.

### Employment

As a group we find that one of the gaps in the law is in the area of people with a learning difficulty and equality in employment, we don't think that people with a learning difficulty are treated equally, we would love to see Cafes employ people with a learning difficulty, and for this to be 'normal' everyday practice, people with a learning difficulty should be paid a real wage.

The public would be able to order from a menu that has pictures on it, and the person with a learning difficulty could take the order.

We are saddened to end this consultation knowing that people with a learning difficulty are not treated equally in York, we hope however to see that the law be changed in favour of giving people with a learning difficulty a more equal stance in society.

Kind Regards

All of the team at York People First

*3 September 2015*

## **Jane Young – Written Evidence (EQD0009)**

### **Evidence to Select Committee on Equality Act 2010 & Disability**

#### Introduction

1. The purpose of the Equality Act 2010 was to combine the various statutes, which protected minority groups from discrimination, into one statute; it therefore replaced the Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 2005, although there were some changes made in the detail of the provisions during the drafting of the Equality Act. In addition to the merging of legislation, the individual Commissions, including the Disability Rights Commission, whose task it was to oversee and assist in the enforcement of anti-discrimination legislation, were merged into the Equality and Human Rights Commission.

#### Discrimination in employment

2. Some of the earliest provisions of the DDA 1995 to be brought into force were those that sought to outlaw discrimination against disabled people in relation to employment. The primary route to enforcement, under both the DDA and the Equality Act, is via employment tribunals. However, the last Coalition Government introduced fees of up to £1200 per claim, and I understand that MoJ statistics produced in 2013 showed a significant fall in the number of claims at employment tribunals following the introduction of these fees. It would be instructive to seek out any research that has been done to show the longer term impact of the introduction of fees on disabled people seeking to enforce their employment rights under the Equality Act.
3. The inadequate means of enforcement of the Equality Act, in relation to its employment provisions, is of particular concern, given that the payment of benefits to disabled claimants who are unable to find suitable employment is becoming increasingly precarious. The message from the Government, evident through its policies, is that disabled people who are able to work (in the right environment) could find employment if only they had greater “incentives”. One example of this way of thinking is the recent Budget announcement (Summer 2015) that new Employment and Support Allowance (ESA) claimants in the work-related activity group (the WRAG, intended for claimants who are able to undertake work-related activity in preparation for a return to the labour market in the medium term, but which in fact includes claimants with progressive conditions such as MS or Parkinsons) will receive the same weekly amount as those on Jobseekers Allowance, ie £30 per week less than current claimants. The Government’s stated reason for making this change is to provide a greater incentive for disabled claimants to access employment, despite the fact that there remain major structural labour-market



factors, such as the inaccessibility of workplaces and employer attitudes and knowledge, that put disabled people at a disadvantage when seeking work.

4. If the employment provisions of the Equality Act were properly enforced, and if enforcement were not entirely the responsibility of individual disabled employees and jobseekers via employment tribunals, Government policies on long term sickness/incapacity benefits would be slightly less concerning. In the meantime, however, penalising disabled claimants financially for labour market issues that are not of their making is both unfair and, perhaps more importantly, fails to provide the economic benefits the Government wishes to see.

#### Reasonable adjustments in service provision

##### Guidance documents and awareness-raising

5. Before the merging of the Disability Rights Commission into the Equality and Human Rights Commission, I worked in both the voluntary and public sectors, where I often provided advice to service providers, such as restaurants, hairdressers, shops and voluntary sector organisations. In providing such advice, I found it very useful to point people to the very helpful guidance documents produced by the Disability Rights Commission – including sector-specific guides, eg for hairdressers, restaurants etc. The provision of such straightforward guidance documents was a significant element of the Commission's public-facing work, which helped to increase understanding, especially among small companies and organisations unable to pay for high quality training and guidance, of the duty to make reasonable adjustments.
6. It is a significantly retrograde step for the provision of such straightforward guidance to have ceased under the Equality and Human Rights Commission. I don't believe that small organisations, in particular, have a good understanding of the need to make reasonable adjustments; guidance documents and publicity are still needed, to keep awareness levels high and to help organisations comply with the law by offering an inclusive service.

##### Enforcing the duty to make reasonable adjustments

7. The duty to make reasonable adjustments in service provision is enforced by civil legal action by individual disabled people. However, the law was changed in 2013 such that even if they win the case, the claimant him/herself is liable to pay the insurance premium, which protects them against the possibility of having to pay the legal costs for the service provider. This means that a claimant who wins their case against a service provider may have to pay out more in the insurance premium than they receive in compensation. The obvious result is likely to be that service providers that fail to make reasonable adjustments will face no consequences as a result of such failure. For details of this specific problem, reference can be made to Unity Law, who have been involved in a campaign to find a resolution to this problem.

### Public Sector Equality Duty

8. When the DDA 2005 came into force, it required public sector organisations to **involve** disabled people in policy making and to produce a Disability Equality Scheme. It provided the stimulus needed for public sector bodies to do something really innovative in relation to “involving” disabled people, which went far beyond the familiar, safe “consultation” model; this is what we did in Kingston upon Thames. Again, the Disability Rights Commission produced excellent guidance and, in addition, they commissioned research to identify organisations that demonstrated particular good practice in this area. All this helped to give disabled people a louder voice in relation to policies and services that affect them, from highway maintenance to social care and from education to building control.
9. More recently, under the Equality Act and its related policies, it seems that such innovative good practice has fallen by the wayside particularly in public sector organisations struggling financially due to spending cuts. I’m really very concerned about the lack of any kind of enforcement, or even strong encouragement in this area, which is arguably more necessary than ever given the huge financial pressures on the public sector.
10. 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 – either in relation to its own infrastructure and services or in relation to supporting local organisations and businesses, eg by monitoring planning applications or responding to requests for advice from local businesses. Part of the reason is, I suspect, a shortage of resources as, increasingly, limited resources are used for statutory, demand-led services, such as adult social care and child protection, leaving little left for advisory posts that can do a great deal to promote equality, inclusion and access both within the authority itself and in the wider community.

### Conclusion

11. Due to the stripping away of duties and resources from the Equality and Human Rights Commission and from public sector organisations, in practice the Equality Act appears to be viewed as a statement of good intentions or aspirations, rather than a statute. There seems to be little, if any, high profile awareness-raising about good practice in inclusion and almost no enforcement beyond that which disabled people can accomplish as individuals via private legal action – even then, such action is now likely to be prohibitively expensive.
12. I am not at all surprised that many disabled people have started to suggest that breaching equality law should become a criminal matter, when they see the law flouted as a matter of course as they try to go about their daily lives. If we’re to have

an Equality Act at all, it should be enforced; I would urge the Committee to look at whether and how the provisions of the Act are being enforced, and what can be done to raise awareness of its requirements and ensure there is a consequence for non-compliance.

*15 July 2015*

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[i] [Early Years Foundation Stage Profile attainment by pupil characteristics](#)

[ii] [Phonics screening check and national curriculum assessments at key stage 1 in England](#)

[iii] [National curriculum assessments at key stage 2](#)

[iv] [GCSE and equivalent attainment by pupil characteristics](#)

[v] [Destinations of key stage 4 and key stage 5 pupils](#)