

Transport Committee

Oral evidence: [Accessible transport: legal obligations](#), HC 580

Wednesday 25 October 2023

Ordered by the House of Commons to be published on 25 October 2023.

[Watch the meeting](#)

Members present: Iain Stewart (Chair); Jack Brereton; Paul Howell; Karl McCartney; Grahame Morris; and Gavin Newlands.

Questions 256 to 321

Witnesses

I: Doug Paulley, accessible transport campaigner; Caroline Stickland, Chief Executive Officer, Transport for All; Professor Anna Lawson, Professor of Law, School of Law, Leeds University; and Catherine Casserley, Barrister, Cloisters Chambers.

Written evidence from witnesses:

- [Doug Paulley, accessible transport campaigner \(Buses\)](#)
- [Doug Paulley, accessible transport campaigner \(Taxis\)](#)
- [Doug Paulley, accessible transport campaigner \(Trains\)](#)
- [Doug Paulley, accessible transport campaigner \(Air travel & Underground\)](#)
- [Transport for All](#)

Examination of witnesses

Witnesses: Doug Paulley, Caroline Stickland, Professor Lawson and Catherine Casserley.

Q256 **Chair:** Welcome to today's session of the Transport Select Committee. Before I ask the witnesses today to introduce themselves, I have three little items of housekeeping.

First, for the comfort of our witnesses today I am going to have a short adjournment to the session at approximately half past 10. Secondly, I remind colleagues to state their name before asking any questions so that all witnesses can identify who we are.

Thirdly, I remind both witnesses and colleagues that this is a formal proceeding of the House of Commons. Certain rules about referring to specific court cases apply. I therefore ask you not to make reference to the details or merits of any live cases which are currently before the courts at any stage. That includes applications for judicial review where the court is being asked to take a decision on whether to allow a judicial review.

We can, of course, talk more generally about the policy issues involved and, indeed, past cases, which might be very helpful in getting to the nub of the issues.

I will start by inviting each of the panel to introduce themselves, stating their name and position for the purpose of our records. We will start with Doug Paulley on my left.

Doug Paulley: I am Doug Paulley. I am a disability rights campaigner.

Catherine Casserley: My name is Catherine Casserley. I am a barrister specialising in equality discrimination and human rights law at Cloisters Chambers.

Caroline Stickland: I am Caroline Stickland. I am the chief executive of Transport for All, the disabled people's organisation focused on access to transport.

Professor Lawson: I am Anna Lawson, a professor of law at the university of Leeds. I have my guide dog Finn here as well.

Q257 **Chair:** You are all welcome. Thank you very much indeed for giving us your time and experience today. This session is part of our accessibility in transport inquiry. Over the last few months, we have heard a raft of evidence about, quite frankly, appalling experiences that disabled people often have when travelling.

Our exam question, if you like, is to look at whether this is a product of a problem with legislation and regulations—whether there is a gap in them or some revision is required—a problem of enforcement or, most likely, a mix of the two.

I will start by asking each of you to summarise briefly your thoughts as to why many people are not able to travel as easily as they should, despite



HOUSE OF COMMONS

the suite of legislation that is in place.

Doug Paulley: Much of the transport rights legislation and regulations is 20 or 25 years old, yet we are still fighting for basic compliance with that legislation, let alone looking at more forward-thinking legislation which would make it better than that 25-year-old benchmark. It is very sad that the legislation is so regularly not followed. That is problems partly with the complexity of the legislation: it is ridiculously complex and siloed. It is partly a problem with the will for regulation and difficulties in enforcement. I think there is a combination of issues as to why, from a legislative and enforcement point of view, disabled people do not get the access that we need and deserve.

Q258 **Chair:** Thank you; that is a very helpful introduction. Catherine, I will turn to you next.

Catherine Casserley: I agree with what Doug has said. When the Equality Act was passed, it was intended to simplify the legislation. It consolidated a number of different pieces of anti-discrimination legislation, including the Disability Discrimination Act. What it did was create some great difficulties for people who wanted to bring claims.

Transport is dealt with in the Equality Act in three different ways. You have provision for accessibility regulations, which deal with the physical aspects of trains or buses, for example. Then you have anti-discrimination provisions, which are the bits which people bring claims under. Then you have criminal provisions relating to taxis, for example.

You add to that schedules which explain how the different bits work, and then you add the exceptions and the European regulations which overlay that. Transport providers themselves do not necessarily know whether they are dealing with the European regulations or the Equality Act. Individuals do not know which bits they should deal with. I think we have a very unclear picture. It is difficult for people to bring claims, to get legal aid or support. All of that, I think, adds to a very difficult enforcement regime.

Caroline Stickland: I wanted to zoom out a little bit and then answer your question, to put the challenges of the legislation in the context of the challenges that disabled people across our community face on transport generally.

The latest data shows that we make around 38% fewer trips than non-disabled people. That is for lots of different reasons, including physical infrastructure barriers, attitudinal barriers with staff or other passengers, information and communication barriers, and not being able to find the information we need to plan or take a journey. The expectation, or hope, across our community is that the legislation should be there to help remove those barriers, but all too often we see the legislation and the processes around it for making complaints and the fragmentation of the different regulations across the different modes becoming a barrier in and of itself, when really it should be there to remove those other barriers.



HOUSE OF COMMONS

I am sure we will dig into it a little later on this morning, but issues such as individuals having to take claims under the Act, having to make complaints and having that burden of trying to enforce the law to remove those barriers ourselves is really not the right way round. The key point for me is that there are so many barriers to making a journey, but unfortunately at the moment the legislation seems to be a compounding barrier rather than removing those ones that exist.

Professor Lawson: It is a bit difficult going after everybody else, but I would endorse everything that has been said already. I would add a few words. Another problem is that maybe accessibility does not have a high enough profile. Equality includes accessibility, but it is hidden away a little bit. In other countries there is more of an effort being made to foreground the importance of accessibility as an issue, to link that to the development of standards in a co-productive way and to link those standards to something like their equivalent of the Equality Act.

We could do that. We have the regulation-making powers in the Equality Act to make assumptions about what is reasonable, but if we just leave it to what is reasonable it leads to potentially expensive cases which are just too burdensome for individuals.

Q259 **Chair:** Thank you. That neatly leads on to my next question. I will go the other way down the panel, starting with Anna. Would you give us an overview of how easy—or how difficult, I suspect—it is for an individual who wants to challenge a transport operator over their failure to provide an adequate service for them: first, complaining to them but, if they are not getting any redress there, how it can be escalated?

Anna, again it is a very general question, but are you able to give us an overview as to how easy or difficult it is?

Professor Lawson: I feel that Doug has first-hand experience of this, so I am going to be brief. The first point is knowing where to make a complaint to. The systems are very complex. There is no one channel that you can go through to make a complaint.

When I have had trouble, often people working in the transport system have said, “Oh, just use Twitter.” I actually don’t use Twitter so that is not an option for me. From inside the system people are recognising that it is quite difficult to use the complaint system. Twitter—or X as it is called now—seems to be much more effective.

There are other problems in bringing cases under the Equality Act. Finding legal advice is a massive problem because there are fewer and fewer lawyers—solicitors—available who specialise in this area. It is a complex area, and disability equality is particularly complex. Even though some people might specialise in other types of discrimination work, the anticipatory reasonable adjustment—which is the relevant one to transport—is not relevant there and it is not relevant to employment in the disability sector. Again, there is more focus of expertise there than in services areas.



HOUSE OF COMMONS

If you do manage to get a lawyer, there are significant financial risks. I am not going to talk about a live case here, but I am aware of a case that happened in Leeds a while ago concerned with transport infrastructure and an attempt to bring a case to prevent barriers being built in. The case was lost and the person concerned was threatened for a while with having to pay the very heavy costs of the local authority, because they used an expensive barrister. He thought he would have to sell his house. He did not know how he would tell his wife. The financial risks are a huge deterrent, and the law is so complex that it is difficult to get it right.

Caroline Stickland: I want to speak a little more to the part of your question about how you make an initial complaint when something goes wrong. I echo what Anna has said about the response that many members of our community get from transport staff when something does go wrong, which happens very often. They are told, "Oh, don't worry, you can just make a complaint," as if that is as easy as pie. That is really not the case for a lot of reasons.

There is clearly a time requirement to make a complaint. I was talking to one of our members this week. She told me that over the last month 75% of her taxi journeys have included a driver charging her while they were putting the ramps out for her to disembark, which is illegal. That is the frequency and regularity of where things are going wrong.

If you were to complain every single time something went wrong, I am not sure you could have a job, caring responsibilities or study, or do all the things that really make a difference to our lives. A lot of us also live with low energy or energy impairments and may not have the spoons or the energy levels and resources to spend time making complaints.

The process of reporting a complaint, whether on a website or filling out a complex form, can be really inaccessible for those of us who do not have the internet. Twenty-three per cent. of us in the disabled community do not have internet access. For those of us with learning disabilities or other impairments, it is not a process that we would be able to do easily and independently.

Lastly, complexity comes in when we think about the fragmentation of the system. Our research in Transport for All shows that the most common part of a journey where things go wrong is at interchange. How do we know exactly which bit is to blame? If we are standing on that bit of the pavement or that bit of the station, is that the train operator's responsibility? Is it the underground? Is it the bus operator's or the local authority's? Even just finding out who you are meant to complain to sometimes needs a PhD.

When you take all those things together it is really clear that we are not always going to complain when something goes wrong. I would just encourage colleagues to think about who is not in the data that we are looking at today, who has not lodged a complaint and who has not taken a case because of all those barriers.



HOUSE OF COMMONS

Catherine Casserley: I would probably just add a little bit to what has already been said. Solicitors who take on this sort of work are few and far between. Often, when I see a case, it is at the stage where proceedings are about to be issued. People often have a catalogue of complaints because they have got to the stage where they really cannot deal with it any more. They have had numerous complaints, they have complained and nothing has been done about it.

What may happen then is that the defendant will say, "This case is out of time because you've waited for so long. Really you should have been taking your case much earlier," which is a problem.

Q260 **Chair:** What is the time period?

Catherine Casserley: The time limit is six months. There are some complexities around the time limit for a failure to make reasonable adjustments as well. There is a discretion for the court. It can allow a claim out of time if it is just and equitable to do so, but if defendants want to argue that something is out of time, and indeed if they want to rack up costs, they may apply for a strike-out of the claim at an early stage. If they are successful in that, costs can be awarded at that stage, and they can be quite significant. Claimants can get very anxious about that as well, so it is quite a significant deterrent.

You can get legal aid, but the merits tests are quite hard. It is often the case with a transport case that it is the first of its kind. It is then very difficult to say, "This has more than a 50% prospect of success." You can say, "This is going to make a very significant difference," but legal aid might not be awarded. You can get funding from the Equality and Human Rights Commission, but, again, whether you get that funding can depend entirely.

There are significant challenges for people bringing cases. If they want to bring them on their own, it can be even more difficult. There is not only a cost potentially financially but also emotionally, which Caroline has already dealt with. It is a very difficult process for people. I think that is probably all I would say at this stage.

Doug Paulley: A case in my name, Paulley v. FirstGroup, in which Cathy very ably represented me, was the first case on the goods and service provision to get to the Supreme Court. That could not happen in the same way again now because of changes in costs protection legislation at first instance. In the county court we had what they call "after the event insurance", which protects the claimant against what can be significant costs if the case is lost. Even with the best case in the world, it is very difficult to guarantee that it is going to win, particularly in the area of transport and disability rights where there has been so little case law. It used to be that you could reclaim the very significant insurance claims for "after the event insurance", but now you can't, since the last Legal Aid, Sentencing and Punishment of Offenders Act.



HOUSE OF COMMONS

In other case areas, they extended what is called qualified one-way cost shifting, so that the risk is much less if you are bringing a case, but they did not do that for disability discrimination cases. If the FirstGroup bus case was to happen now, it could not get off the ground. As also mentioned, there are very few solicitors who will take on such cases because it is such an unpredictable area of law. The law is also very little understood or enforced. Generally, you just have to walk a wheel down a street and see the number of barriers that disabled people experience. Reasonable adjustments are not done in general, let alone in transport.

The Government, so I understand, originally split off some areas of transport from the civil duty, partly to give operators more time to sort themselves out, but partly also, in theory, to take the burden of responsibility off disabled people and put it on to regulators and other enforcers. That has fundamentally not worked because the regulators and enforcers, to one degree or another, do not know how to enforce the law or, in my experience, do not know what is going on, on the ground.

I am unusual as a disabled person, in that I nerd the regulations to a ridiculous extent and on occasion have caught out the industry. For example, all the National Coach operators were openly telling wheelchair users that they had to give 36 hours' notice to travel, yet that was illegal. It was a criminal offence under the driver conduct regulations, which say that wheelchair users must not be required to give any more notice than anybody else. The regulator, the DVSA, either had not noticed that this was happening or had not realised that it was a criminal offence until I pointed it out. I am trying not to be egotistical here; it is just a frank statement of what happened.

It is the same for home-to-school buses. I pointed out that those buses were required except if everybody on the bus travelled for free and no payment was made to anybody for their right to travel. It is in the House of Lords debates and records from 2005. It said that most home-to-school buses are caught by the Public Service Vehicle Accessibility Regulations and thus have to meet those access requirements, yet all around the country it was not happening until I nerded the law and pointed it out.

It is the same with rail replacement buses. Nobody realised until I approached Cathy and somebody else and asked about it. I said, "This is what I think is happening," and the industry suddenly went, "Oh yeah."

It was frankly said by the DVSA that the reason they are now having to issue mass exemptions from the access regulations for buses or vehicles in these circumstances is because the DVSA failed to realise and enforce the law at the time.

The conduct regulations on buses, which I have mentioned already, set out what drivers are required to do. Nobody has ever been prosecuted for breach of these. Nobody, to the best of our knowledge, has ever been prosecuted for running inaccessible vehicles where accessible vehicles are required, yet it is a criminal offence and it does happen. It has been



HOUSE OF COMMONS

happening routinely on home-to-school and rail replacement. When FlixBus started in the UK they used inaccessible buses, yet nobody faced prosecution.

When I try to get organisations like the British Transport Police involved, when I am not strapped in properly on a rail replacement bus or when other criminal law has been broken, I face, first, having to explain to the police and really enforce, “Look, this is a criminal offence. Nobody prosecutes it other than you. It is a hate crime in that it is blatantly done as a result of discrimination.” It doesn’t work. This whole idea that the burden is taken off the disabled person by it being enforceable by other bodies does not work because the other bodies do not enforce it either.

Chair: Thank you. Later on in this session I want to look at the role of regulators in enforcement, but for now I turn to my colleague Karl McCartney to ask a supplementary question.

Q261 **Karl McCartney:** Very quickly—this is to all four of you, but I will split it up. Catherine and Caroline, I will come to you first. Catherine, you probably deal with quite a lot of the more serious cases, I would have thought. Is there anybody you want to name and shame? Are there particular organisations or sectors that are not doing well compared to others that are, perhaps, doing slightly better?

Catherine Casserley: I probably do not deal with anyone who does slightly better, I am afraid. Generally, I tend to see things when they have gone wrong. I do not tend to see—

Q262 **Karl McCartney:** Which sector do you deal with mostly? Is it buses, trains or airlines?

Catherine Casserley: It is a combination. I do not see many airlines due to the fact that there is nothing that one can do under discrimination law when there is a problem on airlines because of the Montreal Convention. That is particularly problematic. I have come across some pretty horrific stories. When things go wrong on airlines, they go wrong very, very badly. I have come across some pretty horrific examples of mistreatment and ignorance—I think that is the word—but from a legal and discrimination perspective there is nothing that can be done.

In the context of other modes of transport—and this is obviously generalising from the cases I have dealt with—on buses it is the attitudinal issues with drivers. I would hope that that improves with training, but that has been the most significant issue. There are lots of repeat offenders. With trains, it is assistance breaking down. Again, that is repeated. I cannot say that either of those industries is any better. What I see are repeat offenders. When people come to me, it has been repeated and these are people who have put up with an incredible amount. As Caroline said, if people made complaints and brought cases every time there was a breach of legislation, they would be in court all the time and they would do nothing but bring cases.

Q263 **Karl McCartney:** Caroline, is there anything you would like to add to



that?

Caroline Stickland: I absolutely echo what Catherine said. We have spoken a little bit about the different modes. I just want to highlight the stages of the transport ecosystem where these breaches can occur.

A hot topic recently has been to do with the processes for transport consultations and whether or not people running consultations are sticking to the Gunning principles and having documents for consultations in accessible formats, released in good time and so on. It is not just looking at each mode. We also need to look at each stage of the transport ecosystem and process, from consultation through to delivery. These breaches happen at every stage of that, including while we are on the journey but also before, when decisions are being made.

Q264 **Karl McCartney:** Professor Anna Lawson, I am Karl McCartney, one of the Members here. I was going to pick up on something you said in your opening statement. I like to look at the positives. You said that abroad and internationally there were some countries doing a lot better than we are in the UK. Are there any examples in any particular sectors on which you would like to give the benefit of your knowledge to the Committee, so that we can look at that as we go through our inquiry?

Professor Lawson: Thank you. I think it would be worth looking at Canada. They have just introduced the Accessible Canada Act. I think they were coming from a similar place to us, but realised the need to really heighten the profile of accessibility, resource it and place it within the centre of Government. It is quite a recent Act and might be quite an easy model to follow.

There are limitations with it; we might want to do things a bit differently. It allocates accessibility as an area of responsibility to a Government Minister, who then has oversight of that. It is not just in transport; it is across different areas. That is something we might want to think about too. It also creates an accessibility standards body and an accessibility commissioner, who is the focal point through which you can channel complaints. It is a nice simple structure, which I do not think is hugely expensive, that might be worth looking at.

There is also the United States, which has had a long history of the development of standards through the Access Board. They develop accessibility standards in very deep consultation and with the involvement of disabled people and their organisations. Those standards can then get adopted by people who enforce the Americans with Disabilities Act and various other things so that they become enforceable as part of equality law.

I think both Canada and America have responsibilities on Government bodies to be proactive in going out and monitoring the compliance of these accessibility standards. It is not just a case of waiting until complaints come, if they come. There are very strong, proactive duties to go out and monitor.



HOUSE OF COMMONS

We have an example of that here in connection with the accessibility of websites which we might draw on. That has changed the focus a little bit. A Government body now has responsibility to go out and monitor on a regular basis and write a report every year, but it is also linked to an easy way for people to raise complaints which can get channelled through to people who will investigate without the whole risk of financial ruin.

Norway might be another model worth looking at. Again, it has limitations which we could avoid, but their equality legislation is based on the idea that accessibility is really embedded into it. They develop accessibility standards and once they are introduced there is a very strong presumption that any failure to comply with that is discrimination. It is very easy to bring discrimination cases and there is a mechanism for doing that which does not cost anything.

The downside to their legislation is that, if an area is not covered by accessibility standards, I know some people think it is even harder to bring a case. It is already hard enough here, so that should not be done at the cost of reducing protection for areas not covered by standards. There is no reason why that should be a pay-off.

Karl McCartney: Thank you very much indeed for that. It is most useful and gives us some direction to look elsewhere for good models. Chair, can I ask a further question?

Chair: You may have a quick supplementary and then we must move on.

Q265 **Karl McCartney:** I just wanted to give you the opportunity, Doug, to add anything to what the other three panel members have said, and then hand back to the Chair.

Doug Paulley: Thank you. It is on this whole thing about the ability versus obligation to enforce. There is a common analogy where, if you get food poisoning in a dodgy take-away somewhere, you can speak to the local environmental health people, who will go and inspect, take whatever action and keep you anonymous. They have a duty to deal with it.

If you are discriminated against, the only way to enforce is either to take legal action yourself and complain or try to get a regulator to use their discretion to enforce. That makes a fundamental difference to the ability to enforce.

Q266 **Paul Howell:** I am Paul Howell, the Conservative Member of Parliament for Sedgfield in north-east England. Listening to what you have said, I want to try to get a little bit of clarity on the legislation that exists, and whether that is good enough. Also, it sounds as if getting compliance with that legislation from people is as much of a challenge as anything.

I will start with Catherine on this one. It also feels as though the legislation governing transport accessibility is like a patchwork of provision. There is the Equality Act, the European law, other Acts and so on. Is there a better way to organise it? How would you organise it? It might be better way to say that, rather than, "Is there a better way?" It



HOUSE OF COMMONS

is almost going back to the questions that were put to Professor Lawson earlier. Are there other examples worldwide of a better way to do it? Can I start there and then we can digress?

Catherine Casserley: The difficulty at the moment comes from the fact that we retained regulations governing rail and bus when we left Europe. Because they are regulations, we have not actually set out anywhere domestically how they apply. At the moment, we have the Equality Act ostensibly applying to trains and buses, but we also say the Equality Act does not apply to anything governed by the regulations. You have to look at the regulations. They apply to ticketing and assistance. Does the Equality Act apply to assistance at all?

The Equality Act provisions are worded slightly differently because we have an anticipatory duty—the thing Anna talked about—and it does not look like the regulations have that. To give you an example—

Q267 **Paul Howell:** Yes, please. It is difficult to understand the nuances of what you are saying.

Catherine Casserley: If someone approaches us—I say “us”, but me and a solicitor I am working with—about the fact that they have not been provided with assistance to get on a train, the letter that will be written to that rail provider will set out the bits of the EU regulation and the Equality Act. We will say, “We believe that the Equality Act applies, but if you think the regulation applies, equally we are saying that you have breached the regulation.” Invariably, either they do not answer it at all and just put their defence in, or they come back and say, “We believe the Equality Act applies.”

If you look at anything written about this area, nobody really explains how the regulation applies and how it interacts with the Equality Act. Nobody has really done that analysis, so far as I am aware. Anna may have a different take on that, but I do not think it has been done. I think the first thing to do is work that out. At the moment we have retained the regulations, so it is there. It may be that we cannot and that what we need is a court to decide how it works for each bit. That is going to take a very long time because these cases do not get to court. It may be that we need to start again with the transport provisions.

I know that is not terribly helpful, but it has been left in a bit of a mess.

Q268 **Paul Howell:** The obvious question follows: if you were in a position to do the changes, what would you suggest we start to do? What should Government be doing to try to get this into a better place?

Catherine Casserley: I think the obligations have to be spelt out and exactly what it is that service providers have to do. I think, ideally, we need regulations that tell them what they need to do.

Q269 **Paul Howell:** To cloud the legislation into the fog, and people are using that almost as an excuse not to live up to the obligation. Is that a fair summary?



HOUSE OF COMMONS

Catherine Casserley: Yes, or they do not know what they are supposed to do.

Q270 **Paul Howell:** You need people like Doug to be the nerd who digs his way through the different pieces.

Catherine Casserley: Yes. When the Disability Discrimination Act was in force and even when the Equality Act came in—I have been involved in this area for a long time—I was quite a fan of the concept of reasonableness because it allows for small providers and for a degree of flexibility. I do not think it works in certain areas, and I do not think it works in this area. I think you need standards. Providers need to know what they need to do.

Q271 **Paul Howell:** They need some sort of a Transport Access Act, or something like that.

Catherine Casserley: Something specific, yes.

Q272 **Paul Howell:** Before I go into anything else, would anybody else like to add anything to what Catherine has said, or has she covered the subject?

Caroline Stickland: I just wanted to agree and say I think that lack of clarity, particularly when we are thinking about assistance, really trickles down into how it is captured and reported on.

For example, train operators are required to report data on prebooked passenger assistance and the success or otherwise of those cases of assistance. They are not required, as far as we can tell, to publish some of the data for “Turn up and go”, which is the non-prebooked assistance. It is a reflection of that lack of clarity and lack of expectation of what the standard should be that there is not that data to hold the regulator and the operators accountable for the service that they may or may not be providing.

Professor Lawson: Going back to the retained law that we had from Europe, we have retained things that are a bit frozen in time. EU law has developed through the European Accessibility Act. That has very strong enforcement mechanisms which stop service providers functioning, basically, or selling things if they do not comply. It is looking at a different type of enforcement mechanism than the ones we can use through the Equality Act, which is worth thinking about too.

That law has very strong links through to procurement processes, which, again, we really need to embed in the transport sector. Accessibility is absolutely at the core of any procurement process.

Q273 **Paul Howell:** Trying to push back further in the process, so that when people are trying to procure something they have a responsibility to make sure it is going to work.

Professor Lawson: Yes.

Q274 **Paul Howell:** Whenever you are trying to fix something, there is almost



HOUSE OF COMMONS

a priority list. Are there some very obvious gaps in legislation when it comes to transport accessibility that should be at the top of the list? If you had one or two things that you wanted to get sorted, is there any particular, specific focus?

Linked to that, are there any areas of ambiguity that habitually cause problems and which should be picked up on, when you are trying to make sure that the rights are able to be enforced and then are enforced?

Doug Paulley: In the legislation there are clear lacunae, so to speak, one of which is ships and hovercraft. The Equality Act is completely exempted, as far as I understand, from anything that happens on a ship or hovercraft. The Government had the ability to introduce regulations to make the Act apply but have not, so there is just this blanket. There are also similar problems airside of airports and with aircraft. Those are two areas where the law basically does not apply and cannot be enforced.

It is very difficult to know where to start with ambiguity. There are so many with lack of clarity in the Act and in the understanding of such by enforcers, providers and the public. I am at a loss to try to prioritise it, to be honest.

Q275 **Paul Howell:** The fact that there is so much of it says everything. Catherine, do you have anything to add to that?

Catherine Casserley: In terms of priorities on the enforcement side, Doug earlier mentioned the qualified one-way cost shifting. It would make a difference if that was extended to discrimination cases because it would provide cost protection for people who brought those cases. I know there will be talk about regulators later, but I do think that, while there is legislation, it is still important that people are able to bring those cases.

As to ambiguities, it would be difficult without a wholesale revision to prioritise particular ambiguities. My priority would be to have standards that were enforceable in relation to assistance.

Caroline Stickland: I take the point from Catherine about enforcement of standards and expand that out across the whole transport sector. Although we have talked a little bit about rail and bus, where there are some clear regulations, if you look at other parts of the transport system like walking and wheeling, cycling or pavements, a lot of the standards are guidance or good practice. It is, "you should", "you should have consideration", or, "you should make best efforts to". That is clearly filled with ambiguity and incredibly difficult to enforce. It is incredibly difficult for a disabled person to know whether that is worth even trying to enforce or complain about because of the ambiguity baked into the guidance there.

Q276 **Paul Howell:** Is there anything you would suggest that they have missed or you would like to enhance, Professor Lawson?

Professor Lawson: It is the same points that the others have mentioned, but on top of those there is the point I made earlier about an obligation on a body to go out and proactively monitor compliance with



HOUSE OF COMMONS

the standards. It is building on what Caroline has said about making the standards a bit more meaningful.

Alongside that, the standards are of no use if they do not model accessibility very effectively. I know that there are instances at the moment where litigation is going on because of what is in a standard, not having created something that is regarded as accessible enough by disabled people. How those standards are developed is really important. Caroline mentioned something earlier on about the consultation. Standards really need to be developed in a way that fully involves disabled people.

Q277 Paul Howell: Thank you very much. I have a final question, thinking of where we are now. Looking at you, Doug, and the tools you have to help you move around, that world has changed so significantly over recent times. Is there any impact in transport, where there needs to be more consideration of the aids people use to get mobile in the first place? Then I will hand back to the Chair. You are obviously the best person to answer this, I would suggest, Doug.

Doug Paulley: I definitely have thoughts. The discrimination against scooter users is just phenomenal. It is just wrong. First, there is no clear definition of what a scooter is as opposed to an electric wheelchair. Each transport operator has its own different scheme, where you have to get a pass to be approved. ScotRail just bans all scooter users unless you can get on, fold it up and put it in a luggage rack. It is just ridiculous. People use scooters for all sorts of reasons these days. More and more people are using them. There is no good reason to exclude them from public transport or to make life so difficult.

Paul Howell: As we are under time pressures, I will not ask all the witnesses but just hand back to the Chair.

Chair: Thank you, Paul. I turn next to Grahame Morris.

Q278 Grahame Morris: On the adequacy or not of the legislation, I want to ask about Part 12 of the Equality Act. It is 13 years old now. Although it is perhaps not so much in the news now, you may be aware that the Chair wrote to the Rail Minister on behalf of the Committee to raise concerns about the proposal to close almost 1,000 ticket offices.

In response to the consultation, the Equalities and Human Rights Commission raised a number of issues about the consequences and the impact. That included issues around staffing, digital ticketing and turn up and go. In the response it said, "This raises important questions about the compliance of the proposals with the requirements of the Equality Act 2010 and commitments made under the UN Convention on the Rights of Persons with Disabilities."

Catherine, what are your views in general? We are talking about access to the system, but particularly in relation to ticket offices, because that is a huge concern. What are the consequences of the staffing reductions? Is that compatible with equalities legislation and the human rights framework?



HOUSE OF COMMONS

Catherine Casserley: That is a big question. How long do we have? I have to say that I have not looked at the consultation, but I will give you my brief view. I think it undoubtedly raises issues. I have read responses about it and a summary of it. It undoubtedly raises issues for disabled people in particular because there are people who cannot access their tickets in any other way. It provides staff assistance potentially. There are issues under the Equality Act itself in relation to reasonable adjustments. There are issues under the UN Convention which effectively supplements—

Q279 **Grahame Morris:** You are a barrister or a lawyer.

Catherine Casserley: Yes.

Q280 **Grahame Morris:** In your opinion, are there legal arguments that could be used to challenge the closure of ticket offices on accessibility grounds or on grounds of restricting access to the railway to people with disabilities?

Catherine Casserley: I have not read the consultation in full, so I cannot give a definite opinion on that. I can say that in my view it is likely to raise issues, yes. I would certainly say that it raises issues for disabled people.

Q281 **Grahame Morris:** Would that form the basis of a legal challenge?

Catherine Casserley: It could do. Obviously, I am being cautious because—

Grahame Morris: I will take that.

Chair: We must be careful that we do not stray into potentially live cases.

Catherine Casserley: Yes. I think there are potential cases going on, but, undoubtedly, if you are taking away physical people from a ticket office where disabled people buy tickets or access tickets, and there are no other means for people to buy those tickets, there is potentially an impact on disabled people. That impact means that they may not have access to reasonable adjustments; there may be human rights issues around transport. There are potential legal issues in the closure.

Q282 **Grahame Morris:** Doug, I will come to you in a moment because you have raised some interesting points. Professor Lawson, Part 12 of the Equality Act excludes hovercraft and aeroplanes, as Doug mentioned. It specifically only talks about taxis, public service vehicles and rail vehicles.

I think Caroline said before that we need an Accessibility Act. I think we are in agreement there. Is there any basis for amending Part 12 of the Equality Act, Professor Lawson?

Professor Lawson: I think it would be great to have a holistic look at the Equality Act, to be honest. We mentioned earlier on the idea of a Transport Access Act, but I think the Equality Act is failing in other sectors as well. It would be really sensible to have a good look at the



HOUSE OF COMMONS

whole of the Equality Act, certainly as far as disabled people are concerned. That part of the Act is incredibly technical. It makes the Equality Act so complicated. If they are dealt with in regulations, I am not sure they even need to be in the Equality Act. They sit uncomfortably with a lot of the rest of the Equality Act, as Cathy was saying. They need improving. Cathy and I have both mentioned the anticipatory reasonable adjustment duty. It should be really powerful. Although it is called "anticipatory", arguably, you can only bring a case if you have actually experienced a disadvantage.

Q283 Grahame Morris: Instead of bolting on Part 12 of the Equality Act, should there be a more holistic approach incorporating access for people with disabilities throughout the whole of the Act?

Professor Lawson: I think that would be sensible. Part 12 has been amended recently to bring in local buses. The Department for Transport has done some really important work on regulations around audio and visual information on buses, which is a bit of a bugbear of mine. When the audio announcements came on to buses initially, they were great, and now, on nearly every bus I go on, they are turned to such a low volume that you cannot hear what stops they are saying.

We need the regulations, and there is provision for that in Part 12. We cannot lose what is in Part 12, but how Part 12 works and what it extends to needs a good look at and how it links to the Equality Act and the reasonable adjustments duty in other parts of the Act.

Q284 Grahame Morris: Doug, you gave the example of scooters on ScotRail, but there are other operators as well. Bearing in mind that the Equality Act is 13 years old, is it still relevant? It certainly has not kept pace with the developments in electric vehicles and so on.

Doug Paulley: I worry that it does increasingly lose relevance. I know that the Department for Transport is looking at the regulation size as to what wheelchairs have to be accommodated on public transport. That is another area. It feels like it has frozen since about the year 2000, with some tinkering around the edges on enforcement of taxis and some minor stuff.

What worries me—and it is not my skillset at all—is that there has not been the drive for improvement in accessibility and legislation around such that there needs to be, and, as such, things have stagnated or even gone backwards, I would say.

Q285 Grahame Morris: Caroline, pre-Brexit the Government gave various assurances—not just to the House and to MPs but more broadly to the country—that elements of EU law, particularly in relation to accessibility for people with disabilities, would be enshrined in UK law post Brexit. Do you think they should have done more to honour that commitment?

Caroline Stickland: Unusually for this panel I am not a lawyer, and so I am not going to comment on the specific details of the legislation. I would like to bring it back to the wider point.



HOUSE OF COMMONS

We are all broadly in agreement that there are challenges with the current legislation and with the enforcement of the regulations. One key issue with the Equality Act at the moment is the way it relies on our community to bring cases and to make complaints. Frankly, it strikes me that there are probably very few other areas of legislation—we have health and safety with food poisoning, as Doug was saying—where the burden consistently gets put back on the minoritised community who are facing the brunt of these issues to try to come up with solutions. We just really want to see wholesale change so that that is shifted 180 degrees, so that it is not constantly disabled people saying, “This isn’t working. Something needs to change.”

Q286 Grahame Morris: The Equality and Human Rights Commission have looked, including recently, at ticket office closures. They make rulings but they do not have any enforcement powers, or have they? Can you clarify that?

Caroline Stickland: Again, I would defer to one of my legal colleagues. We would really like to see the EHRC doing more in the transport sphere. We can all appreciate how important transport is for getting to work, to places of education and to cultural and community centres. We feel it should be a priority for the EHRC and others to have a look at this area. In terms of their specific enforcement, I would definitely defer to Anna or Catherine.

Q287 Grahame Morris: Could Professor Lawson enlighten me? Do they have enforcement powers and, if they do not, should they?

Professor Lawson: They do. They have some quite useful enforcement powers. They can enter into legal agreements with organisations. If they are broken, they can sue them for discrimination. That would take the burden off members of the disabled community. Like you say, they also have advisory obligations. They can advise about what they think would be a breach of the Equality Act or an infringement of UN human rights treaties, but that is just advice. It is not like a court ruling.

The courts are the ones who do the actual rulings, but the Equality and Human Rights Commission has some really useful enforcement powers which were designed to take the burden off members of the marginalised communities—the minoritised communities. They cover all the different protected characteristics. They have focused on some issues around accessibility, but accessibility is quite a technical subject. They do not necessarily have a lot of people who have expertise in accessibility. Trying to rely on them to enforce accessibility is just a non-starter. They are just not geared up for it really.

Grahame Morris: Thank you. That is really helpful.

Chair: Thank you, Grahame. It is exactly 10.30. I promised that we would adjourn for a short break. I suggest we reconvene at 10.40.

Sitting suspended.



HOUSE OF COMMONS

Chair: Welcome back to this session of the Transport Select Committee. I turn now to Gavin Newlands for our next questions, please.

Q288 Gavin Newlands: This section clearly has some overlap with previous sections. I want to look at the accessibility legislation as it stands in practice. We have obviously touched quite heavily on the legislation as it stands.

Having looked at a lot of this, clearly we can see there is a lot of wording like guidance, making considerations voluntary, etc. There is law and there are regulations. They might not be as clear as we would like, given the answers we have had. I think we have established that the legislation as it stands, from the answers you have given thus far—feel free to disagree with me because I do not want to put words into your mouth—is fundamentally flawed in the sense that it is a hotchpotch and all over the place. Come back at me if you disagree with that.

Do you think the fact that we are in this situation is a cultural issue about not taking disability seriously enough? I will start with Doug and move along the panel.

Doug Paulley: Thank you for the question. Yes, I completely agree with you. The fact that it is such a hotchpotch and that it is so poorly enforceable and unenforceable is a reflection of the fact that disabled people's access needs are not seen with the priority that they should be. It is easy to say that the DVSA, the police and other people such as taxi licensing bodies should be enforcing more. I understand that they have so many responsibilities, duties and restricted resources on a continuous basis, but it is notable that there is this problem. The existing legislation is such a mess and is not enforceable or enforced. This has been the case for so long.

I agree and I do think it is an indicator of an underlying assumption or problem with attitude. We need regulations. There are bits of technical guidance that the Equality and Human Rights Commission wanted to put before Parliament to get converted to a statutory code of practice which is then more enforceable and referable to in court that never got turned into statutory guidance. It has just stayed as guidance. Baroness Campbell famously said once that, at this stage of history, she is not a fan of guidance, and what we need is enforceable and enforced regulations, to paraphrase her.

The red tape challenge did not help. We need red tape. Obviously, red tape is also problematic if it does not achieve anything, but if regulations are enforceable and enforced that is what can mandate disabled people's access.

Q289 Gavin Newlands: Some red tape is good red tape. I should have said at the start that I am Gavin Newlands, the SNP MP for Paisley and Renfrewshire North. I am also the SNP transport spokesperson at Westminster. Catherine, I will come to you next.

Catherine Casserley: I would agree with what Doug has said. I think that there are obviously difficulties with enforcement, but the attitudinal



HOUSE OF COMMONS

difficulties, certainly that I see in the cases that are brought to me, and the attitude displayed to disabled people and to their access needs, are reflected in the legislative progress, or lack of progress, that there has been and the fact that there is such a mess in the legislative landscape for disability. There does not really seem to be, or has not been, much of a will, or has not been.

Disability lagged behind in terms of anti-discrimination legislation. I am sure that the Committee will be aware that the Disability Discrimination Act, when it was passed, was rushed through because a more generous provision was going to be made by the forces that had gathered in 1995. There was no anti-discrimination legislation at all. The Government at the time knew that something effectively more generous would be passed if they did not rush something through, and so it was. But it had come rather late to the party, and, as it was, it was fairly inadequate at that time, although changes were made to it. I think disability has lagged behind. It does lag behind. I think that attitude towards it underlies where we are with transport in particular and, indeed, with some of the other provisions.

Caroline Stickland: I echo Catherine's point about the attitude to accessibility across the sector. Too often, it feels like accessibility is seen as something nice to have or an added extra, rather than it being built in and really embedded.

What we want to see at Transport for All is accessibility being considered on a level with health and safety or sustainability. Across the transport sector we have seen industry getting hotter on embedding those elements into all their decisions, their planning and their budgets, but often accessibility is left as, "Oh, we'll get to that later," rather than having it front and centre.

That is seen as well in some of the bidding processes or the funding opportunities for industry to make improvement. For example, in Wales, the Access for All programme delivers rail upgrades for accessibility through a process of competitive bids. Our view is very much that accessibility should not be a point of competitive advantage; it should be for everyone. Why are we asking people to bid against one another to improve accessibility?

The other point I wanted to touch on is a wider cultural point about how disability can sometimes still be seen as a bit of a dirty word. People might be afraid of saying that someone is disabled or has access requirements. We can speculate on whether that is to do with elements of the media culture or the political culture, but until people realise that it is okay for disabled people to have specific needs and it is okay for us to have those needs met, there is still going to be that stigma or fear of even naming what the problem is here. That might be why people are perhaps reticent to offer that assistance or to do their jobs properly to support us. We need that change at a cultural level to prioritise accessibility and to be forthright and say that disabled people are a



HOUSE OF COMMONS

community with specific needs and we have a right to have those needs met.

Q290 Gavin Newlands: Before I come to Professor Lawson, you mentioned Access for All and its limitations with regard to station accessibility. Is it your understanding that there are still four rail operators who have an exemption in terms of accessible trains at the moment? The last information I had was that there were still four operators, three and a half years after it came into force.

Caroline Stickland: Thank you for the question. I am delighted to have Doug here, who can answer that much better than I can.

Doug Paulley: Most of the temporary exemptions which were because the industry was not ready in time for vehicles have now passed. Maybe all of them have passed, but there are some permanent exemptions. Some of them are about the platform train interface, so that there is not level boarding. That is because of the legacy of platform heights. We have the oldest railway in the country. I think that exemption is overused. There should be level boarding coming.

Then there are things like the toilets on Class 158 diesel trains. They are not compliant. They have a permanent exemption from being compliant. A lot of trains have their side displays permanently exempted. Only new trains from now on should meet most of those. For some of those they still get exemptions. So, yes, there are still exemptions.

Q291 Gavin Newlands: Thank you very much. After that detour that I took you on, back to you, Professor Lawson, on the attitude and culture. Do the Government, operators and everyone else take disability seriously enough?

Professor Lawson: Thank you; it is a great question. I would just add a couple of things to what others have said. I think disability does get overlooked, disregarded or regarded as less important than it should be. That is really evident when it comes into potential conflict with other agendas like the green agenda or increasing cyclist travel.

Floating bus stops are a massive concern for a lot of disabled people, but they are going in all over the place. These bus stops—there is another word for them—or bus stop bypasses are where you have to cross over a cycle lane to get to the bus stop. You cannot often stop the bikes, so you have to take your life into your hands to get to the bus.

Other interests are often given priority rather than disability accessibility being treated as the starting point and other solutions having to be found around that, which is how it should be. In the United States that happens more.

Another example of that is the one I gave earlier on about the audio announcements in buses. If other passengers or the driver find it is a bit noisy, the volume gets turned down so that you cannot hear them. The



HOUSE OF COMMONS

huge value that they have for disabled people is totally lost. A willingness to put other agendas before disability is very evident still, unfortunately.

The second point I want to make is that there is another issue here. There is a tendency in the UK, which might be lovely in lots of ways, to be pragmatic and build on what we have already. We do have historical ways of dealing with different types of issue. This patchwork has emerged because there has been a whole process of building on to what is already there rather than taking an issue and trying to overhaul it and make it simpler.

In other countries where there has been less emphasis on equality in the past, when things like the United Nations Convention on the Rights of Persons with Disabilities have come along, they have kept the emphasis on the right to accessibility and various other things. Other countries have been able to respond to that more nimbly than maybe we have because of our commitments to building on what we already have. It comes to a point where you think that what we are doing constantly is making the problem worse and worse.

Q292 Gavin Newlands: Thank you very much. We have spoken about some of the limitations in the current law. I will start with you this time, Professor Lawson. How effective has case law been in changing practice on the ground in the transport sector?

Professor Lawson: There has not been a huge amount of case law. There were some early cases which were very important. I think Cathy was probably involved in them. There was *Roads v. Central Trains*, probably the most beautifully named transport case. Not only the outcome in that case but the judgment in that case was incredibly important and valuable in shaping disability discrimination law in quite a strong way. That was very important. I think that was in 2004. That was under the Disability Discrimination Act. Then we have Doug's case—*Paulley v. FirstGroup*—which was really significant. The potential for building on that has not been taken advantage of as much as it could have been. It has not had as much impact as it should, in my view. I will stop there.

Q293 Gavin Newlands: I will come to Catherine, and obviously Doug, given that you are involved.

Catherine Casserley: What Anna has said is right. I did see some use of the Paulley case in particular on a couple of cases, but it was not being used in the right way, which was unfortunate. *Roads* did make a very significant difference to things on the ground and in subsequent cases; I think it was used well.

There is no point in having a significant case unless you build on that and use it and get messages out from it. You need that campaign around it. That did not happen with the Paulley case. I do not know why that did not happen, but it did not. I think a lot more could have been done with the case than was, so it has not really had the impact that it could have



HOUSE OF COMMONS

had. I think it has had some impact, but not the impact it should have had.

Q294 Gavin Newlands: Thank you. When issues or cases are settled out of court, it obviously lessens the impact on the sector. Operators can then simply ignore what has occurred and what has been said in court.

Catherine Casserley: That is really problematic. Lots of cases do settle. Some of them settle for quite a lot of money. Not all of them settle with confidentiality clauses. Doug made mention of one that I know of that had quite a lot of money involved in the settlement. Where there are no confidentiality clauses, obviously you can do things with those in a campaigning way. That might have an effect, but they are problematic because lots of them come with confidentiality clauses and it is very difficult to push back against those. If what is being offered is far more than you are going to get in court, that brings its own problems.

In reality, the money that you are going to get in court is based on a thing called the Vento scale, which goes up from between £0 to £9,000, and then the end of the scale is around £50,000. Most of the cases fall within the £0 to £9,000 mark, which is really comparatively little. If you have had repeated incidents of discrimination, you might get it into the middle band. You might get it up to £15,000. There have only been about three cases that have been in the top band. You are looking at maybe £30,000. Those have been cases of real severity and not in the transport sector.

It does not cost a lot to pay your way out of difficulty. If someone wants an injunction to make a transport provider do something, that is often the way that a case may continue going, but that has not really happened in the transport sector. Yes, it is problematic, but if you get the right case you can make a significant difference with it, but you need to back it up with a campaign.

Q295 Gavin Newlands: Doug, you can have the last word on this section.

Doug Paulley: I hesitate to say too much, to be honest, because I am not a lawyer and I am in the presence of lawyers who know so much more and have had so much more experience on this.

Q296 Gavin Newlands: But you get a case named after you.

Doug Paulley: There is a case in my name, yes, although it was lawyers who fought that. The case in my name was specifically about the priority or otherwise that was given to wheelchair users for accessing a wheelchair space on a bus. Still, on a regular basis, I get people contacting me saying, "I wasn't able to get on that bus." Yesterday I wasn't able to get into a wheelchair space with a window, in my case, on a train and not a bus, because there were pushchairs and prams in there that would not be moved. It has not resulted in fundamental change on the ground.

There is also evidence that some operators—I am carefully not naming them—have a contingency fund. They will have money that they can



HOUSE OF COMMONS

throw at people who take legal action, which may be cheaper or easier than dealing with the fundamental problem that is the subject of legal action.

Gavin Newlands: Thank you very much. I am getting flashbacks to my time on the Justice Committee with these sections, but back to you, Chair.

Q297 **Chair:** Thank you. Just before I turn back to Grahame, I want to ask Catherine a supplementary question on the out-of-court settlements that are made, which companies will want to do for all sorts of reasons. By and large, do you find that they learn lessons from these cases? Do they say, "Okay, we got this wrong. We don't want to admit it. We'll settle the money"? Do they then do something on the back of it and say, "We'll alter our way of operating"?

Catherine Casserley: To be honest, it varies. They usually do something, but I do see people back again because the same things happen again. Whether they happen for the same reason, it is difficult to tell. I cannot say that they do not do something, because they usually do, but it is the extent of what they do and the extent of the lessons learnt.

Chair: I appreciate that it is a very general point. It is interesting to try to dig in a little to what the companies' attitudes are. Earlier we touched on the role of the industry regulators. Grahame Morris would like to ask some questions on that.

Q298 **Grahame Morris:** I do apologise that earlier I forgot to introduce myself. I am the voice on the right, although I am on the left of the Committee. I am Grahame Morris, the Labour MP for Easington in the north-east of England. I would like to ask some questions about the regulators and enforcement.

Doug, you gave a bit of insight in relation to the police's reluctance. Indeed, we were talking in the earlier section about the Equality Act and the EHRC. Earlier this year we had John Larkinson from the ORR. We were doing an inquiry into minimum service levels. I was asking him about what the implications would be for the staffing reductions that were being proposed on strike days.

In general, how effective are these industry regulators, the Office of Rail and Road and the CAA, in ensuring that the legislation and the regulations are enforced? You said it does not apply in the case of aviation and hovercraft. What is your experience, Doug?

Doug Paulley: I find it varies by regulator. My opinion of the Office of Rail and Road is that when they find out about things that are happening that are not compliant—for example, ScotRail failing to have compliant ramps—they can be quite effective at taking action, but because they aren't any part of the complaints procedure for people raising accessibility issues, unless people know to tell them, which most people do not, then they do not know what they can take action on. They can only take action within what is available.



HOUSE OF COMMONS

As I explained earlier, the DVSA had no idea that a lot of these accessibility regulations apply. They had no meaningful way or mechanism of applying them, and no intent to do so. It varies by regulators. Sometimes it varies by area as well. For example, particularly with taxi licensing and regulation, the variation in approach to either ensuring that there are accessible taxis, vehicles, in their area or that accessibility law is followed is just huge. The postcode lottery is massive. I would say there is a lot of variation. I am going to say this, aren't I, because I am a bit biased, but in general regulation does not meet the needs of disabled people.

Q299 Grahame Morris: Thank you. Caroline, do you have any thoughts on the effectiveness of particularly those two organisations?

Caroline Stickland: I definitely wanted to pick up Doug's last point about whether regulation is the right answer to the barriers that our community face. I would just echo the points I raised earlier about the fragmentation and about not necessarily knowing who the right person is to go to, and almost being passed from pillar to post if you do happen to go to the wrong regulator or the wrong place first. Again, there are the points I made earlier about accessibility, having to access things online or perhaps the websites of regulators not being accessible enough.

More broadly, on the Office of Rail and Road, I think it was very interesting to see the evidence given to this Committee by their representative at the session you had in September on the ticket office consultations. They were very frank about having no involvement in that process and about not being aware before time that they were coming.

Q300 Grahame Morris: I had a discussion with John Larkinson about that because the ORR was set up after those terrible train disasters in the 1980s: Southall and a whole succession of them. Their principal responsibility is safety. Surely closing ticket offices and forcing blind people to use automated machines is a safety issue. He said, "How is it?" I said, "Well, if there are no staff and a blind person falls on the track, surely that is a fundamental safety issue." He acknowledged that, but it had to be pointed out.

Caroline Stickland: I would say that the disabled community had been raising those issues for almost two years when the rumours of those changes surfaced, and perhaps the operator would do well to engage with the impact to people on this, listen to our experiences and take them into account.

We have heard from the ORR that they were not involved in that. It is not for me to sit here and say what the changes should be in terms of the regulation, but the way it is set up is clearly not working for our community if, as you say, such a wholesale change is being proposed and they are not involved.

Q301 Grahame Morris: To be fair to them—and I do not want to give the ORR and the CAA a bad rap—they acknowledge that there are deficiencies in their abilities.



HOUSE OF COMMONS

Caroline, the whole point of you being here is to express an opinion. The whole point of holding this inquiry is so that we can make recommendations. If you think there is a deficiency, spell it out. The Committee can then take that into account when we are deciding.

I will ask Professor Lawson the same question about the powers they have and if you have any suggestions as to whether they should be strengthened or if there are some good examples we should be looking at, maybe from another country.

Professor Lawson: What Caroline said about the fragmentation is absolutely right. I know that a big strand of the Equality and Human Rights Commission's strategic work over the past couple of years has been to try to work more closely with regulators in different sectors. It is not just transport. They cover all sorts of things, so they have a big job there to heighten their awareness of what their responsibilities are under the Equality Act.

There has been an attempt to embed equality into what they do. I am not sure how successful that has been. I think Doug's examples are quite horrifying about the level of non-awareness of accessibility obligations in their work. I think accessibility just has too low a profile. It should really be at the core. If they are to play an important role in delivering accessibility, that needs to be very clear in the training and in their strategic plans. They may need more resourcing to go out and do the monitoring—the compliance checks—as well, if they are the ones who are going to do it, or we may need different machinery.

Personally, I think that we need to look at Canada and the United States and think about having a more centralised way of dealing with accessibility that can then reach out to these different regulators. There needs to be resource around checking compliance, whether it is allocated to the resources under the oversight of an accessibility office of some kind or to an accessibility commissioner or somebody like that.

Grahame Morris: That is really helpful. I like that. You have given us some definite ideas that we can take on board.

Chair: I bring in my colleague Jack Brereton now.

Q302 **Jack Brereton:** I am Jack Brereton, the Member of Parliament for Stoke-on-Trent South. I want to ask you about the public sector equality duty. I will go to Catherine first. Do you think that this has been effective in delivering the changes that are needed to improve accessibility for transport?

Catherine Casserley: In short, no. The public sector equality duty has had mixed success, both practically and in the courts. It is a very useful duty if it is put at the heart of what is done, which is what was intended, and if it is taken into account in every function. The difficulty is that it has become viewed as a duty of process and as a tick-box exercise. The courts have vacillated a bit on how they see it, but, broadly, as long as you take it into account when you make your decisions and as long as the



HOUSE OF COMMONS

evidence is there for that, what you subsequently do once you have taken disability into account is not really something a court will intervene in.

I am of the view that the duty needs to be strengthened. For example, there should be an obligation not only to “have due regard” but to “take reasonable steps”, so that there is a positive element to it. At the moment, it has become too process-focused. It has the potential to do a lot of good, but I do not think that that potential is being realised.

Q303 Jack Brereton: Is it applied differently across different modes of transport? Does it have greater weight on certain modes than on others? Has it been more effective with certain modes of transport?

Catherine Casserley: It is applicable only to public authorities, so it is only going to bite there. It bites in the procurement process—when a Government Department is looking at its procurement process for contracts, for example, and things of that sort. The extent to which it bites will depend on what it considers its duty to be. Of course, it only gets any light shed on it if someone does a freedom of information request or seeks a judicial review. That is the other aspect of it.

Sometimes it is useful on a local level, when people are looking at transport plans and use the duty to argue that disability should have a greater input into the transport plan. It can be useful on a local level as well. Really, without something that bites—without an obligation to do more—it has become too much about process, rather than action.

Q304 Jack Brereton: Does everybody agree with that?

Caroline Stickland: I want to speak to how the public sector authority duty is used on that local level. We particularly see it being used by local authorities proposing changes to street spaces—around walking, wheeling and cycling infrastructure, for example.

Oftentimes that process is delivered through doing an equality impact assessment. We would really like to see wholesale change to how the EqIAs are carried out and considered, moving away from a tick-box exercise that is done as a sort of desk-based exercise that is then shelved and not come back to. That needs to be a really living document. It needs to be produced in co-production with the communities that will be impacted by any change, and it needs to be done before people have made up their minds. We would also like to see more transparency around the publication of equality impact assessments.

Q305 Jack Brereton: What sort of legal status do equality impact assessments have?

Caroline Stickland: They are not required under the public sector equality duty.

Catherine Casserley: Unless you are in Wales or Scotland.



HOUSE OF COMMONS

Caroline Stickland: Oh my gosh—I am showing my England-centrism; apologies. In England, they are one of the ways in which you can show that you have had due regard to the duty. It is an example of people seeing it almost as a ceiling, rather than a floor. They think, “We’ll do the EqIA and will then have done that due regard.” Rather, that should be your starting process. Once you have your EqIA, you should be looking at mitigations. You should be looking at not doing things, rather than doing them anyway. It has become a bit of a fall-back, in our experience. Local authorities do it and then move on, rather than its having the impact that it should have.

Q306 **Jack Brereton:** So you think that those should probably be strengthened and given more legal standing.

Caroline Stickland: I think so. I also think that local authorities, or anyone who uses EqIAs, need the right information and support to do them properly.

Q307 **Jack Brereton:** Is there a process that you as an organisation might go through to challenge if you disagreed with the findings of an equality impact assessment?

Caroline Stickland: The most live case that we have at the moment is just trying to see equality impact assessments, in some cases.

Q308 **Jack Brereton:** You are not necessarily even seeing them.

Caroline Stickland: We have made a number of applications to the Department for Transport under the Freedom of Information Act to see the equality impact assessment for the programme-wide ticket office closures. That has been refused multiple times. We still do not have sight of that.

Catherine Casserley: Under the Disability Discrimination Act, there were specific duties. There are specific duties now, but they are very different. Under the DDA’s specific duties, there was an obligation to have an equality impact assessment, to publish it and to involve disabled people in drawing it up. Those duties were there. When the Equality Act produced a cross-protective characteristic duty, the specific duties for England were shrunk, basically, so there is no longer that requirement.

Q309 **Jack Brereton:** There is no formal route. If there was disagreement—if an organisation wanted to challenge that—there would not necessarily be a route to do so, other than a legal route.

Catherine Casserley: No, other than judicial review. That is really to do with the decision that is made, not specifically the impact assessment.

Q310 **Jack Brereton:** In terms of the Department for Transport and its role in all of this, do you think that there is more that the Department for Transport should be doing, particularly around some of the legal aspects?

Caroline Stickland: One of the key issues that we have regarding the way in which the Department for Transport is looking at learning from the current situation and looking ahead is that it feels like a lot of the issues



HOUSE OF COMMONS

we have been talking about today, relating to the class dependency that Professor Lawson talked about earlier, are being repeated and built in.

If you look at what is coming up in the future of transport, demand-responsive transport is the big thing, with Uber buses or local responsive transport. The majority of the vehicles used for that will have fewer than 22 seats. Therefore, there is no requirement, as I understand it, for those vehicles to have a wheelchair priority space. That is really fundamental. We are investing in this. There is funding out there from the DFT. There are lots of ways in which communities and industry are being encouraged to look at this as the future of transport, yet we do not have a process there that means that those vehicles will be accessible.

Similarly, Mobility as a Service is the platform that a lot of current digital providers use to help to plan journeys or to do ticketing on the go. It is really important for multimodal journeys as well. The Department is aware of that. There is the MaaS code of practice, which was published recently. It says that you should have consideration of accessibility and that it might be useful to talk to disabled people who may want to use your products. I think that the Department has a massive role in making sure that we do not end up in another 20, 30 or 40 years with an even more segregated transport system where that inaccessibility has been baked in because the Department was not bold enough to require and mandate accessibility when encouraging the sector to innovate and come up with new opportunities.

Q311 Jack Brereton: Professor Lawson, in terms of the legal obligations the Department of Transport is under to consider accessibility when it comes to its policymaking around transport, do you think that that is currently being done effectively by the Department?

Professor Lawson: I looked through the inclusive transport strategy again last night. I was impressed by the attention given there to heightening awareness of the public sector equality duty and to co-ordinating initiatives around accessibility, but obviously that is the intention, rather than what actually happens in practice.

To pick up the question about the public sector equality duty, it is hugely important in that it is proactive. Its purpose is to give us, as disabled people, but other people as well, a voice at the beginning, to make sure that those concerns are really factored in then, before things become embedded. Once transport and the built environment are in place, they are very expensive and time-consuming to undo. That is why it is so important to have a strong proactive duty. Nothing else in the Equality Act really does that in the same way. I do not think that it is strong enough to meet the purpose for which it is supposed to be there.

Q312 Jack Brereton: Do you think that it is more about the policies and legal obligations that are in place or more about the actual implementation of those? Is that where are problems?

Professor Lawson: I think that it is a bit of both. "Due regard" is quite vague. As Cathy said, the England-specific duties have been weakened



HOUSE OF COMMONS

quite a lot since 2010. They are stronger in Scotland and Wales. Having the requirements that were there before around consultation and publishing equality impact assessments would help a lot. They speak to how the duties are framed. Even when you have those duties in place, things do not always work that well. In Scotland, as well as in England, there are big concerns around how well consultations on transport issues go, how effective they are and how much disabled people are able to get their voices heard in processes—heard and listened to, rather than just heard—rather than its just being a formality.

Q313 Jack Brereton: Finally, I come to Doug. Do you think that there are any specific things that the Department should be doing to try to improve some of those processes, to make sure that people with a disability are properly considered when they are thinking about accessibility of transport?

Doug Paulley: I think that there are. It is very difficult to achieve cultural change to make it so that the voices of disabled people are made more important or given more priority. On how we should go about that, I am afraid that I am not the best person to answer. I am very good at pointing out where things are not right, but I am really not good at mechanisms as such. I am sorry.

Jack Brereton: I think that we have heard about a few of those, certainly the legal ones. Thank you all for that.

Q314 Chair: I move on to my last set of questions, to conclude the session. First, Professor Lawson, may I ask a supplementary? Earlier you referred to the Accessible Canada Act. That is something that we will want to examine in more detail. Just to clarify, is it purely in the transport sector or is it more wide-ranging across Government Departments there? What I am specifically trying to get at is whether there is a carry-over option for our Department for Transport to own a similar piece of legislation here.

Professor Lawson: That one applies to other sectors as well. It applies to banking. I cannot remember the others, but it applies to other types of services that are regulated by Government. That would be the ideal here. We need something like that. Even if it applied just to transport, that would still be a big help. Maybe that could be built on by other Departments and they would get inspired by what was happening in the transport sphere.

Q315 Chair: I dare say it is certainly something we will look into as we take our inquiry forward.

Earlier we touched on the penalties that operators have. Catherine, I forget the name of the scale you referred to, but you said that the payments involve fairly small amounts of money in the overall scheme of things. What would make operators take their responsibilities more seriously? Is it harsher financial penalties or some other sanction?

Catherine Casserley: I am not sure that I know the answer to that, but I can speculate. What I can say is that the threat of the damages that are awarded by courts is not going to make providers comply with the



legislation, because it is not very high. It is not an incentive to comply. If providers considered that they were at more risk of cases, that might make a difference. Certainly, being taken to court more regularly and having judgments against them might well make a difference.

Having enforcement by a body would certainly assist. The rights that are in the legislation—both European legislation and the Equality Act, whichever applies—should be enforced in the same way as any health and safety requirement. As part of any operation, any business has to comply with a range of obligations. These should be no different. At the moment, they are. There needs to be a different attitude to the obligations that they have.

Q316 **Chair:** Would any of the other panellists like to add something?

Doug Paulley: I agree that it has to be a volume of enforcement. Each individual enforcement does not achieve significant sector-wide or operator-wide change. It needs to be more effective and widespread enforcement. One case of £17,000 or £5,000 is not going to hit an operator. The number of cases is tiny compared with the number of incidents. If a significant proportion of incidents faced enforcement, that would make a difference.

Stephen Anderson, who gave evidence at a previous session, has recently been taking loads of taxi cases. It is noticeable that he gets awarded £50 for a taxi refusal. In Vento, it starts around £1,000, in theory. People usually get low thousands, yet for taxi refusal, which is enforced by the magistrates, it is 50 quid—and, in the London area, losing your taxi licence. I guess that that makes a difference.

There has to be a huge volume of cases. That is what needs to happen. For that to happen, the whole enforcement model has to go from individual disabled people trying to enforce it themselves, or getting enforcers to enforce it, to a proactive duty on competent regulators and enforcers to make that happen.

Caroline Stickland: I definitely agree about the importance of enforcement of regulation. We also need to see a change in the regulator model that covers the gaps that exist. I mentioned earlier that interchange is a key part of the journey where things can go wrong. At the moment, because regulation is fragmented by mode, there does not appear to be very good learning between different parts of the sector when cases are brought and complaints are made. There is an opportunity for more centralisation of that regulation across all the modes where that learning could be shared. Interchange and multimodal journeys would fall under that. That regulation also has to look at training and the culture of staff, both on the frontline and in the head office.

I also want to touch on the carrot bit of it—if that is the stick—which is about the resources that the industry needs. I talked previously about Access for All and how that is done through a competitive bid process. I imagine that it is an interesting position to be in if you are in the industry



HOUSE OF COMMONS

and are being told to prioritise accessibility, but you still need to bid for the funds. Directives from industry or, perhaps, from the Department in relation to things like ticket office closures seem to play against that initiative. We need to look at how the sector is being directed to prioritise accessibility as well.

Anna mentioned the inclusive transport strategy, which was very much welcomed at the time by our community as a good step and signal that inclusive transport was a priority. Again, that has stalled. We are now five years on from that, with no clear indication of whether it is going to be picked up, whether something else is going to follow or how the prioritisation of inclusive transport is going to be embedded. That leaves an open question of what is the carrot that is being given out, as well as the importance of addressing the stick of regulation.

Q317 **Chair:** That brings me on neatly to my final question. I will go down the line for each of you to answer and then to add in anything else that you want to put on the record that we have not covered.

We are well aware of all the problems that people with disabilities and other mobility issues face. We have heard plenty of evidence that, since covid, the experience seems to be deteriorating, not improving. Are there any bright spots? Are there any operators, local authorities or other agencies we could look at that are actually turning it around and taking their obligations seriously? No one is going to be perfect, but are there any that you would highlight as making a difference at the moment? Doug, I will start with you and then go down the table.

Doug Paulley: There are some that are better than others, I would say. Brighton & Hove Buses has a relatively good reputation. There are some councils that mandate accessible taxis and take legal action, but I would not say that there are any pervasive good examples, unfortunately.

You gave me the opportunity to say anything else that I would like to put on record. A friend, the campaigner Flick Williams, commented that public sector equality duty equality impact assessments tend these days to be "sorry, you lose" impact assessments. They say, "Yes, we realise all of the difficulties that this is going to bring, but we do it anyway. That is proof that we have had due regard." I have significant issues with the public sector equality duty.

I want to say as well that it is really great that the Committee is looking at this key issue for disabled people. Although I do not represent disabled people, I would like to thank the Committee for doing this.

Q318 **Chair:** Thank you again for sharing your experiences with us. Catherine, I turn to you next.

Catherine Casserley: I cannot give examples of specific authorities or providers that are particularly good. What I would say is that I have noticed more of a willingness for defendants I deal with to meet claimants to discuss what the issues are and to look at mediation, for example—which is a positive—to see what changes they can make. Whether or not



HOUSE OF COMMONS

they make those changes and how they take them forward is another matter, but at least a willingness to look at that is a positive that I would take from it.

I would like to add one other thing. It is about disability being behind, and being left behind. One of the things I have come across in my practice as a discrimination lawyer is a certain reluctance to treat accessibility issues and the duty to make adjustments as a type of discrimination. Discrimination is about direct discrimination and indirect discrimination, but accessibility is something different. That causes problems in trying to enforce these cases. Because it is seen as different in that way—Anna talked about its being something extra—it does not get the same approach. I have heard defendants talk about its being unfair. That comes across in the education sector, in particular, but I have heard it in a transport context as well. That sort of attitudinal problem is really difficult and something that has to be overcome if a real difference is going to be made.

Q319 **Chair:** Thank you very much. Caroline.

Caroline Stickland: Like Doug, I would struggle to name any specific examples of things that are going particularly well. One thing that I want to highlight is that in some parts of the sector and some local authorities there has been more of a shift recently towards a co-production and engagement approach. Some operators have access panels. Some local authorities have accessibility forums. I think that we need to go much further than that. We need to see disabled people and our lived experience being as valuable as the professional experience that a designer or an engineer may have. Industry needs to be seeking that out proactively and compensating for that time. There are baby steps in that direction, but we are certainly not solving the issue yet.

Q320 **Chair:** The last word goes to Professor Lawson.

Professor Lawson: Is this just on good practice?

Q321 **Chair:** Good practice and anything else that you would like to put on the record that we have not covered in questions so far.

Professor Lawson: You asked for examples of good practice. As somebody who travels by public transport a bit, with my dog, I have found that assistance on train travel is really patchy, but there are some stations where it is just amazingly and consistently good. I try to make my routes go via those stations, if I can. Luckily, one is Leeds. That may be because they know me there. Another is Birmingham New Street, which is always incredibly good.

This also speaks to the patchiness of it. I book train assistance with a guide dog—a big guide dog. We used to have one number where we could book assistance. It was possible to reserve an extra seat so that the dog could be tucked in on the floor, away from the aisle. On most providers, that is now no longer possible. You can get assistance and book a seat, but there is no room for the dog. If somebody whom you do



HOUSE OF COMMONS

not know is sitting next to you, you cannot tuck the dog in on top of their feet and your feet. It just does not work. The dog then becomes a trip hazard for everybody walking up and down the aisle. That is the problem. There are one or two providers who still allow you to reserve a seat for the dog so that they are out of the way. I cannot remember which ones they are, but that is patchy.

You asked about things that I have not mentioned. I would like to pull out the fact that, although I would love a wholesale review of the Equality Act, that is quite a big ask; that is a big undertaking. While we are working on that, we could do something else, maybe around an accessibility Act that picks up some of the issues that we have been discussing today. We have talked a lot about the problems with the Equality Act and how that needs addressing, but that has been raised a lot in the past and it is still sitting there. A House of Lords Committee looked at this in 2016 and made very strong recommendations, but not many of them have been acted on. If we wait for that to happen, we might be waiting a long time while these problems persist.

Chair: Thank you very much. Once again, I thank all four of you for your time this morning. It has been a very informative session. We have learned a lot. That will certainly influence the work that we do in this inquiry and the conclusions and recommendations that we will make at the end of it. Thank you for your time today. It is very much appreciated.