



Public Services Committee

Corrected oral evidence: The transition from education to employment for young disabled people

Wednesday 13 December 2023

3 pm

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Members present: Baroness Morris of Yardley (The Chair); Lord Bach; Lord Carter of Coles; Lord Laming; Lord Porter of Spalding; Lord Prentis of Leeds; Lord Shipley; Baroness Stedman-Scott; Lord Willis of Knaresborough.

Evidence Session No. 5

Heard in Public

Questions 52 – 58

Witnesses

I: Audrey Ludwig, Director, Suffolk Law Centre; Catherine Casserley, Barrister, Cloisters Chambers; Stephen Robson, Senior Solicitor, Employment & Discrimination, Disability Law Service.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Audrey Ludwig, Catherine Casserley and Stephen Robson.

Q52 **The Chair:** Welcome to this evidence session for our inquiry into the transition from education to employment for young disabled people. I would like to welcome our three witnesses, and I begin by asking them to say who they are and where they come from. Catherine, can I begin with you and move along the line?

Catherine Casserley: My name is Catherine Casserley; I am a barrister specialising in equality, human rights and employment law, and I practise from Cloisters Chambers.

Audrey Ludwig: Hello, I am Audrey Ludwig. I am the director of Suffolk Law Centre and am a solicitor who is specialised in discrimination.

Stephen Robson: Hello, I am Stephen Robson. I am a solicitor with the Disability Law Service, which is a charity providing legal assistance to disabled people. I deal with employment law cases and discrimination almost exclusively within that field.

Q53 **The Chair:** Thank you for coming in. As you can see, the focus of today is to look at rights of redress and the legal structure. Stephen, I will start the first question with you and move the other way along the line. How aware do you think both employers and young disabled people are of the rights of young people in the workplace and the obligations that the law puts on employers?

Stephen Robson: My view, from the work I do, is that there is certainly an awareness of the Equality Act and the fact that you should not discriminate against employees and young disabled people. However, there is a separation between the awareness of that fact and whether employers think it applies to them. I do not know whether it is that they simply do not realise that there is discrimination there because of bias that they do not appreciate they are subject to, or the fact that discrimination and making appropriate adjustments for disabled people is an effort for them and they perceive it as being costly, so they would rather not go down that course.

For instance, while employers may well subscribe to the Disability Confident scheme by guaranteeing interviews for disabled applicants, in practice we find it is much rarer for them to make appropriate adjustments for disabled applicants by, for example, providing neurodiverse people with questions in advance, or even just making the interview at an appropriate time for somebody who has a disability, which can cause them difficulties with attending at the time they are required to be there.

As I say, there is lots of lip service paid to the fact that there should not be discrimination, and we try to do everything to have a diverse workplace, but it does not always filter through to the coalface, so to speak.

Audrey Ludwig: We know from research that, generally, young people have low awareness of their legal rights and the sort of advice services that can assist them. There was some research done in 2009 that said that generally, 16–24-year-olds will experience at least 2.3 million rights-related problems requiring advice ... More than a quarter of these problems will be experienced by young people who are not in employment, education or training—we know that disabled young people are more likely to be NEETs than non-disabled young people. In addition, as many as 200,000 problems will result in young people trying, but failing, to obtain advice, often because there is no service able to help them. That is young people generally; disabled young people have added difficulties with regard to provision of services which are accessible and tailored to their specific needs.

Catherine Casserley: I echo what Stephen and Audrey have said. Some young people in particular may not associate themselves with disability or with having a disability. The Equality Act itself is quite dense, but it does not actually indicate what it does or what it is. Prior to the Equality Act it was the Disability Discrimination Act, and now you have an Equality Act that encompasses all the protected characteristics. In addition, prior to the Equality and Human Rights Commission, the Disability Rights Commission used to run awareness campaigns, which were aimed at raising awareness of the rights that people had. I do not see many of those campaigns in existence now. For example, I happen to go to Ireland occasionally and what you have there are campaigns run on the radio about the rights that the European directive affords people, for example. There do not tend to be public awareness-raising campaigns on the radio or television here about the rights that people enjoy. Generally, very little awareness raising is done about those rights. Certainly, in my casework, and when I am invited to give talks to both employers and disability organisations, awareness is relatively low.

The Chair: I suppose with young disabled people, many of them might turn to somebody to act on their behalf. For example, we have heard evidence in the past that they are less likely to be members of trade unions. If we say that that is the case, might it be that advocacy is the best course of action for young disabled people, and is there a problem with access to that?

What I am getting at is: what is the picture about whether it is awareness raising for advocacy or awareness raising to go to the tribunal yourself to access the legal framework? I am trying to get a measure in my mind of how different the course of action is for young disabled people as opposed to young people in general. Sometimes you can teach somebody something, but it does not mean they have learned it. So, you raise awareness in school, but they do not learn it until they actually need it. I wondered if, perhaps, we could explore that with each of you in turn. Is it a different route with young people because of the advocacy element, and how do you reckon that goes? Do most young people with disabilities end up trying to find somebody who can represent them? Stephen, I will start with you again and then work the same way along the line.

Stephen Robson: When it comes to the application process, advocacy is not provided for them and, generally, they are not appreciative of the need for it until that point.

The Chair: Is there no direction? Does part of the awareness raising not include directing them to people who might support them?

Stephen Robson: It does not seem to. In any event, I am not quite sure who they would be referred to at that stage but, certainly, there does not seem to be a great deal of help for them then.

The Chair: Some would find their way to you, would they not?

Stephen Robson: Almost inevitably people find their way to us after the event. The nature of a legal helpline is that they come to us only once a problem has arisen. A lot of the difficulty that young disabled people have in seeking jobs is the question about whether to disclose that they have a disability at the time of their application. There is the unsurprising feeling that if you tell the potential employer you are disabled, irrespective of anything they may say, there is an unconscious bias against you, and they will find a reason to prefer a non-disabled candidate. However, if you do not disclose that you are disabled at that stage, first, you will not get any adjustments made during the recruitment process, which means you may not be able to present yourself as best you can, and secondly, we frequently have people who get in touch who have not disclosed their disability until after they have been offered a job, and the employer takes against them because they feel they have been dishonest with them in the application process. Irrespective of what the Equality Act says, it is a difficult thing to combat.

Audrey Ludwig: The particular problem for young disabled people is that a lot of services have become very generic—one-size-fits-all information on websites, *et cetera*—whether it is the careers service or services that can be provided by the DWP or the jobcentre. For example, when I was looking at the issue of the difference between flexible working and disability-related reasonable adjustments, I went on to the government website and looked at flexible working, and it does not mention reasonable adjustments for disabled people at all in the context of flexible working. It is unsurprising that we have had several cases where clients who have sought disability-related reasonable adjustments but not used those words are, essentially, treated as if they are being made as flexible working requests, have been turned down, and then they come to us.

In practice, ACAS is slightly better but, again, it does not emphasise the duty elements. The point I want to make is that, at the moment, we are finding that it is a broader problem with regard to disabled people in that a lot of the support services that were historically provided for them—support workers for people with learning disabilities or the neurodiverse and other advice services that are specific to disabled people—are just disappearing. Those services are not there anymore.

Quite often, people who are just about coping when there is not a crisis cannot cope with a crisis—if something has gone wrong, they do not get a reasonable adjustment, so they go off sick and then they are threatened with performance management and all those sorts of things, they cannot cope, or they are told that they will not succeed in their probation periods. They just do not cope, and that is what I find the difference is; it is a combination.

I can say a lot about legal aid and the lack of provision of, for example, providers of disability legal aid services. There are hardly any in the country, and in 40% of the 20 or so that exist, the contracts are dormant and they are not doing any work, probably because they cannot afford to do the very low-paid work under legal aid.

The Chair: That is a general problem.

Audrey Ludwig: So, it is a combination of the generic cuts to services, but also that disabled people need very bespoke advice about their situation rather than just generic information applicable to the whole population.

Catherine Casserley: I will just make two points: I echo what Audrey says about the generic nature of the advice available because that does not speak to young disabled people; it is not suitable. The other point goes back to trade union membership. One of the reasons that usually comes top of the reasons for people joining a trade union is the support they get in enforcing their rights. If people do not know what their rights are, they are not going to join that trade union. I think that is one of the reasons why trade union membership is so low, because young people do not have that awareness at the beginning.

Q54 **Lord Laming:** Thank you very much, Chair. This is most helpful. We have had a lot of evidence about the routes disabled young people are helped to take from school into higher education. In relation to the last point on being made aware of trade unions and the like, I find—I suspect I am not alone in this—it very difficult to understand whose responsibility it is to prepare young people for employment and, in doing that, to explain their rights to them at that early stage. I do not think it has been spelled out to us what is the process for informing and supporting young people in that transition from education to employment.

Catherine Casserley: In terms of their rights in employment, I am not sure that there is a responsibility on anyone to inform them. That is probably one of the issues. Obviously, the Equality and Human Rights Commission has an overarching role in relation to the Equality Act, but I do not think there is any obligation on anyone to advise young people of what their rights are. That is probably a very big gap and one of the reasons why young people do not know. Obviously, there are things such as citizenship lessons at school and it could be part of that.

The only thing I would say is that it is really important in the context of disability—it will probably come up later—that it is made clear that the

rights that disabled people have, particularly around reasonable adjustments, enable them to access work on a level playing field, and that that is what fairness means. Fairness does not mean treating everyone in the same way, and that is a really important lesson. However, that is not just for disabled people: it is for everyone, because a lack of understanding across the board is what leads to a lot of problems inside and outside the workplace.

Audrey Ludwig: In practice, the reality is that our population are not generally trained on their legal rights and responsibilities. Whether somebody knows is usually more a product of their family life or that somebody happens to have told them by accident. The difficulty is that a lot of preparation for disabled people focuses on benefits, community care, and support packages. There is no real consideration of disabled people in the workplace in ensuring they have that. You also have the issue that with some of the routes that non-disabled people take into employment where people will sort of try it out, the barriers can often be problematic with regard to the inability to make reasonable adjustments—it may just be a lack of accessibility. I think about work experience being harder to arrange. There is no duty to do reasonable adjustments for volunteers, so again, in practice, that is another route that, essentially—

The Chair: Or work experience, presumably.

Audrey Ludwig: Yes. Catherine would probably answer this better, but in theory you could probably bring a claim as a worker if the volunteering was directly work experience, but if you are a pure volunteer, there is case law that the Equality Act does not apply. Some routes in, the way that people learn, are blocked to young disabled people and, to be frank, my experience of the Department of Work and Pensions and jobcentres with regard to assisting is not great.

I did some work a few years ago on the failure to make reasonable adjustments in claimant commitments in what was employment and support allowance and, more recently, in universal credit. Essentially, we were seeing people being required to do job-seeking activities that were inconsistent with their disabilities and then being sanctioned accordingly. That whole approach is completely anathema to getting people into work and staying in work if your focus is very much on sanctioning people rather than supporting people. The other thing is that the whole way Access to Work is set up, for example, means that you have to have a job before you can even access Access to Work, largely. In an ideal world you would have a situation where people were effectively going to interviews with packages of support and the funding for it already in place.

Stephen Robson: With specific reference to Lord Laming's question, I am not sufficiently involved in education to know what support is being provided in that field. However, certainly an impression which is given by the people who approach us is that young people do not really know what their rights are and that there is the obligation to make adjustments for them. Probably with the majority of younger people who approach us for

help, it is actually their parents who are making the approach after something has developed at work. The parents have done the research themselves and said, 'There's been a failure to make reasonable adjustments', or 'You've been treated unfairly'. The young people themselves seem to have been oblivious to the fact that they should not have been subject to that treatment, or that they did have further rights.

The Chair: It is a big jump, is it not, to have to act on your own behalf if you have just left school, especially when it is a difficult situation?

Stephen Robson: Indeed. Just picking up on what Cathy was saying with union membership, the fact is that, generally, you have to have been a member for a number of months before they will provide you with support in any legal issues that crop up, and obviously, a young person moving into employment, even if they join a union, will not have been. It is quite common for the union to say, 'Sorry, you haven't been a member for long enough; we can't support you here'.

The Chair: That is a good point.

Q55 **Lord Willis of Knaresborough:** First, apologies to everyone, particularly our witnesses, for arriving a little late today. I was detained elsewhere against my will.

I am really interested in what employers are legally required to do. For instance, if a young person is leaving school and they see a job which is, let us say, in a call centre, part of which could be delivered from home, and they apply for the job, how far do employers have to comply with their legal rights that relate to the recruitment and employment of disabled people? Do they have to declare that they are disabled before they apply, and if they do that, what are the legal requirements of the employer to take that into consideration? What happens if employers fail to do so? I cannot see much of a record of employers being prosecuted for failing to do exactly that, and that is probably because there is no reason for it.

Audrey Ludwig: In practice, the starting point is that you have to identify to your employer that you have a disability. The test is about knowing, or 'ought to have known'. Sometimes from conduct, sick leave or whatever, it is deemed that an employer ought to know, but, generally speaking, you need to disclose to your employer that you have a disability. Once that is identified, the duty is on the employer to explore potential reasonable adjustments. The key element is reasonableness, and there is no list of for what a reasonable adjustment is. It could be anything; it is very individual. Basically, if you have a substantial disadvantage in undertaking a particular activity because of your disability that is greater than other people who do not have that disability, there has to be a reasonable adjustment. It might be a change to the physical premises, but it is more likely to be a change to policy. It could be on home working as opposed to working from the office, or a change of hours—those sorts of things. It could be on accessible information.

In terms of enforcement, we are talking about individuals having to enforce it. It is a civil matter, so it is not about prosecutions; it is about individuals bringing grievances and then, if the grievances are not successful, taking them to employment tribunals. The onus is on the individual to do it. There are very strict time limits and the criteria are very complex. We can go into more detail: I do not know how specifically you want me to go into it.

Lord Willis of Knaresborough: Can I interrupt you there? Let us say I have a physical disability that makes it very difficult for me to come on to the premises, but I have looked at it before and I realise that they have a lift and there is easy access to the building itself, so I can do that if necessary. However, 20 other people have applied to the employer for this job, all who do not have any of those problems. I suspect most employers would simply say, 'I'd rather have someone who can just do the job without me having to find anything else for them'. How does the person who is disabled ever question that to make sure they have not got the job because they are not good enough for it—which is fair enough—rather than because they were the one who was going to be difficult to deal with?

Audrey Ludwig: It comes down to evidence.

Stephen Robson: As Audrey just said, it comes down to evidence. The Equality Act at Section 136 talks about burden of proof and effectively says that to prove a case, if you as a claimant have some evidence to show that you have been discriminated against, once you have established that, the burden of proof switches to the employer to demonstrate that discrimination was not any part of the decision not to employ you. The difficulty, however, is always having that smoking gun, that initial evidence that the reason why you were not taken on was not because there were three candidates who were better qualified than you but because the employer looked at it and thought, 'Well, it'll be a bit of a pain having somebody with a physical disability who may struggle to come to work every day'.

Lord Willis of Knaresborough: My question to you, Stephen, would be: what do you think we, as a Committee, could recommend to Government that would change either regulations or law to enable people with a disability who have applied for a job to have access to the evidence as to why they did not get the job?

Catherine Casserley: The Committee could recommend the return of the questionnaire procedure. In the Equality Act—as with the Disability Discrimination Act—there was a procedure for asking questions and if an employer refused to answer those questions or answered them inadequately, that was taken into account in evidence and the tribunal could draw an adverse inference from that.

The Chair: Is it after somebody feels they have a case that they give a questionnaire?

Catherine Casserley: Yes. If they felt they had been discriminated against, a representative or an individual could write to an employer. For example, in the situation that has been described, they could ask the employer, 'Why didn't I get the job? Who got the job?' They could, for example, ask for suitably anonymised score sheets. Sometimes cases did not go ahead because they received the information and they could see why they had not got the job, and sometimes cases went ahead because it was quite obvious that the individual had been the best candidate and that disability, or another protected characteristic, was the reason for not getting the job. As a result of what I think was called at the time the Red Tape Challenge the Government repealed those provisions in relation to questionnaires, so they are no longer available in that form.

Lord Willis of Knaresborough: Was that a good thing? Was that a reasonable thing to do, or was it just something which put another barrier in the way of disabled people being able to get a job even if they can show they are as good as anyone else?

Stephen Robson: It was not a barrier in any way. It meant that—to take your example beforehand—if you had been denied a job and you had a disability, you would not just go to the tribunal and say, 'It must have been my disability which was the reason I wasn't taken on'. You have this first opportunity to allow the employer to show whether they have a valid reason for not taking you on.

Lord Willis of Knaresborough: Would you all support the Committee making a recommendation that that should be reinstated?

Audrey Ludwig: Yes.

Catherine Casserley: Yes.

Lord Willis of Knaresborough: If it was, how could it be improved to make it more effective?

Audrey Ludwig: In practice, if you can get early legal advice—and we can get in at grievance stage—we could use the questionnaire quite well to get decisions changed. I have done that in my practice. It is another tool; it is useful. The advantage was that if you used the questionnaire, basically it created a rebuttable presumption. It was very handy because, quite often, employers answered inconsistently, and it boded very badly for them at a later stage if their answers were inconsistent with other evidence. It was a very useful tool but, actually, what is needed is early legal advice, more early legal advice, more legal aid practitioners, and more people skilled in being able to challenge disability discrimination at an early stage with the idea of trying to keep people in work.

The Chair: So, is the questionnaire a useful thing that could solve some problems straightaway and provide evidence?

Audrey Ludwig: Absolutely. It is interesting that the Government have sort of reintroduced it in the services field. They have made it available; it is available for people to use, but only in the goods and services sector.

They have not brought it back for the employment sector, and it does not make any sense as to why not.

The Chair: We will have a look at that.

- Q56 **Lord Bach:** Welcome to our three speakers—if I can be a bit personal, particularly to Audrey, as she and I go back a few years. I suppose my question is around people who are in work. How effective are the enforcement mechanisms relating to disabled people's rights in the workplace, given, for example, that, as I understand it—you can correct me if I am wrong—under LASPO, employment law was taken out of the scope of legal aid completely, even though discrimination was kept in? In particular, what do each of you think about the efficacy of employment tribunals as an enforcement mechanism in this day and age?

Audrey Ludwig: There are myriad problems with employment tribunals as a process. A lot of people think employment tribunals are just a hearing. In practice, we are looking at a multiyear process if you include early conciliation. The whole system does not work, particularly for disabled people. Part of the problem is the lack of legal aid providers. There are about 20 providers—I think I sent some information and gave you the stats on the number of current providers—of which 40% are dormant contracts. This is around the country, so there are hardly any providers of legal aid.

The other thing is that the time limits for employment tribunals do not work with legal aid. Basically, if you are thinking about somebody who is being performance managed out because the employer has, for example, failed to do a reasonable adjustment and instead they are trying to get them out, in practice, the point at which they would try to get legal advice at the beginning is usually when they have their final salary or just about when they have been dismissed. If you only have three months, you end up in a situation where somebody who essentially has just had their contract terminated needs legal advice at that point, but the means test is done at the point at which they get their final salary rather than when they are unemployed.

In practice, I would ask that the time limits be extended to six months to take account of the fact that their income is then actually a lot lower and, therefore, they should get legal aid. As Lord Bach knows, the legal aid rates means test threshold has not gone up since 2009. You have to be very poor to get legal aid anyway, and a lot of working disabled people are not eligible because they are a few pounds over the threshold. Even those who you would think should get legal aid do not get it. However, there are loads of other problems with employment tribunals, which my colleagues will probably talk about.

Catherine Casserley: Obviously, employment tribunals, when they started off as industrial tribunals, were meant to be informal courts, and they are not. Audrey has already talked about time limits and I would echo that, especially for reasonable adjustment claims, because reasonable adjustments have a very complex approach. I will not go into

the detail of it, but it is very difficult to ascertain when time runs from in reasonable adjustment claims, and so people are often out of time in relation to those.

It is very complicated; it is a complicated process for individuals to deal with. The Equality Act, and particularly disability, which is the most complicated of all the grounds, is difficult for people to deal with on their own. Employers are usually represented, people face strike-out hearings and face preliminary hearings on their own. It is lengthy; it can sometimes take two years for a claim to go through. One of the most difficult aspects of it is that, if you have a reasonable adjustment claim and you are still in employment, you want that claim to be dealt with quickly and you want to stay in work. The longer you are out of work, the less likely it is that you will go back. If you are waiting for your case to be heard and for that claim to be determined, it could take up to two years. By that time, you may have left work and you may have developed—this is what happens in a lot of the cases I see, and I am sure the same is true for Audrey and Stephen—a mental health issue that you did not have before because of the stress and the strain. Ultimately, that is really not what you want; you want people in work. So, those are the difficulties with the employment tribunal system, particularly in relation to disability.

Stephen Robson: Many people dive into the tribunal process without fully appreciating what they are getting themselves involved in. It is very easy to start a claim because, once you have gone through the early conciliation process, there is an online form that you complete and then click 'submit' and your claim starts. Many of them have the impression that, once they have done that, the wheels of justice will grind into motion and at the end of the process they will be rewarded with a declaration that they have been discriminated against. They do not appreciate quite how adversarial the whole process is, and that the onus is on them to make their case to show they have been the victims of discrimination.

With the absence of legal aid to assist them and the fact that no win, no fee arrangements do not really work in the employment tribunal, unless they have union support or legal costs insurance, quite often they will have to do the whole thing themselves. We may be able to give them background advice but, in most cases, we can only do that rather than represent them. I frequently have to warn people that, if they are going to start a claim, they have to do it with their eyes open and brace themselves for a long and not terribly pleasant process. Even if they are successful at the end of the day, it is quite rare they come away from the process thinking, 'I've achieved justice and that was worthwhile'. I am afraid that on very many occasions they come away scarred.

Audrey Ludwig: Could I just—

Lord Bach: Chair, can I ask one more question on this?

The Chair: Let Lord Bach do that, Audrey, then you might be able to incorporate it in your answer.

Lord Bach: In the same way as Lord Willis was asking what we should ask the Government to do, presumably you would agree that the Government should do something about the means test itself in the first place and—this is a much bigger issue really—that they should look at employment tribunals and some recommendations in regard to how they do their work. Is that right? Would you all agree on that as a possible way forward?

Audrey Ludwig: They need to revisit early conciliation. It is not working at the moment, as far as I can see, particularly for the group of claims that involves people who are still in employment. We get a situation where we help people with grievances right through the process. We regularly see employers not really engaging until we have issued proceedings. Early conciliation is not working because the employers are not really engaging with the idea of focusing on the claim, particularly when it is around failure to make reasonable adjustments and discrimination arising from disability. Often, it really takes getting legal advice, which is after the claim is lodged. Early conciliation needs to be improved tremendously.

The other thing is that, at the moment, there is not sufficient incentive for employers with regard to employment tribunals to undertake reasonable adjustments as opposed to performance manage out people in work. The statistics show that 48,000 disabled people are managed out of work every year which, as a statistic, should horrify everybody: and yet that is what is happening. The danger is that a lot of the focus is very much on trying to get people into the workplace; there is very little focus on trying to retain jobs for people. More work needs to be done in that area, on retention of employment by disabled people once they are in the workplace. Every element needs to be looked at. It took one of my disabled colleagues 18 months to get her Access to Work provisions finally paid for because the bureaucracy was so slow. Another employee would not put up with that, so these are the sorts of elements that need to be dealt with.

The Chair: Catherine, do you want to respond to Lord Bach's last question?

Catherine Casserley: Yes. I agree with everything that Audrey has said. Time limits need to be revisited as well. I do not have anything else to add there.

Stephen Robson: I echo what Audrey said about the early conciliation process. In an ideal world it would, I hope, resolve issues before they became too deep. Unfortunately, often, by the time we are approached by clients, the trust with their employer has gone and, even if they go through the whole procedure and are successful, it is often very difficult for them to return to the workplace because they just do not trust it, and they fear they will, in any event, be managed out one way or another.

Lord Prentis of Leeds: I may be pre-empting the questions I am going to ask in a couple of minutes, but in everything you are saying about the

difficulties disabled people have in the enforcement areas—in taking a grievance, tribunals, conciliation—you have raised a number of areas where the system is deficient. It puts people off and, for want of a better word, it creates a barrier to them getting recourse to justice. It is even more difficult in the area that we are looking at, which is 16 to 18 year-olds coming into work and then facing all the barriers. Many 16 to 18 year-olds will not go into work. Audrey, I think you mentioned at the beginning that 48% tend not to go into work.

The general difficulties you have spoken about are mega when it comes to 16 to 18 year-olds. What is your experience of them going into the workplace and then facing all the difficulties you have experienced? Do many 16 to 18 year-olds use the tribunal system? Do they use the grievance system? Do they know about it, or are they more likely to put up with it and maybe move away and move out of work? What is in place for those people leaving education and going into work? There used to be one-to-one careers advice looking at people's issues, people's needs. If you look on the website, it is no longer there now. In all the points you have made here about the difficulties, can you relate it specifically to 16 to 18 year-olds? My impression is that it could be far worse for them.

Catherine Casserley: In terms of my caseload, I tend to see people where it has gone wrong. Not many of my clients are in that age bracket because most of them have put up with a situation for a long time, so they are out of it. I see very few clients who have not put up with a situation for a long time; they tend to be in the situation. I do not see many recruitment claims because, certainly in my experience, not many people bring them. Most of my client group have started in jobs early and have had difficulties in that job but carried on. They then get to a stage where they can no longer deal with it and end up going off sick because they have not had the adjustments they needed. That tends to be the experience of my client group.

In the work that I do with disability organisations, there is very low awareness. When the awareness is raised, people recognise the issues, but in discussions with people they say they would not want to go through that process. So I suspect people do not take those cases because of the barriers they face; they just move on. That is my feeling.

Audrey Ludwig: We have taken a few cases regarding apprenticeships and training schemes that people have been put on by a jobcentre and, again, the issues tend to relate to failing to make reasonable adjustments. They do not tend to differ particularly from those of other age groups, but what is more problematic is the young people do not know their rights and, quite honestly, the employers do not know their rights. The line managers do not know about them—they tend to take a one-size-fits-all approach. Training is often organised for whole cohorts rather than recognising that an individual disabled person will need specific training provisions.

Application processes are quite often inaccessible, so people just will not apply for jobs. You do not necessarily see it because they just do not

apply. We generally find that apprenticeship schemes, training schemes, tend to be quite rigid, which is a real difficulty. We have done a lot of work with neurodiverse clients and so we know more about that group and the problems they have had with training courses and stuff basically not working for them. The other thing is that with regards to grievances, even the ACAS guide identifies that in a grievance you can be accompanied by a trade union representative or a colleague, but young disabled people would often want their parent or a support worker to go with them. We know that we can ask for those as reasonable adjustments but the disabled person would not, and ACAS has not identified that as a possibility in its documentation.

The Chair: Does it think it is not permitted?

Audrey Ludwig: It thinks it is not permitted. Again, that is another barrier. The system is complicated; the process is hard. For a young person who is new to work and often does not even know what a trade union is, it is just a lot harder. The sooner my colleagues and other organisations can get involved, the better. Involvement at an early stage—at the grievance stage—is the key to it. That is when we can explain their rights, identify what the problem is, and identify how it can be resolved.

One of my clients—it was a really profound moment and I was really impressed by her—actually went through an employment tribunal and stayed in work. I said to her, 'How can you manage this? This is really stressful that you stayed in work for about 18 months until we got to a judicial mediation', and she said, 'Only 32% of autistic people are in employment and I can't do job interviews. I'm good at my job. I was the best salesperson last year, and I want to keep my job'. The reasonable adjustment she was asking for was fixed shifts. Her employers were insisting on floating shifts—despite the fact she had worked there for quite a few years—and she could not cope with it. As a particular autism trait, she could not cope with it. A lot of my clients are very aware of the reality that one of the challenges is, if they do not stay in work, they will not get another job, and that is a real disincentive to challenging. We need quick processes to resolve reasonable adjustments. One of the things I have suggested—

The Chair: Sorry, I have my eye on the time. Stephen.

Stephen Robson: First, I echo what Audrey has just said, that there is a great tendency with disabled employees just to put up with it rather than kick up a stink. Going back to the original question, one of the issues that young people who do get a job face is actually getting through their probation period. Irrespective of the whole recruitment process and whether adjustments are made, you are obviously not protected from unfair dismissal until you have been in a job for two years. I have had a number of cases with people who, at the end of the probation period, are told, 'You're just not the right person for the job. Very sorry, here's your notice money, off you go'. We can bring a claim under Section 15 saying that this is discrimination arising from the disability but, because the

employer has not had to give them any reason for why they were not the right person, obviously you are starting from scratch. The onus is very much on you to establish that the reason they have not got past their probation is because of something that is a consequence of their disability.

As an example, I recently had a client with ADHD. They started a job, but one of the consequences of ADHD is that people who have it are not the best timekeepers in the world, and they were spoken to a couple of times about it. However, at the moment, there is a great shortage of medication for that, and so they do not have any medication and they were unable to keep time. They were told, 'Well, you haven't been turning up on time sufficiently often—we're not keeping you on'. It seems to me that there needs to be protection for disabled people much sooner in their employment than there is at present.

The Chair: That is a good point.

Q57 **Lord Shipley:** Thank you very much indeed for what you have contributed so far; it has been really very helpful. We have been talking about the rights of disabled young people and about the duties and legal duties of employers. In the end, surely we all want successful resolution of problems. I wonder whether there is scope for much greater advocacy on behalf of young people and how that might be organised.

Equally, for employers, where there is good practice, I wonder whether there are good employers that other employers can learn from—Catherine, I think you said you only see the ones that go wrong, as it were, whereas many situations are satisfactory. In other words, you might not get into the issue of tribunals, enforcement and so on if everybody better understood what they were expected to do. Am I simply living in an idealised world and it is not actually going to be like that? Is there a role for advocacy that would clarify things for young people? Is there a case for employers' organisations having a role to assist in encouraging good employers to help poorer employers but who might be willing to take help?

Stephen Robson: On your first point, in the same way that an employer has to have a health and safety officer, you could say there is a good argument for saying that they should have a diversity officer—I know the tabloids would not like that requirement. It would be somebody who is responsible for ensuring that an employer is aware of their obligations under the Equality Act and who could be a first port of call for somebody who feels they are not being treated properly because of that. With regard to organisations, I am not sure that there could be a statutory organisation to mediate between employers as such—not a statutory organisation, but a CBI-type thing which could necessarily enforce that. In an ideal world, obviously, it would be the case, but I am not sure that is feasible at present.

Catherine Casserley: There could well be a role for that. I know there is an employers' organisation that deals with disability and, certainly in the

past—I do not know if they still have it—they used to have an informal mediation service. It is something that I have used, or I have liaised with a solicitor to use, on behalf of a client where I thought there might be room for resolving where someone was still in employment, and that has worked to very good effect. That is the sort of thing that would be preferable to a case going all the way to a tribunal. That sort of organisation would certainly have a role in assisting employers, but it is about how those organisations are funded and, yes, how they would do that, and whether they could play that role, for example, prior to a case being litigated. You would hope so. In terms of advocacy for young people specifically, yes, I would not say that that would not be useful. I am not sure at what point it would kick in, but, in any event, a young person would still need awareness of their rights for that to be useful.

Audrey Ludwig: I am afraid my experience of EDI officers is very poor. I do not see from the experience of them that increasing their number would benefit us. We should be looking at quotas for apprenticeships for disabled young people and using positive discrimination processes to do that. We could explore an equivalent to the Health and Safety Executive or the Inland Revenue unit that deals with minimum wage claims as an alternative to tribunals. However, there is a bit of me that says that tribunals are important because we get clarity in the Equality Act and, in Suffolk Law Centre—a new law centre set up in 2018—we have found that one or two claims that we managed to get publicised had a really good effect on employers. So there is some benefit to employment tribunals.

I have not spoken to Catherine about this, but maybe we need some kind of interim relief for reasonable adjustments. We cannot do interim relief under the Equality Act claims other than whistleblowing claims, but you cannot do them for reasonable adjustments claims. Certainly, having some mechanism with the employment tribunal for quick determinations of reasonable adjustments cases might be a very useful process. Certainly, a lot of the steps that the employment tribunals are currently taking with regard to the judges commenting on the strength of claims at directions hearings is a useful process going forward. I would quite like to see more judicial intervention and judicial mediation coming much earlier in the process because I have found great benefits in it. One of the things we have not touched on is around enforcement. One of the things about enforcement is—

The Chair: Let me take Stephen on that, then we might come back.

Audrey Ludwig: Do you have a question on enforcement?

The Chair: I do not know, but I was just trying to keep to this question, and then I will take Patrick, because I do not know what his question is.

Lord Carter of Coles: My question has been covered, Chair. Thank you.

The Chair: Let me take Stephen now and then perhaps we will come back to enforcement.

Stephen Robson: As I was saying, I take Audrey's point about diversity officers not being the strong situation. I can see that if there was a more statutory role for them and an obligation on employers to pay heed to them, it could help resolve things. Judicial assessment is part of the tribunal process at the moment but in practice, it does not seem to happen very often. I do not see how we cannot have the tribunal, but it is about whether cases can be resolved sooner. In an ideal world, that would very much be the case. As I said earlier, from our perspective, very often when we are approached, there is a lack of trust between employer and employee, and so it is going to be very difficult for them to return to work. If something could be done before we got to that stage, it would be a much better situation, but I am not sure how we can reform the tribunal process itself to do that. It is about having the ability to have a more open discussion about things before they blow up and the defensive shields are put in place.

The Chair: It is about early intervention again.

Stephen Robson: Yes.

The Chair: We have looked at enforcement a bit. Did you want to add something on that, Audrey, without going through the whole panel again?

Audrey Ludwig: I will, very quickly. The difficulty with an employment tribunal is that, essentially—

The Chair: Do you mean the enforcement of the decision of the tribunal?

Audrey Ludwig: No, the powers of the employment tribunal are only to give compensation, make a declaration and make recommendations. Our clients tell us that what they actually want is a job with reasonable adjustments and a written reference, neither of which can be attained at a final hearing, although we secure those from settlements. What I am saying is that one of the advantages of early settlement and encouraging it is that you can get systems changed and be a lot more creative in terms of what you can agree between the two parties. Employment tribunals, if you actually go to a hearing, have fairly limited scope for what they can actually do.

Stephen Robson: If I could pick up on the point on recommendations, it is another thing that was limited in 2015 when the questionnaire policy went in that, until then, tribunals could make a general recommendation about what an employer should do to reduce discrimination within the workplace. They can now only make a recommendation specific to the employee who has brought the claim.

The Chair: So it cannot be case law that other people are required to refer to in future cases.

Stephen Robson: No; I mean that they cannot make a recommendation that an employer provides diversity training to everybody there. It has to be a recommendation simply for that employee and, in many cases, they are no longer an employee of the relevant employer, so—

The Chair: Nothing happens.

Stephen Robson: If that ability came back, although it is a long-term thing, as declarations are made they may have an ongoing effect on how employers behave.

The Chair: Can it become case law?

Stephen Robson: No.

The Chair: If a tribunal decides something, in future tribunals can that be referred to as something that—

Stephen Robson: The first-stage tribunal is not binding on other tribunals. The EAT is binding.

Q58 **Lord Prentis of Leeds:** We may have covered this question to an extent but I will put it to you: how far do the rights and duties currently in place meet the needs of young disabled people? Connected with that is: what other rights or duties would improve the situation?

The Chair: This is a final wrap-up question and the answer to the first bit is probably something we have already explored.

Catherine Casserley: In terms of how they meet the needs of disabled young people, we probably all agree: not very well. I will not say very much on that. However, in terms of improving the situation, and apart from some things that have already been said, Audrey's point on interim relief is a really interesting one because it is something that tribunals can do very quickly, and on reasonable adjustments that would be really useful.

The Public Sector Equality Duty could be made stronger. That might impact upon the public sector, which could make a difference. The other thing is, potentially, an anticipatory duty to make adjustments in employment. In everything outside employment, apart from premises, the duty to make adjustments is anticipatory, which means that it does not rely on, for example, an individual approaching a service provider. In theory, buildings are supposed to be accessible if you want to access a service. As far as an employer is concerned, if there is a physical problem with getting to the second floor—let us say there is no lift—an employer can say, 'Well, you have to work on the ground floor'. That might mean you do not work with any of the team and that you are isolated, but the employer does not have an obligation to do anything about it.

If you had an anticipatory duty to make adjustments in employment, it would mean they have to think about disabled people as a whole. For example, when they are buying a building, it might be about putting in a new computer system. That also means that if you wanted to look at enforcement that is slightly different, such as an inspectorate, it would be much easier for an inspectorate to do that. You are not going to be able to get an inspectorate to enforce the duty to make adjustments more

generally because it is very individualised, but that would not be, so that might make a difference in certain respects.

Perhaps the other thing to look at is more of a policy recommendation. One of the things that has not been done—it ties in with the equality duty—is building disability into not only ways of working but job descriptions and person specifications. It still has not been done. When I look at job descriptions and person specifications, I still see things such as driving requirements and no alternative, and that is in the public sector as well as in the private sector. Perhaps there could be an extension of the public sector equality duty, or some type of it, to the private sector.

Audrey Ludwig: I would say, definitely early legal advice, specifically for disabled people, reasonable adjustments, and an improvement in the situation with regard to legal aid so we get more providers. That means that the legal aid system has to pay the few providers that there are a greater amount of money for their hours to stop people from not doing that work. Also, the means test has to be sorted out. On time limits on employment tribunals, if you have a situation where there are hardly any providers of early legal advice and you have this terrible means test, making the time limit only three months from the act of the discrimination to bring in a claim, it is just not happening for a lot of disabled people. We are seeing too many people who have had rights but they are now out of time, and we do not think they will succeed in an extension of time, just an equitable application. So, in practice, those are the things I would say are a great priority.

Stephen Robson: I echo what Catherine and Audrey have said but add that it would probably be helpful if the tribunal could, in some way, have more teeth to take action to give employers more of a disincentive to fight discrimination claims. There are many employers who, as soon as there is a claim brought, put up the barriers and they fight it all the way, at least until the doors of court. While they will have to pay their own lawyers, the average award for discrimination is around £15,000, and they see it as worthwhile to dissuade anybody else from bringing a claim against them.

There is power on a tribunal to make an award—a sort of fine. I think it is under Section 12(a) of the Employment Tribunals Act where they can award about 50% of the award they have made to the claimant if there have been aggravating factors. There should, maybe, be even more encouragement on them to do that and, indeed, to pay award-aggravated damages when they feel that an employer has just been fighting the case to make it awkward for the employee. For instance, probably in the vast majority of cases I deal with, the employer will, just as a reflex, contest whether the claimant is disabled or not. They know full well from all the occupational health reports they have that they are, but they will say, 'We'll put them to proof in the hope that we might be able to get rid of this case that way'. Then, at a later stage, you will get a letter from their solicitor saying, 'This case has no merit and if you do not withdraw it

now, we are going to pursue costs against you'. They know full well that, other than in completely unreasonable cases, there are no costs awards made in the tribunal, but this scares people off from pursuing the claim further. I would like some sort of system where the tribunal can punish employers that are taking that approach.

The Chair: Just before we finish, to take up Lord Prentis's last point: when you were talking about the 16 to 18 year-olds—I probably should know this—at what age can you access the tribunal? Is it at any age, so a 16 year-old can access it?

Audrey Ludwig: Even younger.

The Chair: Really?

Audrey Ludwig: Yes.

The Chair: Is there no lower age limit on accessing this system?

Audrey Ludwig: No, there is no lower age limit.

The Chair: I wondered if, perhaps, you had to get somebody to do it on your behalf.

That has been very helpful. Thank you. It is a very complex system and we have to get our head around it. I know that one of the things we were talking about outside is how much it can be amended to work effectively, or whether it is a system that does not hold together very well. However, I am sure that we will return to that during our deliberations, and the evidence you have given has been really helpful. You will get a copy of the evidence, and you will be able to suggest any amendments you want before it becomes confirmed, but I am very grateful for your time today. Thank you.