

Transport Committee

Oral evidence: [Accessible transport: legal obligations](#), HC 82

Wednesday 13 December 2023

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Members present: Iain Stewart (Chair); Jack Brereton; Sara Britcliffe; Fabian Hamilton; Paul Howell; Karl McCartney; Grahame Morris; Gavin Newlands; Mick Whitley.

Questions 112–141

Witnesses

[I](#): John Kirkpatrick, Deputy Chief Executive Officer, Equality and Human Rights Commission.

Written evidence from witnesses:

- [Equality and Human Rights Commission](#)

Examination of witness

Witness: John Kirkpatrick.

Q112 **Chair:** Welcome to today's session of the Transport Committee, which is our final day of evidence for our accessibility in transport inquiry. Before we start, could you state your name and organisation for our records, please?

John Kirkpatrick: My name is John Kirkpatrick. I am deputy chief executive at the Equality and Human Rights Commission.

Q113 **Chair:** We are grateful for your time and evidence this morning.

The Equality Act contains a number of provisions in parts 3 and 12 that guarantee the rights of disabled people when travelling. Can you briefly set out your organisation's role in enforcing those rights and give us your general assessment of how effective that role has been?

John Kirkpatrick: Of course. We are, as you indicate, the regulator of equality and human rights law, and, in particular, the equality obligations imposed by the Equality Act. We consider ourselves to be a strategic regulator. That means that we operate in a variety of ways in this respect. We try to enhance the quality and availability of evidence to allow for regulation. We try to influence standard setting. We try to monitor and assess compliance with those standards. Where necessary, we act as an enforcer in various ways.

In this context, our frame of reference is probably a bit narrower than it is in some others, simply because of the interaction of the Equality Act and the various regulations that govern transport and accessibility of transport. We do not have power to act under the Equality Act where those regulations apply. Both for that reason and for reasons of effectiveness, we consider that most of the law in this area is probably better applied and enforced by the regulators, under those regulations. We definitely see our role as being to work with them to encourage them to comply with the public sector equality duty, which binds them as it binds others, and to regulate effectively in that way.

That is not to say that we do not act. We have acted in the past. We have a record that we are moderately proud of. Therefore, we clearly see that we have a role in this area. Particularly in times when transport has been a strategic priority for us, as it has been for periods in the past, we think that we have had a real impact for the benefit of disabled travellers.

Q114 **Chair:** On the actions that you have brought, can you give us a general overview of the number of organisations that you have taken to court and that have been fined, with one or two specific examples?

John Kirkpatrick: The numbers are relatively small. Our powers are somewhat constrained. We have powers to inquire. We have powers to investigate, where we have reason to believe that there has been a breach of equality legislation. We tend, where we can, to work with



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people. For example, we use our section 23 powers under the Equality Act to agree action plans with providers, or whoever it might be, for how they might go about improving the position.

I will take you back not necessarily to numbers but to specific examples. I will give a couple of examples of what we have done. Earlier this year, we concluded—it finished—a section 23 agreement with London North Eastern Railway. That was initiated as a case related to a visually impaired customer who had been very poorly served by that company. The fact that our preferred means of working with the company was to make an agreement with them enabled us to oblige them to think much harder and much more rigorously about the way they go about dealing with accessibility for passengers and to improve their practice on that front.

That is one example. The other prime example would be the action that we took against Network Rail to ensure that it properly secured accessibility of stations while they were being refurbished. That was a matter of lifts, primarily, at Piccadilly station in Manchester and in Macclesfield. Those are two of the prime ones. I can talk more about some of the other things that we have done, if you would like.

Q115 **Chair:** My colleagues and I will dig into some of those points later. You mentioned that you work with other regulators, such as the Civil Aviation Authority and the ORR. Is that a statutory engagement, or is it just a practice that has evolved over time?

John Kirkpatrick: It is a practice that has evolved. As I said, those regulators are themselves bound by the public sector equality duty, under equality law. To a certain extent, it is our job to keep an eye on whether they and, indeed, all other public bodies subject to that duty are complying with it.

The nature of our engagement is not because there is something in the law that says, "You must talk to these people with this frequency about these topics." It is rather because, where we think there are issues that can be best pursued by co-operation between us or a proper allocation of responsibilities between us, we think that the right thing to do is to interact with them on that front. As a result, we have, and have had over time, somewhat different levels of interaction with different regulators. Most recently, we have spent more time with the ORR than with some of the other regulators, for reasons that will be obvious.

Q116 **Chair:** This is the final question from me for now. Do you think that that informal, loose engagement works or does there need to be a more specified level of engagement?

John Kirkpatrick: It is varied, in our experience. Our practice with different regulators is different. We have formal memoranda of understanding with some other regulators in other sectors—the Care



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Quality Commission, for example. We have found that useful in teasing out different responsibilities and terms of engagement between us.

As it happens, we do not have any formal memoranda of understanding with any of the regulators this Committee is concerned with. We have not felt the absence of that, but there certainly can be circumstances where having that formalised in one way or another is quite helpful. Of course, the absence of a memorandum of understanding does not let them off the hook in terms of the public sector equality duty. They are still obliged to do the things that they are obliged to do.

Q117 Karl McCartney: Mr Kirkpatrick, thank you very much for being with us this morning. It all sounds very touchy-feely to me. I do not think that you were appointed as regulator of the regulators. You said that the number of actual actions that you have taken is very small. How small? Is it zero?

John Kirkpatrick: It is not zero. I can go back over a period of five years. In the period of our strategic plan that ran from 2019 to 2022, we opened up a transport legal support fund. As you probably know, we have powers both to bring actions in our own right, as strategic litigation, and to assist individuals or groups bringing actions, where they need to do so. The legal support project was designed to do the latter of those. It supported 26 cases through its life, of which six had broadly positive outcomes. The other 20 achieved something in terms of clarification of the law or routes to address—

Q118 Karl McCartney: In those three years, how many actions did you take off your own back?

John Kirkpatrick: Off our own back? We took two strategic actions coming out of those cases, because we decided that we were actually better off acting ourselves—

Q119 Karl McCartney: Next question. How many people are in your senior management team? You are the deputy chief executive. You have a chief executive. How many other people are in your senior management team?

John Kirkpatrick: I have another seven colleagues.

Q120 Karl McCartney: Okay. Did anybody take responsibility directly for transport as a strategic aim?

John Kirkpatrick: To be honest, that was before my time, so I would not be able to tell you that. It is not a strategic aim for us now, so the answer at the moment is no, we don't have anybody who is specifically responsible—

Q121 Karl McCartney: Does your senior management team, however much they all earn between them, think that they did enough in those three years on the specific issue of transport, or not?



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John Kirkpatrick: We feel that we did a respectable job, within the capacity of our powers and our budget, to make a difference to the accessibility of redress for people who were affected by that fund, and we feel that we have made a difference by virtue of our strategic litigation. The fact that we have litigated against LNER, for example, does not just affect LNER. It causes all the other rail operators you have had in these seats as well, to think, "What did they do there? We need to have our house equally in order." We would like to think that they would act in response to that.

I understand the point that one does not want to act entirely consensually and that there are times when one needs to bring the—

- Q122 **Karl McCartney:** I am going to interrupt you. From my perspective here, it is great that you all sit in meetings, drink coffee and tea and eat biscuits. We can all do that. It is an Olympic sport for some people in quangos and so on. What proper actions have been taken where actually you can stand up and say, "This is something where we have delivered on the role and responsibilities that we have and have been given"?

John Kirkpatrick: The answer to that is that we do it not by sitting and drinking coffee, but rather by setting out with people, "This is what we think you need to do." That is the way the section 23 provisions work. We and they agree an action plan. That action plan needs to be one that causes change in behaviour on the part of the person who is committing to do it, which should be the change in behaviour that improves circumstances.

I don't think that it would be right to characterise that as soft. Yes, we have to negotiate it, and they have to agree it. If we cannot agree an action plan that we think is adequate, there are other options that we can pursue to greater degrees of enforcement.

- Q123 **Karl McCartney:** Finally, I am going to pick up something else that you have just said. You are here on your own. Fair play to you for being here on your own, with no chief executive. Are there members of the senior management team who have been at your organisation since prior to 2019, or are you all new in?

John Kirkpatrick: We are not all newbies. There are others who were around earlier. I could tell you more if you wanted to know the history of how we organised our responsibility for those things in the past. I don't know that off the top of my head because I am the new—

- Q124 **Karl McCartney:** It would have been helpful to have somebody who has had the experience of when it was a strategic aim to sort out the transport sector come to the Transport Committee. I am not knocking the fact that you are in front of us, but maybe you can take that message back for the next time that you are having a meeting, with or without tea, coffee and biscuits.

John Kirkpatrick: I will happily pass that on.



Q125 Paul Howell: Thanks for being here. I want to follow up on the central theme of where you have engaged and the like. The Equality and Human Rights Commission support scheme for transport accessibility has provided legal aid to 26 people. One of our witnesses alone told us that they had brought 20 cases and had 20 other cases pending. We know that you cannot do individual cases, but given some of the high-profile things that we have seen, and in order to be more active and engaged, should you not be picking up case situations and actually driving them, rather than waiting for individuals with disabilities and so on to pull them themselves? Should you not be overarching that?

John Kirkpatrick: Where we think that it is worth doing, we can, and we have.

Q126 Paul Howell: Have you?

John Kirkpatrick: To take the obvious example, the question is how we then act. Our ambition would be to try to act in the way that we think is most likely to have an impact, which might be to take an individual case. Our view has generally been that it is more likely to be to work with the collective of other regulators, or whoever it might be.

For example, the most recent large issue—I am sure that you will want to talk more about this, possibly with the Ministers rather than with me—relates to the proposals to close ticket offices. When those proposals came forward, we had some concerns about whether their equality implications had been properly thought through. We considered that the best way to do that was to engage with the Department and the regulator and to talk to them about it. As I am sure you know, we issued public comment on that consultation, setting out what we thought some of those concerns might be.

Our view was that, as a regulator, we were better off doing that, in an attempt to head off such proposals, or at least to make sure that they were properly considered, than we would have been had we let it happen and then tried to support a legal case thereafter. The way we thought about it was, “What is the most impactful course of action that we think we can take?”

Q127 Paul Howell: Isn't it the case that, if the regulators are not enforcing accessibility duties under their public sector equality duty, you should be pushing the regulators and should be really on top of them in terms of what is happening?

John Kirkpatrick: We can and we should. As I said, we have had conversations both with the Department and, recently, with the ORR about the public sector equality duty. You heard from them about it. I have read the evidence. I do not recall exactly what was said, but our impression is that the ORR takes seriously its obligations under the public sector equality duty. Of course, it has both its own obligations and the obligation to ensure that those they regulate comply with the full range of the law, including those provisions. Our sense is that there is movement



in that area, that it is positive and that the engagement of the regulators is positive.

As I said earlier, it is important to remember that it seems to us that most of the issues that arise—that we are aware of, anyway—are both properly dealt with by the regulators and probably better dealt with by the regulators, because they are more expert in the detail of the regulations and of the situation than we are. Exactly as you said, our concern is to keep an eye on whether we think that they are taking their obligations seriously and to leave the principal burden of enforcing in specific cases, or pursuing specific instances, to them.

Q128 Paul Howell: To follow on from what has been said, our concern is whether you are too hands-off in that situation—that you are observing, but not enacting. We are concerned that you are not enforcing and that you are not going back to the regulators and pushing them hard enough.

John Kirkpatrick: Our view is that we need to think about where we can have the most impact, where the issues that are most salient are arising. In the general transport space, our sense was that the most salient issues on which we needed to be keeping both the Department's and the regulator's feet to the fire were the recent proposals around ticket offices. Our choice of a way to work there was to press both the Department and the regulator on their action. I do not think that that can be characterised as sitting back. I think that that can be characterised as acting.

I guess that the point I am trying to make is that our view is that the most effective way of acting is not necessarily to bring individual cases. We are neither empowered nor equipped to do that in a serial way. Rather, we are trying to make the system work better for those passengers.

Paul Howell: I will leave it there.

Q129 Jack Brereton: Still on the point around your strategic priorities, do you think that things actually improved during the period when transport accessibility was one of your priority aims?

John Kirkpatrick: We would like to think so. We set ourselves some objectives for the legal support scheme specifically. One of the things that I know you have been told is that in the past it has been very difficult for people to find advisers and that it has sometimes been difficult to find lawyers to take cases. Clearly, the fact that there were then another 20-plus cases on the books indicated that there were more, better sources of advice out there for people.

Even some of the cases that did not necessarily yield an outcome have helped to clarify the law—on where it is. You had Mr Paulley sitting in this seat a few weeks ago. We supported his case. The way in which that was decided clearly clarified the law on what the obligations of bus operators were and were not, and the way in which they should do that. That seems to me to be a desirable impact.



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Q130 Jack Brereton: You have mentioned some of the evidence that we have heard. Some of it was pretty scathing in terms of the daily experience travelling around the country of some individuals with accessibility needs. Why do you think that this no longer needs to be a strategic priority for your organisation?

John Kirkpatrick: My best answer to that would be that the fact that it is not a strategic priority does not mean that we don't think it matters.

Q131 Jack Brereton: But it is not one of your top issues. If you think that it is so important and needs the attention that you have suggested, why is it no longer one of your top priorities?

John Kirkpatrick: We work on a three-year strategic planning horizon. In the strategic plan we are currently two thirds of the way through, we had to make some choices at the start, which was in the midst of the pandemic, about where we were going to focus our attention. At that point and in those circumstances, we focused more on the equalities impacts on children and young people and on health and social care that we could see around us.

That is not to say that we regard this as unimportant, any more than we regard the rest of our range of activity as unimportant. Where we are seeking to move the system, we will seek to concentrate and focus such resources as we have in some areas at a time. At the time of the pandemic, when transport appeared to us not to be not a priority, but a lower priority than some of those other things, we moved a little way away from that. That also reflects the fact that we felt that we had made a bit of a difference in the previous strategic plan period.

Q132 Jack Brereton: What evidence of that do you have?

John Kirkpatrick: That is our sense from the nature of the queries and questions that we see. We are not a complaint-receiving body, but we get intelligence from others who are. We see a number of issues still out there for disabled passengers. Absolutely. For the most part, they seem to be issues that are best addressed within the framework of the existing law and the existing regulatory system by the regulators themselves, by duty holders. There are a lot of things about accessibility of taxi and private hire services, for example. There are still some things about accessibility of buses. You had evidence from those responsible for both of those things that they are trying to move those sectors over time.

Q133 Jack Brereton: It would be very useful if you could provide some hard evidence that things have improved. From what we are hearing, it is actually the reverse since the pandemic. If you have evidence to suggest that this no longer needs to be a strategic priority for your organisation, it would be very helpful if you could write to the Committee.

John Kirkpatrick: I am happy to do two things. First, I can provide you with such evidence as we have on that. The second thing is to say that in the next nine months or so we will be consulting on a new strategic plan



going forward. One of the things we will be looking at is what the evidence tells us right now. Obviously, we will need to revisit a variety of things in that context.

Q134 Sara Britcliffe: From that conversation, it sounds like there are a lot of strategic plans going forward but a lack of action for people, to be quite frank. Do you genuinely believe that you have the necessary expertise and resources to pursue breaches of transport accessibility law?

John Kirkpatrick: We definitely have powers, if we need them. As I said, we have powers to investigate. We have powers to support cases. We have powers to pursue cases on our own. As I said, those powers are constrained by the fact that we cannot pursue things that are properly pursued under the regulations. The Equality Act is a kind of fall-back from that. That is why I talked about us using our power to seek to press and influence the regulators, rather than necessarily taking action ourselves. It also speaks to the question of expertise. We would not pretend to be as expert in the situation on the railways as the ORR, in the situation on the roads as the traffic commissioners, in the situation at airports and in the air as the CAA, and so forth. They unquestionably have better expertise than we do, which is one reason for doing that.

We are constrained on resources. We have roughly half the budget that we had eight or 10 years ago. As I was telling Mr Brereton, we have to prioritise reasonably rigorously. Our capacity for pursuing expensive investigation and, potentially, litigation activity is constrained. That is why we have to make choices.

Q135 Sara Britcliffe: Are there any other factors that lead to those constraints? You mentioned the costs. Is there perhaps a shortage of experts in accessibility law?

John Kirkpatrick: Not that we are aware of. As I said, one of the desirable outcomes from the transport legal support project was that it somewhat increased the number and availability of legal advisers willing and able to act in this area. We had evidence after that closed that there were more people talking to us about their availability and willingness to act in that area. Clearly, many of them will act only if instructed and paid. Therefore, there is a cost implication, which brings us back to the same thing.

I suspect that there could be the capacity in the system. It is not a straightforward system. It is quite a complicated body and area of law. You are quite right. It needs people who are familiar with and expert in those areas to work in it.

Q136 Grahame Morris: Good morning, Mr Kirkpatrick. Thanks for giving evidence today. I appreciate that you have not been in post for a very long time, but I was interested in some of your earlier responses—in particular, the fact that the EHRC shares concerns about the impact of closures of ticket offices, especially on disabled passengers.



Can I ask you about an earlier letter that the EHRC wrote to the Transport Committee? I don't know whether it is fair to ask, but perhaps you could find out for me. This was in 2019. The chair of the EHRC wrote to the Committee. In fact, the Chair of the Select Committee then was Huw Merriman. That letter stated that, "the impact of ongoing transport policies remains a concern, in particular the move to driver only operated (DOO) trains, as well as reductions in staffed stations. We believe that the shift to DOO trains, with the increased likelihood of there being no second member of staff on board to assist passengers, and a decrease in staffed stations could represent a diminution of protection for disabled people, and potentially be a breach of the Equality Act 2010." Has anything changed since that opinion was given to the Committee in 2019?

John Kirkpatrick: What lies behind that opinion is our view, which would be the same as is expressed there and as we expressed to the consultation on ticket offices, that when steps of that kind are contemplated, what is most important is that the authorities involved properly think through whether they have understood the equalities implications of all of those.

Q137 **Grahame Morris:** You understand how the system works. Ministers—the Department for Transport—are pressuring the train operating companies to reduce costs. Train operating companies are trying to reduce costs by reducing staffing levels, closing ticket offices, reducing the number of staff on stations and introducing driver only operated trains. Ministers and others must be aware of their obligations under the Equality Act. I hope that you and your colleagues will point those out to them in no uncertain terms.

John Kirkpatrick: We agree. We consider it our responsibility to remind Ministers, in this and other fields, if we think that there is a danger that they are not fulfilling their equality obligations properly. We have written at different times to a number of different Ministers, not just in Transport but in other Departments of State, asking them that question.

To be clear, and I think this is absolutely consistent with what you have said, our ambition is to make sure that they have thought through the equalities implications properly and are making such changes as they want to make, for whatever reason, in a way that takes those properly into account and does not give rise to disproportionate harm to particular groups of the population. That is our obligation. That is the obligation that we continue to seek to fulfil.

Q138 **Grahame Morris:** I understand. Thank you for sharing that view with the Committee. I would be grateful if, when you are reviewing your strategic objectives, you could check with colleagues and clarify that the position remains the same as it was in 2019, as the Committee was informed by letter.

Chair: Karl has a quick supplementary.



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Q139 **Karl McCartney:** That's right. You have not been in your position for very long. How long has your chief executive been in position, since he left IPSA?

John Kirkpatrick: He will have been in place for about two and a half to three years, something of that order.

Q140 **Karl McCartney:** Okay. Will you pass the message back that the next time you are in front of us we would like to see the chief executive?

John Kirkpatrick: The chief executive is currently unwell, I'm afraid, which is why you have me, but I hear the message.

Q141 **Chair:** Can I conclude this part of the session with a fairly general but important question? We have heard considerable evidence that the experience of disabled people travelling is poor and has got worse since the pandemic. You have said that it is a complex area of law. Our main exam question in this inquiry is to determine whether there is sufficient legislation and regulation in place and, therefore, it is a question of enforcement, or whether there are gaps. Do you think that the Equality Act is the right place for transport rights to be enshrined?

John Kirkpatrick: We don't have a strong view on that. We are not aware of gaps. We believe that it is possible to act under the regulations and, as a fall-back, potentially under the Equality Act, where we are able to and need to. We do not have a shopping list of changes to the law to offer to the Committee.

The Equality Act is a big, broad-ranging piece of legislation. It was a very consolidatory piece that deliberately draws together multiple duties, multiple protected characteristics and so forth. Carving bits out of that would have consequences that would need to be thought about fairly carefully, because the coherence of that broad legal framework seems to us to have some value. That is not to say that there isn't a case for doing things in a different way. We do not see a compelling argument that there are gaps now that need to be filled.

Chair: That is very helpful. I am not sure what our conclusions will be, but that is the question that we are trying to answer through this inquiry.

Thank you for your time and evidence this morning. I ask the second panel to come forward.