HOUSE OF LORDS

Liaison Committee

Corrected oral evidence: Equality Act 2010 and Disability—follow-up

Thursday 17 June 2021

2.05 pm

Watch the meeting

Liaison Committee—members present: Lord Gardiner of Kimble (The Chair); Lord Bradley; Lord Davies of Oldham; Lord Lang of Monkton; Lord Tyler; Baroness Walmsley.

Equality Act 2010 and Disability Committee—members present: Baroness Deech (former Chair); Baroness Browning (former member); Lord Faulkner of Worcester (former member); Baroness Thomas of Winchester (former member).

Evidence Session No. 1 Virtual Proceeding Questions 1 - 6

Witnesses

I: Catherine Casserley, Barrister and former Specialist Adviser to the Equality Act 2010 and Disability Committee; Kamran Mallick, Chief Executive Officer, Disability Rights UK.

Examination of witnesses

Catherine Casserley and Kamran Mallick.

The Chair: Good afternoon and welcome to this meeting of the Liaison Committee. I particularly welcome our witnesses, Catherine Casserley, barrister and former specialist adviser to the Select Committee on the Equality Act 2010 and Disability, and Kamran Mallick, CEO at Disability Rights UK.

As this meeting is following up the recommendations of the former Equality Act 2010 and Disability Committee, I am delighted that we are joined by the former chair of that committee, Baroness Deech, and three of her colleagues. Baroness Deech and her colleagues will lead on the questioning.

Q1 **Baroness Deech:** Thank you, Chair. As has been said, I was chair of the disability committee that reported five years ago. We are here to find out what has happened in the interim. I am particularly pleased to welcome back Catherine Casserley, who was our adviser and knows our work very well. I am also very pleased to meet Mr Mallick, another specialist in the area.

My first question is to you both, and perhaps Ms Casserley could be the first to answer because she knows our previous work so well. What progress, if any, has been made since the committee reported in 2016 in regard to all sorts of matters, including, in particular, transport, sports stadia, access to justice, and rights upheld by the public sector equality duty?

Catherine Casserley: Lady Deech and committee members, good afternoon. Thank you very much for inviting me to speak. I am delighted to be here.

That is quite a difficult question to answer. In short, my answer would probably be “very little”. It is a disappointing answer, but it is fair to say, certainly from my perspective, from the clients I see, the work I do and the law I have observed, that very few changes have been made, if any, to the law that there is.

In transport, disabled people face still face significant difficulties. I am sure we will come on to transport in more detail later. No changes have been made to accessibility to sports stadia.

On access to justice, disabled people still struggle to enforce the rights that they have.

The public sector duty has some effect. I cannot say that it has not made some difference, but particularly during the pandemic, when it should have come into its own, it failed miserably, and disabled people were not at the centre of decision-making, as they should have been. As a result, they suffered considerably during the pandemic and in relation to the decisions that were made. To list a few examples, there was the guidance that was put out on intensive care right at the beginning and who was going to benefit from the ventilators, "do not resuscitate" notices, exercising outside, hospital visitors, and being able to take an interpreter with you into hospital.

Those are just some of the examples. It is exactly what the PSED was intended to do: to put disability right at the heart of thinking, as well as the other protected characteristics. Even if one looks at what is going on at the moment with low-traffic neighbourhoods and roads being closed off, often one sees that there is no disability impact assessment. Decisions have just been made. No thought has been given to how disabled people will be able to get up their own road, for example.

I am sure that Kamran will have things to say on this, but from my perspective, by and large, improvement has been slow and very limited.

Baroness Deech: Talking of new developments, I wonder if the rights of disabled people are being taken into account in the new approach to hurrying through planning development and building new houses.

Mr Mallick, you may agree with Ms Casserley. In particular, I would like to know what you think is the biggest barrier to progress in upholding the rights of disabled people.

Kamran Mallick: Thank you, Lady Deech and committee members. Yes, I absolutely agree with what Catherine has just said, outlining very broadly the range of areas that she mentioned. For disabled people, life is difficult. It certainly remains incredibly difficult. If anything, the last year has shown us that the values placed on our lives are very low. Disabled people are always the last to be considered. Often, it takes organisations like ours and people like Catherine to challenge government to think about disabled people.

One of the fundamental changes that did not come into widespread use by government after the last UNCRPD was in engagement with our organisations and our voices. Disabled people's voices are not central to thinking. Disabled people are not central to planning. Therefore, when non-disabled people are making the rules, it goes wrong. Disabled people are not central to any government thinking in a systematic or structured way. I believe that consulting disabled people is not enough. That is not the answer.

Baroness Deech: A big barrier in your opinion is that your voices are not being heard.

Kamran Mallick: Yes, absolutely. That reared its head last year as we went through the pandemic. Catherine mentioned the "do not resuscitate" orders being applied to individuals and the frailty index that was released. It made disabled people feel incredibly anxious that, if they were to find themselves in hospital, judgment would be made on the value of their life, purely based on the fact of their impairment and nothing else. Disabled people were left effectively to fend for themselves.

Individuals who received care from local authorities in their own home were left on their own to fend for themselves. They did not have access to PPE, and it goes on.

Baroness Deech: Thank you.

Q2 **Baroness Thomas of Winchester:** It is very good to see Catherine again. We turn now to transport. There are a number of low-cost or no-cost recommendations that have yet to be implemented by the Government, and sections of the Equality Act 2010 that relate to disability that have yet to be commenced. Why is this? What impact is it having on disabled people? I declare an interest as a trustee of Muscular Dystrophy UK.

Catherine Casserley: Under Section 163, on taxi licences and accessibility, certainly my understanding was that initially additional time was given because accessible vehicles would obviously be more expensive and there would be an impact on business. Obviously, when the Act was passed, that would have been factored into it. As time has gone on, what appears to have happened, certainly from an objective perspective, is that what is considered to be a burden on business is outweighing the needs of disabled people to have access to taxis.

As regards the impact on disabled people, what I see from my end are disabled people being excluded from a means of transport. Many disabled people rely on taxis as a means of accessing facilities in order to travel. There is also a considerable knock-on effect for those who rely on accessible taxis when they need to travel from inaccessible rail stations. So many rail stations remain inaccessible, and people end up having to get a taxi from the inaccessible platform, or to the inaccessible platform that is their local station. They often have to wait for a very long time to get the accessible taxi from the local taxi firm. It causes significant problems.

My view is that, if there is a provision in a statute, it was passed by Parliament, and presumably the intention was that it would be brought into force. The Equality Act was passed in 2010, and we are now in 2021. That was 11 years ago, yet it remains unimplemented.

Baroness Thomas of Winchester: Why do you think that is?

Catherine Casserley: Obviously this is speculation, but presumably it is because it is considered too expensive for taxi owners. Personally, I cannot see any other reason for not implementing it. It must be considered to be too much of a burden on business. I do not know what other reason there would be. The drafting appears to be fine. I have not seen a reason given for its non-implementation.

Kamran Mallick: I agree with everything Catherine has just said. I do not know why it has not been implemented. I see no reasons why it would not be. Enough time has passed for companies and individuals who run taxi businesses to have made the changes. As Catherine said, 11 years is a long enough period for those changes. They should have been implemented.

The bit that gets missed is the impact on disabled people and their mobility—the ability to get out and about. We often talk about disabled people leading isolated lives, lonely lives, and loneliness being a killer. Yet the ability to get out, meet friends, go to work and have a social life, all of which are so important, are denied to millions of disabled people, because we are not willing to push and make our travel infrastructure accessible.

Reasons are given of cost and money, but when you spread that over 10 or 11 years—whatever it might be—it really should have been done by now. It is completely unacceptable. The other thing you notice with transport and taxis is that provision is so patchy around the country. There is no centralised guidance. The law does not require centralisation of what you must do, even though, as Catherine was saying, the law is very good on that. There is no enforcement.

Baroness Thomas of Winchester: What about buses and rail being accessible?

Kamran Mallick: We often, wrongly, look at London as being how it is in the rest of the country. London has an accessible bus network through TfL. We are moving, albeit incredibly slowly, towards making more and more of our underground accessible. But that is London, and it is not the experience outside the big city. Even when you go to other cities, there is often no equivalent, and if you live outside a city you have a completely different experience. You may be lucky if there is one bus that goes along your route once a day, and if you miss it that is the end of it, plus the lack of accessibility. In those areas, people are even more reliant on private hire vehicles and taxis, where again accessibility is so poor that it just perpetuates disabled people's isolation.

Baroness Deech: Five years ago, we regarded it as a distortion of the democratic process that great portions of the Equality Act were enacted so that it looks good, but were never brought into force. How much worse it is five years later that those sections should be sitting on the statute book and not yet brought into force.

Q3 **Baroness Browning:** I declare that I am a vice-president of the National Autistic Society and an ambassador for the Alzheimer's Society.

Could we move to the public sector equality duty? Catherine, you will remember that the committee recommended that the Government replace the Equality Act 2010 (Specific Duties) Regulations 2011 with provisions that require local authorities to develop and implement a plan of action setting out how they will meet the public sector equality duty. It also recommended that a new subsection should be added to Section 149 requiring public authorities to take all proportionate steps to meet the public sector equality duty.

The Government have not, to date, made such plans of action a requirement. What are your thoughts? Do you feel that was important at the time, and do you still feel that it should be pressed for?

Catherine Casserley: I think it is really important. The public sector equality duty is an incredibly important provision of the Equality Act, obviously not just for disability but for all the protected characteristics. It has its origins in the Stephen Lawrence inquiry, and in the right format and used properly it has the potential to really change the way in which authorities do things, and ultimately to change lives.

There is no doubt that it has had some effect. There have been some very good cases on it, and there are organisations and authorities that use it properly, but it has not delivered the outcomes that the people who were involved in it at the outset certainly would want it to. One of the reasons for that is that it does not require outcomes. That is one of the problems with it.

The case law says that it is a duty that is about process and not outcomes. Process is important; committee members may be aware of a recent case to do with facial recognition in Wales. In that case, the court said that there was a breach of duty, and that process is very important because process is about transparency and people understanding that things have been done properly. Nevertheless, authorities often say, "This is about process and not about outcomes. We did consider equality and disability, but we went ahead anyway. Even if we did breach the duty, it wouldn't have made a difference". There have been a number of cases where the courts have said, "Well, yes, they did breach the duty, but it wouldn't have made a difference anyway", so they have not quashed the decision. That in itself, for some authorities, will give them comfort.

I think there needs to be a change to the duty. It needs to be more action based and more enforceable. Not every disabled person can take a judicial review. Judicial review itself is one of the things that the Government will be reviewing. Obviously, the Government have been at the sharp end of a lot of judicial reviews, and the equality duty is one of the things that has featured. There may need to be other means of enforcement, but it is really important that the duty is strengthened and that authorities pay attention to it. As Kamran and I have both said, disabled people really suffered in the pandemic. If the equality duty had been properly implemented in the way it should have been, I think it would have made a difference.

Baroness Browning: Thank you very much. I turn now to Kamran Mallick. I should declare that I am an annual subscriber to the wonderful *Disability Rights Handbook*. Mr Mallick, can you give us any practical examples of the impact of this lack of action on disabled people?

Kamran Mallick: Thank you. I am glad you are a subscriber. I absolutely agree with everything that Catherine has just said. I think the public sector equality duty should be outcomes based and should be looking at the impact, and how we mitigate and ensure that it does not happen.

The burden is currently on disabled people to enforce their rights. The public sector equality duty is a prime example. It should be different. The burden should be on public institutions to implement their obligations or strengthen their duty. We hear about disabled people being sanctioned and penalised. We do not want individuals to be penalised but public bodies to incur penalties when they do not meet the duty. That should be an absolute requirement.

You asked about the direct impacts. We have heard that through the pandemic many disabled people have had their support packages reduced without any consultation or due process, under the guise that resources were limited and therefore, "We're reducing your package". We were against the Coronavirus Act coming in and the elements in it that allowed local authorities to reduce their requirements under the Care Act, but we have heard that even authorities that never enacted it, and never used it, reduced support for some people in their areas without due regard of the impact that would have on the local community of disabled people.

Baroness Browning: Thank you.

Baroness Deech: I hope coronavirus is not being used by public authorities to reduce their support for disabled people. We have to look to the future. It sounds, from what you have said so far, that there is some sheltering behind the emergency provisions, regardless of the effect on disabled people. Is that so?

Kamran Mallick: Although a number of local authorities enacted the Coronavirus Act, they never formally implemented their right to reduce support. Irrespective of that, many disabled people are coming to us and saying, "The conversation I'm having is that my support is being reduced". The fear is that the reduction will never be brought back up to where it was. Formally it is not a known figure, but we are hearing from disabled people that their support is being reduced.

Baroness Deech: That is a very important point.

Q4 **Lord Faulkner of Worcester:** I declare my interest as a vice-president of the Level Playing Field charity, and the relevance of that will be clear from the question I ask in a minute. I am also the chair of the Great Western Railway stakeholder advisory board, and president of the Heritage Railway Association.

I want to ask about accessible sports stadia, but, first, I want you to give me your view about the so-called reasonable adjustments to common parts under Section 36. When we carried out the inquiry, we increasingly got the feeling that this was constantly the alibi because of what was determined to be reasonable or unreasonable. Is it not the case that the Government have not yet decided to review Section 36 and start on any commencement of new arrangements? What impact do you think that has had on disabled people? Do you take the view that the delay is reasonable?

Catherine Casserley: I have to say that I am still very puzzled as to why Section 36, the common parts provision, has still not been implemented. I was working at the Disability Rights Commission in 2006, and at that point civil servants in the Department for Work and Pensions were discussing how a common parts provision for housing would be implemented. They were discussing it with landlords.

As far as I can see, the provisions already in the Act have enough caveats to ensure that if adjustments are allowed they will be reasonable. I find this area quite difficult, because I really do not understand why the provision has not been implemented. I do not understand the reasoning.

What is reasonable and unreasonable is allowed for in the provisions of the Act. No further amendments to Section 36 would be necessary. As it stands, it is a perfectly well-drafted provision. I do not think you could make any more changes to it. Either the provision should be implemented or, if they have no intention of implementing it at all, it should be repealed, I presume. There is no reason, I would suggest, not to implement it.

Lord Faulkner of Worcester: Kamran, do you agree? Can you think of any reason why they have not, other than resistance, presumably from pressure groups?

Kamran Mallick: I completely agree with what Catherine said. I cannot think of a reason other than pressure from a particular lobby group.

Again, looking at the impact this is having on disabled people's lives, it just means that life becomes very difficult for disabled tenants and leaseholders. The ability to move to a different part of the country, to move house, and to move where you live becomes incredibly difficult. You find yourself living in properties that are just not accessible, so you cannot really live there. You sort of exist, but you are not really living a life because of not being allowed to make what are called, as Catherine says, reasonable adjustments. If the law is very clear on that, I see no reason why we should not be implementing it.

Q5 **Lord Faulkner of Worcester:** Thank you. Perhaps I could move to accessible stadia. You are probably aware that in 2015 I took a Private Member's Bill through the Lords that would have placed a duty on clubs to make their stadia accessible in order to obtain a safety of sports ground licence to operate. It passed our House with, it is fair to say, some acclamation, but then, as is often the way with House of Lords Private Members' Bills, it died a death in the Commons.

Still nothing has happened on that. Catherine, you said in your introduction that nothing has happened since 2016. I think that is probably true, although the very introduction of my Bill did at least produce some movement on the part of the Premier League clubs. However, as far as I can tell, it has not been followed up by others. Would you now support the strengthening of the law and the provision that we recommended in our report: that accessible stadia provision should be passed as legislation?

Catherine Casserley: I think that very little has happened. As you said, an investigation was carried out, possibly by the EHRC, into Premiership clubs and accessibility. So I think this was looked at, but there was nothing in relation to other clubs, or indeed to other sports stadia generally.

I think the Government said at the time that the Equality Act remained untested on access to sports stadia. The Equality Act is untested in many areas, and that would not be a reason for bringing in legislation. Any strengthening of provisions in relation to an area is to be welcomed. Sports stadia have their own particular issues, which it would perhaps be helpful to have in separate provisions rather than necessarily a court having to determine what was reasonable in the particular circumstances.

Lord Faulkner of Worcester: What do you say to the argument that one of the difficulties with the present legislation is that for a complaint to be considered there has to be a complainant—ie a disabled person—involved in the club, rather than there being a duty on the club to comply with a common set of standards? Is there not some evidence that a lot of cases have been settled out of court, and that individuals themselves feel reluctant, effectively, to take on the might of their own club, to which they may have a great attachment? Football fans are very loyal and do not want to upset the people who are running their club.

Catherine Casserley: That is a very good point. In fact, it is one of the issues about stadia that is different from other services cases. Generally speaking, there is a dearth of services cases, as compared with employment cases. There are a number of different reasons for that. Cost is one of them. It is also different from employment because, if someone loses a job, they lose their income and they are more inclined to take someone to court, whereas in services a disabled person will often think, "Well, I'm not going to use that service again". Often, it is a last straw that makes them bring the action. With sports stadia and sports clubs, I have often advised people, and in the end they have said, "I don't want to bring a case, because I'm a supporter of that club and I don't want to go against them"—exactly as you say.

It would be much better to have something that puts the onus on to the club and requires them to do it, rather than an individual having to bring a case. That is true of services generally, but I think you are right: it would be far more preferable for there to be an obligation on the club, and enforcement in that way, rather than an individual having to bring a claim every time. That will not happen, particularly in relation to sports clubs.

Lord Faulkner of Worcester: I agree. Surely there is quite a lot of inconsistency between sports, too. There may be a lot of inconsistency within football, but there is huge inconsistency with other sports. Disabled fans of other sports are likely to be treated less well even than in football. Is that right?

Catherine Casserley: Yes. I think you are right. Often, it depends on how organised and how strong the disabled fan group is. In football, for example, it is very strong. In other sports, it can be weak or non-existent. Where it does not exist, disabled people tend to be much more marginalised.

Lord Faulkner of Worcester: And not go.

Catherine Casserley: Yes.

Baroness Thomas of Winchester: Lords cricket ground has a group of disabled people who monitor what they do. I am a member. They are very good.

Kamran Mallick: I agree. There are particular sporting institutions—individual ones, groups and clubs—that are good and proactive. Overall, the majority of sporting stadia and clubs are not proactive. If you are an ardent fan of a particular club, you may decide not to take them to court for that reason, but for many others, who might follow a club and are not that impassioned about it but enjoy all sport, it means that they end up not going, so their only way of enjoying it is through the TV. That is a very poor substitute for being part of your community and enjoying sport as part of a club or at a sporting occasion.

As Catherine said, I think our law should put the burden of making the changes on organisations, clubs and businesses. It should not be down to the individual to constantly have to battle. If you do that, you can spend your whole life just battling and not enjoying.

Baroness Deech: It is very hard to sympathise with clubs, because so many of them, not all, have a lot of money. You would have thought they could make those adjustments.

In the case of landlords and common parts, could it be that the Government are being oversolicitous towards landlords, or are they frightened that tenants will claim some sort of benefit to help them pay for improvements to the common parts?

Catherine Casserley: On common parts, one of the things that Kamran talked about was the detrimental effect on disabled people of that provision not being in effect. People can ask for a disabled facilities grant to pay for adjustments. One of the things that I have seen with clients is that the disabled facilities grants are available to them, but they cannot get consent from the landlord for the common parts.

It may seem in the short term that that costs money, because disabled facilities grants are available from the local authority, but in the longer term they enable the disabled person to stay in their home. The alternative may be moving them to local authority premises. It is often to do with private housing, and it enables people to stay in the private housing market. The alternative may be to move into local authority or possibly even residential accommodation. In the long term, it is actually about saving money. If one were to do a cost-benefit analysis and include all those costs, it would probably be quite favourable. It is about including all the costs rather than just looking at it in the shorter term.

Q6 **Baroness Deech:** I will move on to a question that runs through everything we have said so far, which is about the legal costs. We have heard from both of you how difficult it is for disabled people to enforce their rights. Much of that must be due to the fear of costs.

What is the current position in relation to qualified one-way costs shifting and discrimination claims? If the Government extended qualified one-way costs shifting, what impact would that have on disabled people? We know that the issue was reviewed in the post-legislative review of LASPO Part 2, but without any joy for disabled people. Catherine, do you have experience of the impact of no qualified one-way costs shifting?

Catherine Casserley: Yes. There was a judicial review of LASPO and what was said by the litigant, Ms Leighton, about the failure of the Government to apply qualified one-way costs shifting to discrimination claims. At that point, the Government said that they were considering the application and were considering doing a pilot in relation to disability and discrimination claims. That was about two years ago. Nothing has happened since. There has been no pilot; there has been nothing. The position at the moment is still that qualified one-way costs shifting does not apply.

It is certainly my view that if it applied to disability and discrimination claims, or indeed any discrimination claim, it would mean that litigants, disabled people, would not be automatically liable for costs. I think it would deter defendants from using costs as a threat to people when they bring claims. It would perhaps make them look more reasonably at claims when they are brought, because it tends to be used quite early on as a way to deter people from bringing claims—litigants in person, as well as those who are represented.

I think it would encourage more solicitors to take up that sort of work. One of the issues at the moment is that there are not actually that many lawyers who do it, so people have difficulty in finding people who do the work. There is only a handful of people who do the work. It might enable more people to bring claims, which hopefully would lead ultimately to more compliance with the law, because ultimately that is what it is all about. It is not all about people bringing claims. The purpose is that hopefully more awareness is raised and then ultimately more service providers, public authorities or whatever make their services more accessible because they do not want to have cases brought against them, or they now know more about the law because they have read more about it. Ultimately, I think it would be a good thing.

Baroness Deech: Mr Mallick, briefly, do you agree? Do you have a different insight into the question of costs?

Kamran Mallick: No, I completely agree with the longer-term picture that Catherine has eloquently outlined. In the long run, it is about improving the landscape of our country. It is about ensuring that equality for disabled people comes about.

Disabled people do not want to spend their time taking companies to court. At the moment, we are in a situation where there is inequality and there is no easy route to challenge that. There is no support, so the inequality goes on because the balance of power sits with the companies and not with the individual.

Baroness Deech: Summing up the impression I have of this session, the obstacles that we found five years ago are still there and, sounding rather pessimistic, Covid has made things worse, if anything. Underneath all that is the great difficulty for disabled people, because of the legal costs situation and because a fan would not want to sue a club, in getting access to justice, and a lack of empathy on the other side as well as a preference for the interests of business rather than the pressing needs of disabled people.

Have I got that right? Are things better today or worse for disabled people than they were when we reported five years ago? In a word or two, are they better, worse or the same?

Catherine Casserley: I would probably have to say worse, given the pandemic. Things are probably a bit worse for many people, but for disabled people they are probably worse, where we are at the moment.

Kamran Mallick: Yes, but I would say that for disabled people the last five or 10 years have been very challenging. The last year has really highlighted the inequalities and the frailty of the little support that did exist and how easy it was to take it away.

Baroness Deech: That is depressing. Thank you both so much, not just for coming today but for the work you do now and have done in the past for disabled people, and for helping the Lords committee. We will be seeing the Minister for Justice later on. We can put to him the points you have made about justice. I reiterate our appreciation to you. You can be assured that this committee will take your points very seriously and will continue to press to do what we can for disabled people. Thank you both very much indeed.

The Chair: Thank you on behalf of the Liaison Committee. I am most grateful to the two witnesses. Thank you very much indeed.