



Liaison Committee

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

Thursday 17 June 2021

3.30 pm

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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. 3

Virtual Proceeding

Questions 12 - 17

Witnesses

I: Caroline Waters, Deputy Chair, Equality and Human Rights Commission; Melanie Field, Executive Director, Strategy, Policy, Legal and Wales, Equality and Human Rights Commission.

Examination of witnesses

Caroline Waters and Melanie Field.

The Chair: Good afternoon, and welcome to this meeting of the Liaison Committee. I particularly welcome our witnesses, Caroline Waters, deputy chair of the Equality and Human Rights Commission, and Melanie Field, executive director of strategy, policy, legal and Wales for the Equality and Human Rights Commission.

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, and I hand over to her now, with Lord Faulkner of Worcester asking the first question.

Baroness Deech: Thank you very much, and thank you to our two witnesses. I will go straight over to Lord Faulkner for the first question.

Q12 Lord Faulkner of Worcester: Thank you. I declare as my interests the fact that I am vice-president of the Level Playing Field charity, chair of the Great Western Railway advisory board and president of the Heritage Railway Association.

What activities has the EHRC undertaken recently in meeting your duty to monitor the effectiveness of the Equality Act 2010, particularly in relation to the areas that our committee looked at, including accessible stadia, transport, access to justice, reasonable adjustments to common parts and the PSED?

Caroline Waters: That question goes right to the heart of independent living. It is absolutely key, and it informs all our positions. Disabled people should have the same choice and control over their lives as non-disabled people. That includes having equal access to transport, housing and leisure, among other things. As we heard so clearly from both Catherine and Kamran, barriers to independent living have a wider impact on disabled people's ability to exercise those rights.

That is why we will focus on three areas of our activity. The three areas are making sure that: we have a strong legal framework, with good practice when applied; there are high levels of compliance; and there is effective enforcement when the law is breached. One of the first things we do is to monitor the effectiveness of the law. It is woven throughout all our functions. Because we work every day with the law, we are particularly well placed to identify whether things are working well or perhaps less well.

An example of where we feel the law worked well was during the pandemic, when disabled people or people with particular health conditions were denied treatments in a blanket way, such as "do not resuscitate" orders, or when there were blanket requirements for face masks, which were obviously a problem for some disabled people. We

successfully used arguments based on the law to prompt changes in approach that took account of the needs of disabled people—for example, bringing in exemptions on masks and working with retailers to ensure that the consideration was there, and that if somebody was seen without a mask it was understood that there could be a legitimate reason—the person might be disabled, et cetera.

Things have not worked quite so well—this has been a general theme throughout the evidence sessions—in relation to the PSED specific duties. We found that the work done on compliance by public authorities was not always strategic. It provides a lot of leeway that makes enforcement rather difficult.

Our work also involves a range of intelligence-gathering functions, so that we always have up-to-date intelligence on issues of concern for particular protected characteristics. That was incredibly important, given the fast-paced nature of the Covid pandemic. Our compliance directorate gathers intelligence on barriers to compliance, including deep-dive inquiries where there are more serious concerns. We get intel from the Equality Advisory and Support Service, direct from individuals and the organisations that represent disabled people. Our legal directorate works with legal stakeholders to gather intelligence on the effectiveness of the law, and it gathers any requests for strategic legal support so that we can apply our enforcement policy there to better effect.

We have a proactive approach to stakeholder engagement, including protected characteristic leads, who regularly engage with representative organisations. Of course, we gather a lot of evidence through our human rights monitoring activities, including some quite deep research. That is very comprehensive in nature and we are very transparent about it. We place it all on our human rights tracker and it is shared in our treaty monitoring reports.

We have a disability advisory committee, which works directly with our staff on the strategic aims board, so that we can embed all the intelligence and insight that they bring directly into our approach. We have a strategic team, who decide whether and how to intervene to deliver the most effective change, so that we can look right across the three characteristics and see where our work can most effectively be applied. It could be policy analysis and advice to maintain and build a strong legal framework. It could be ensuring good compliance with the law through advice, guidance, training, et cetera. It could be enforcing strongly where we suspect a breach of the law—for example, through Section 23 agreements and strategic legal cases, and Section 28 on the drive for legal support.

Mel can talk you through some examples, but in the interests of time we are also happy to provide anything in writing that would be helpful.

Lord Faulkner of Worcester: Thank you. Mel, do you want to come in now?

Melanie Field: Thanks very much for the opportunity. Caroline has set out our general approach, which is based on understanding what is happening on the ground, such as gathering intelligence about the experiences of disabled people, and outcomes through our research and our *Is Britain Fairer?* report; ensuring that there is a strong legal framework, which I guess addresses some of the specific questions about unimplemented provisions which the committee is interested in; supporting duty holders to comply with the law and ensuring that they understand what they need to do; and ensuring, when things go wrong, that there is adequate access to justice for people whose rights have been breached.

I will mention some specifics that we have done in the areas you are interested in. On accessible stadia, using one of our formal enforcement powers we conducted a formal investigation in 2017 and 2018 into disabled access to Premier League grounds. I think that was mentioned by the first panel. We published a report on that, which resulted in a number of improvements being made and in our entering into a formal legal agreement, under Section 23 of the Equality Act 2006, with Chelsea, and several informal agreements. Those are all set out in that report. We continue to receive complaints about disability access in the context of sport, and we continue to follow up the complaints that we receive. Do you want to ask about any specifics, or shall I carry on?

Q13 **Lord Faulkner of Worcester:** I want to ask a quick supplementary on that point. It came up earlier. The onus is on the complainant, who effectively has to take on his or her own club in order to have that complaint considered. A lot of us think that is unfair. Ideally, another body, which could well be the EHRC, should be acting as the champion for the disabled fan who has a grievance. Could you not do more in that area?

Melanie Field: Obviously, we have used our enforcement powers in that context, partly for the reasons that you gave. Where we see that something is going wrong on the ground but there are no appropriate or realistic means of challenging it, we can use our strategic enforcement powers to tackle those kinds of systemic breaches of the law.

You probably know that we have a budget of about £17 million a year and about 200 staff. We cover nine protected characteristics and the whole of the economy, so we have to prioritise. In the case of the Premier League, because it was football and it was the Premier League, so it was quite high profile, we tried to pick an intervention that would have broader impact, in the hope that that would drive up better practice more generally. Unfortunately, we are not resourced to take up every case, but of course we can take up strategic cases.

We briefed in support of your Private Member's Bill, Lord Faulkner. We think that the current reasonable adjustments duty works, as is evidenced by our investigation, although it may not work well in every case. There is an argument for a more prescriptive form of requirement in relation to specific circumstances, as was the approach set out in your

Bill, with separate enforcement arrangements. In certain situations, that is an approach worth considering.

I would draw a comparison with the transport provisions in the Equality Act, which is another area the committee has been asking about, where that kind of approach is taken, and there are specific technical requirements imposed on a particular sector, rather than just a general reasonable adjustment duty. As we know, those provisions have not yet been implemented.

It is worth reminding the committee that a number of those provisions are not only in the Equality Act 2010 but were originally legislated for in the Disability Discrimination Act 1995, so they have been on the statute book in one form or another for 26 years but remain unimplemented.

Baroness Deech: Thank you. We have to move on speedily to the next question.

Q14 **Baroness Browning:** I declare my interests as a vice-president of the National Autistic Society and an ambassador for the Alzheimer's Society.

You have heard our debate so far this afternoon, particularly on the local authority inaction on action plans as far as the public sector equality duty is concerned. In the observations and the scrutiny work that you do of local authorities and their action plans, which might or might not result in actions, do you have in your records some sort of league of who are the goodies and who are the baddies? Do you have any idea where they are?

Caroline Waters: We do not have a league table as such, no, but—

Baroness Browning: Do you have one in your mind?

Caroline Waters: It would perhaps not be appropriate to share that. What we do have is a clear sense that, while we had hoped that public authorities would really use it to identify the most significant inequalities that were relevant to their responsibilities, and to set objectives, take actions and really implement those in targeted plans, we have not really seen that, and that is pretty true in a broad sense.

All too often, we have seen an approach that focuses just on a tick-box exercise that is often quite process driven. Process is important, but they do things like diversity training rather than meaningfully addressing the most pressing inequalities in a local area or sector. There is a lack of specific focus and identification of the issues through strong contact with disabled people, and we are not seeing real, in-depth measurement of their own services. We have provided a great deal of advice and guidance on PSED best practice, on the sorts of things they could do, on the sort of specific duties, but it gives us little meaningful scope to enforce the PSED, as it were. The impact of that is that it is a missed opportunity.

Baroness Browning: I suggest to you that you might consider, from what you have just told us, that in order to facilitate really practical benchmarking between local authorities, which if nothing else would be a

great move forward for those who do not do it, perhaps not under the guise but under the heading of benchmarking you could perform a wonderful service by publicly identifying the local authorities that do it and how they do it, in order to encourage les autres.

Caroline Waters: Yes, absolutely. In fact, we have been developing proposals to enhance the PSED specific duties. It is by no stretch of the imagination delivering to its full potential. We have been publishing action plans, reporting on progress and trying to be a catalyst in this area. We have been working with public authorities, civil society regulators and inspectors to refine and test those proposals. Clearly, there is much more work to do.

Everything that has happened with Covid has made it difficult for public authorities. It is a very noisy environment, and trying to get the specific message through is really difficult.

Baroness Browning: Thank you. I will leave that suggestion hanging in the air with you.

Caroline Waters: Thank you. We will take it away.

Q15 **Baroness Thomas of Winchester:** I declare that I am a trustee of Muscular Dystrophy UK.

You have partly answered this question, particularly Melanie, I think. What strategy do you employ to ensure that the disability provisions of the Act are fully enforced? How do you choose the cases that you intervene in? How do you monitor the effectiveness of your approach?

Melanie Field: In general terms, we do a lot of intelligence gathering through our engagement with disabled people's organisations, looking at outcome evidence and experience evidence to try to identify the big issues that we can prioritise in our strategic plan.

To take the example of transport, which was identified in our current strategic plan as a priority, we did lots of engagement and information gathering. We ran a project where we invited people to bring their cases to us, and we supported around 30 individual cases, raising all sorts of issues about different forms of transport, such as wheelchair access and communications access. Again, it was to try to send a message.

We work with the regulators to support them in ensuring that the accessibility provisions are properly implemented, and to support the development of better complaints systems, so that disabled transport users understand their rights, and understand how to raise a complaint and enforce them when things go wrong.

Baroness Thomas of Winchester: What about the common parts legislation?

Melanie Field: The common parts legislation is not currently the law, because it has not been implemented. That provision has not been commenced in England and Wales. We often draw government's attention

to the need to implement that provision, and we hope that progress will be made. You will be aware that we are all waiting with bated breath for the Government's new disability strategy. I am sure you will hear about that later this afternoon.

We have been writing a lot to the Government, telling them what we would like to see in that strategy. Implementation of Section 36 is one of our key requests to them in that space. I am hopeful that there will be progress on that. It has been on the statute book for more than 10 years. It, or a similar provision, has been implemented in Scotland, and we are very keen to see progress.

You talked with the previous panels about what the barriers to implementation might be. I imagine there is a cost implication for tenants who cannot afford to pay for reasonable adjustments themselves. The provision is such that the landlord and tenant can agree between themselves how the adjustment will be paid for. Where a tenant has no means, that might fall to the public purse, so I imagine there will be issues for government to crunch through in relation to that.

On a similar issue, although not quite the same, we used the existing reasonable adjustments provisions to support a woman in Wales. She was the owner of a leasehold property whose landlord would not let her make the adjustments that she needed in the common parts of her own home. We supported her to successfully challenge the provision in the lease that prevented her making those adjustments. The law can work when it is in place, and we would like to see it in place in relation to common parts, because, of course, if you cannot get into or out of your home, you are effectively a prisoner in your own home.

Q16 **Baroness Deech:** Can I turn to the law now? As you know, my interest is that I was chair of the committee in 2016. I was glad to hear that you have supported several people in bringing their claims, but we have heard concerns that legal costs stand in the way of disabled people who allege discrimination. They cannot afford to bring their cases, or cannot risk bringing them, because of the costs. A remedy might be extending qualified one-way costs shifting, but that has not been done. Do you have views on how legal costs could be made more affordable or possible for victims of discrimination who are disabled?

Caroline Waters: We recommended, in our response to the post-implementation review of Part 2 of LASPO, that the QOCS scheme protection should be extended to discrimination cases brought under Section 114 of the Equality Act 2010. The absence of that, and the cost risks for claimants, genuinely pose significant barriers. We have already heard that in the earlier witness statements. We think it is really important that the scheme is extended to discrimination cases.

Baroness Deech: Presumably, you can afford to support only a very few of the people you would like to see bringing cases.

Caroline Waters: Yes. As you heard from Melanie, because of the resources we have, we are forced to prioritise. As much as we would like to do everything, we simply cannot.

There are cases that make a huge difference. The Paulley case is one of those. We know that we can be effective when we can identify cases and take strategic actions.

Baroness Deech: Yes. I never get on a bus without thinking about the Paulley case.

If we can do it in one minute flat, perhaps we can have a quick question from Baroness Thomas about the national strategy.

Q17 **Baroness Thomas of Winchester:** What would your priorities be for the national strategy?

Caroline Waters: We made a very detailed submission in February this year to inform that strategy, and we have published it on our website, to be really transparent. As you can imagine, it was a rather long list. In particular, we are saying at a strategic level that there needs to be a comprehensive, strategic approach, and it has to cover the key challenges that disabled people face right across all areas of life. It needs to be led from the top: we need much greater leadership from government, with transparent ministerial leadership and accountability.

Given that a lot of the things that we have been talking about have not been enacted, we have asked for a very clear timetable for delivery, with periodic reports on progress and any necessary updates to the strategy, particularly as new evidence emerges.

Baroness Deech: Thank you very much for that. We will have to download your submission from your website. I did not know it was there, but I think we will do that. We look forward to the written evidence that you said you would submit. I thank the two of you very much for the work that you have done and for coming along this afternoon. It has been very helpful. Thank you.

Caroline Waters: Thank you.

The Chair: I reiterate, from the Liaison Committee's point of view, our great thanks to the two witnesses.