



Liaison Committee

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

Thursday 17 June 2021

4 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. 4

Virtual Proceeding

Questions 18 - 25

Witnesses

I: Justin Tomlinson MP, Minister for Disabled People, Health and Work, Department for Work and Pensions; Baroness Vere of Norbiton, Parliamentary Under-Secretary of State, Department for Transport; Lord Wolfson of Tredegar, Parliamentary Under-Secretary of State for Justice; Marcus Bell, Director, Government Equalities Office; Charles Ramsden, Deputy Director, Government Equalities Office; Jessica Matthew, Co-Director, Local Roads, Places and Environment Group, Department for Transport.

Examination of witnesses

Justin Tomlinson MP, Baroness Vere, Lord Wolfson, Marcus Bell, Charles Ramsden and Jessica Matthew.

The Chair: Good afternoon. Welcome to the Liaison Committee and the final of our four evidence sessions today. I am delighted to welcome a full team of three Ministers as well as officials. I record our thanks to Justin Tomlinson MP, Minister for Disabled People, Health and Work at the Department for Work and Pensions; Baroness Vere of Norbiton, Parliamentary Under-Secretary of State at the Department for Transport; Lord Wolfson of Tredegar, Parliamentary Under-Secretary of State at the Ministry of Justice; Jessica Matthew, co-director of the Local Roads, Places and Environment Group at the Department for Transport; Marcus Bell, director at the Government Equalities Office; and Charles Ramsden, deputy director at the Government Equalities Office.

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. I know that Justin Tomlinson has had to rearrange his diary to enable him to attend the first part of the questioning to answer two important questions, and I am most grateful to him and indeed to you all. Baroness Deech and colleagues will lead on the questioning.

Q18 **Baroness Deech:** Thank you, Chair. Good afternoon, Ministers and other witnesses. We very much appreciate the fact that you have made the time to be here with us this afternoon. It is very valuable. I was chair of the committee that reported five years ago, so my burning question to you, Mr Tomlinson, as Minister for Disabled People, is: what is your overall strategy for the Government in implementing the key recommendations of my committee's report?

Justin Tomlinson MP: Thank you, Baroness. It is a pleasure to join you all this afternoon. I was casting my mind back. I was one of the witnesses at the first set of hearings. I believe I am the longest-serving Minister for Disabled People, although I had a brief gap in the middle. I want to thank you, because one of your recommendations was that my role should be upgraded to Minister of State, and here I am returned as a Minister of State, so I put that down to your powers of persuasion. Feel free to recommend further promotions for me and colleagues. We would be very grateful for your influence.

It is a strange one. I am the Minister of State for Disabled People, Health and Work, although the Equality Act itself is covered by the Minister for Women and Equalities and the Minister for Equalities. The officials responsible sit within the equalities hub, which includes the disability unit team for which I am responsible.

Primarily, I have two roles as the Minister for Disabled People. My better-known part is within the DWP administering disability benefits and the various health and work support programmes to help disabled people to

enter work, stay in work and progress in work, but I am also responsible for the disability unit within the equalities hub in the Cabinet Office. That has been a significant game-changer since I was first a Minister. Many of the issues that were raised, including those in your first report, would often have been raised with me by stakeholders, and I would be very much reliant on the good will of other government departments to show suitable enthusiasm and commitment to make tangible differences.

Apart from now being a Minister of State rather than a Parliamentary Under-Secretary, I have the disability unit embedded at the heart of government to make sure that, as policies are developed, the eyes and ears of disability issues are there. With the forthcoming national strategy for disabled people, we have the personal commitment of the Prime Minister to a truly cross-government effort to remove barriers and create a fully inclusive society. That means that each and every department is personally being held to account for their current work and their future priorities to help remove those barriers. I regularly meet each department's disability champion.

Every department now has a senior Minister as a disability champion and they are personally accountable, and that is ultimately all reported back to the Prime Minister. When we publish the national strategy for disabled people, you will see that it will be personally led by the Prime Minister. I assure you that nothing focuses the mind of my colleagues more than when the Prime Minister is reviewing the work that is being done.

I am very pleased that I have never had greater focus, greater cross-government co-ordination and the ability to make sure that the issues are embedded right at the beginning, so I am a lot more upbeat than perhaps I could have been when you first spoke to me back in 2015 or 2016.

Baroness Deech: Well, Minister, I am very glad to hear that. We were concerned, five years ago, about the rather tangled division of responsibilities, and I am pleased about the upgrade. Nevertheless, we need to hear what you personally will do to get our recommendations implemented, because the story we have heard over the last couple of hours has not been a happy one. The general impression we have gained is that so many recommendations have been set aside, sections have not been implemented, and, of course, we have not had the national strategy yet. What will you do, please, to help disabled people and, of course, elderly people to benefit from the recommendations that we made?

Justin Tomlinson MP: I am conscious that those recommendations are ultimately the individual responsibility of the relevant departments, which many Ministers and key decision-makers here are from, and they will answer the specific points on those. I have worked on some of them. I see, for example, Lord Faulkner of Worcester, who has been a real champion on accessible sports stadia. I share his passion for sport, and certainly over the years I have personally pressed different sports bodies and organisations to share best practice and, frankly, up their standards.

On the broader principle of what I am doing, I am the Minister who leads the national strategy work, which has had extensive stakeholder engagement that is then fed regularly into individual departments through the disability unit. We now have the Regional Stakeholder Network, which has over 225 different disabled people's organisations and disabled people with real lived experience, not just in London but across the UK. They meet once a month in their respective regions, setting their own agendas, and I, as the Minister, attend one meeting each year in each region plus meeting with the chairs. We also have the Disability Charities Consortium and other organised events and visits. All those flag up issues that are fed into the work that will drive and set the priorities in the national strategy for disabled people.

For the very first time, there is genuine cross-government focus that will be put into writing saying exactly what we as a Government will be looking to do. That is not us randomly coming up with things; it is shaped by real lived experience. You will see there has been significant progress, and rightly so. Many of the recommendations that you raised highlighted areas where we had to make progress, because if we are fully committed to removing barriers and creating a fully inclusive society we all have to work collectively together.

There are good examples of how we are making that progress. I will talk about those and then acknowledge where I think there are still challenges, and you will no doubt then press the relevant Ministers.

On the good side, if we cast our minds back to the unprecedented challenges of Covid, one of the very real challenges that we had was the fear that people, including those with disabilities, were struggling to get access to supermarkets. Defra acted quickly. It organised a series of round tables with the supermarkets to try to work out what to do. It reached out to us, and with our extensive stakeholder network we were able to bring some of the leading health and disability charities to the top table to share what their members were telling them—what the real issues were—and help the Government to shape the solution.

That meant in reality that they were able to do it much more quickly, because they had real lived knowledge and suggestions. We then saw, thankfully very quickly, the situation with access to food in supermarkets settle down as people were given priority access to online shopping and quieter times. That was a really good example that will run through the theme of the national disability strategy: that all government departments should work with those with real lived experience, at the beginning of policy development, to make sure that we are creating fully inclusive policy.

The fact that I now have ministerial disability champions is also significant. Some government departments have always been proactive and helpful at driving forward their priorities, but some need an extra bit of help. By having a point of contact who is personally accountable and who has to come to my inter-ministerial groups, which I chair and which report back to the Prime Minister, it will be in the national strategy in

black and white, in writing—this is their work, these are their priorities, and this will then be shared and discussed and, crucially, reviewed annually. They will be held to account for the commitments they are making, and as they deliver they will have to come up with new content, because in 12 months' time they cannot have a blank page.

I have seen at first hand not only the genuine enthusiasm which the ministerial disability champions and their respective departments have shown, but their determination to make that difference. They do not always know how, and that is where we, through the disability unit, link them up with the right disabled people, disabled people's organisations, and health and disability charities that can give them expert insight, advice and suggestions. There are some brilliant organisations out there with some really good tangible ideas that we can pick up.

Baroness Deech: Minister, I know you have limited time. I will let Lord Faulkner jump in on your shared enthusiasm for sport, because you made promises earlier. I just want to say that the situation, as we have heard this afternoon from disabled people, is, if anything, worse than it was five years ago. That is their evidence. Why are we to have a national strategy for the future when we have not yet carried out the recommendations made five years ago? I know you do not have much time.

Justin Tomlinson MP: I am okay for time. This is very important. I would say that not necessarily all the departments have agreed with the recommendations that you made. You will discuss those in detail, I am sure, following my contributions.

The national strategy for disabled people was personally announced by the Prime Minister, which gives absolute focus to every government department. It has been brought up at numerous Cabinets, and I then chair the inter-ministerial groups. It will be a comprehensive published document on which each department, the Prime Minister and I will be held to account. It is not in isolation, because it will be reviewed annually through the Regional Stakeholder Network, through different consultation events, through engagement and surveys, and through various other opportunities. We will continue to feed in. We will link those with real lived experience to the relevant departments to offer their insight and expertise as we go forward. I am genuinely very excited about how much of a difference this will make towards creating a fully inclusive society.

It will not happen overnight. We are very close to publishing it. The delay has been because of Covid. But for Covid, this and the health and disability Green Paper, which I am also responsible for, would have been published last summer. We would have completed the consultation, and many of these things would have filtered through to legislation. We are very close to being able to publish both of them. Some of the key health and disability charities have already had early sight of our draft work on this, because they have been integral to designing the priorities and identifying the challenges that need to be addressed. They see it as a significant step that empowers them to reach out to the respective departments to offer their expertise and knowledge.

Since I first came in, as a much younger Minister, we are seeing progress in the ability to engage. If you look across disability employment, we have since delivered record disability employment, but that is not enough for us as a Government. We are ambitious for more. We have set an ambitious target of a million more disabled people in work by 2027. That is partly through additional recruitment, which in part is better cross-government work, particularly between the DWP and the Department for Education. It is about retaining and progressing people in the workplace and stopping the 300,000 a year who drop out of work. Again that is cross-government work between us, DHSC and BEIS to make sure that we can do that.

To be fair, I said that I would acknowledge where we need to do more. You have been looking at the Equality Act. I have a lot of sympathy over this, because the Equality Act in its purest sense, in terms of legal protection, is strong, but it is clear when I talk to stakeholders that it is, in many cases, an ask too much to expect an individual to lead the legal charge.

I am personally receptive to looking at the lessons that can be learned from the HSE, the Health and Safety Executive, which proactively raises awareness and, as a last resort, enforces to make sure that we are world-leading on safety. We need to learn those lessons to apply in the same way in the workplace and in health. There are some lessons that can be learned, and I would welcome a very good look at the Equality Act. I met the EHRC yesterday to discuss this. We will refer to it in the national strategy. This is an area where, post your initial talks, there is mileage that we need to go further on.

Baroness Deech: Yes, and so much of it has not been brought into force.

Q19 **Lord Faulkner of Worcester:** Minister, I hope it will not embarrass you if I say that you were one of our star witnesses at our 2016 inquiry, particularly when asked about the provision for disabled people at sports grounds. You referred to it as disgraceful and said: "There is not provision in some grounds. Supporters are split up or are put in with the away fans. I find that totally unacceptable. We are in the last chance saloon with those football bodies, saying, 'You need to get your house in order'". I am sure you will say that there has been some progress, particularly with the Premier League, but, believe me, there has not been throughout the game, or indeed in other sports. Can we rely on you to be able to do something now?

Justin Tomlinson MP: Actually, I want to pay you tribute, because I remember that you led a lot of this work. If I remember rightly, you were doing a Bill on this area.

Lord Faulkner of Worcester: Yes.

Justin Tomlinson MP: Your knowledge and passion in this area were absolutely crucial for raising awareness. I will be frank with you. The

Premier League was very good. I will tell you why it was very good. Richard Scudamore, the former chief executive, had personal knowledge. His father was disabled, and he remembered the difficulties they had going to visit different sports grounds, so he was personally invested in helping to make a difference.

I hosted a number of meetings with the Premier League, and you raised it in Parliament, so there was an absolute light being shone on that very crucial issue. It is actually an issue for DCMS. It is not in my gift to change it. I remain frustrated that more has not been done. To a certain extent, a lot of sports bodies and grounds presume that it is only about wheelchair access. That is important, but actually when you talk to disabled sports fans, a lot of it is about certainty of access.

One of the best bits of advice I have given sports clubs—I am involved in voluntary sport—is to make sure that you have a point of contact. If you have a point of contact, a fan can speak to someone and ascertain whether it is possible to come, what needs to be done, and what reasonable adjustments can be made. The nightmare scenario for any sports fan is to purchase a ticket, travel a long distance and ultimately get to the ground and not be able to go in and view what they have paid to see.

We are encouraging DCMS, as part of the national strategy work, to continue to do more on that, because it is not only about enjoyment; sport inspires people to be more active. I work very closely with the Activity Alliance, a brilliant organisation promoting active lifestyles for disabled people or sporting opportunities for disabled people. These things go absolutely hand in hand. I cannot promise you that I personally can change everything, but it is certainly one of the areas I am very interested in, and I will keep pushing DCMS to keep pushing at their end, because we should have accessible sporting venues.

Lord Faulkner of Worcester: Thank you.

Q20 **Baroness Thomas of Winchester:** I declare an interest as a trustee of Muscular Dystrophy UK.

This question is about transport, which is obviously one of the greatest challenges for disabled people. Why have the relevant parts of the Equality Act not been brought into force? We are talking about taxis. Lady Vere, would you be able to answer that question?

Baroness Vere: Thank you very much. I would be absolutely delighted to. Thank you for inviting me here today to talk about what the Department for Transport is doing on the very serious issue of accessibility and ensuring accessibility in all the different modes that we have.

I appreciate that the purpose of Section 163 of the Equality Act was to ensure that taxis could be licensed only if they conformed to accessibility standards. On the face of it, one would say, "Oh yes, that's a marvellous idea. Fantastic. Of course, we should do it". Actually, when you lift the lid

on it, you realise that the way the legislation is drafted would not suit our purposes, because we want to make sure that there are the right vehicles for disabled passengers and wheelchair users to be able to travel.

Section 163 applies only to taxis. It does not apply to PHVs. If I was a driver, what would I do? I would sell my taxi and drive a PHV instead. We might find that there was a decline in the number of taxis. Indeed, in the last 15 years there has already been a decline of 13% in the number of taxis, and an increase in PHVs, on which the Equality Act is silent. We are approaching this very much by looking at the powers that local licensing authorities already have to specify what sort of wheelchair-accessible vehicles they have in their local area.

Sixty-seven per cent of local authorities already require all or part of their taxis to be wheelchair accessible. We want to take the powers that are available to the local licensing authorities and support them in making them more widespread, because we very much favour a mixed fleet. We recognise that the world of the PHV is here to stay. We have all probably used a PHV, perhaps not recently but certainly in the past. We also know that some of those PHV operators are becoming very forward thinking in the way they encourage accessibility in their fleet. That is how we will take this forward. We want to make sure that there are lots of vehicles. They do not have to be taxis; they can be PHVs too. We need to see more national coverage of these sorts of vehicles.

Baroness Thomas of Winchester: Tell me what a PHV is.

Baroness Vere: I am so sorry. I am responsible for taxis and PHVs, so this rolls off the tongue. Taxis are vehicles that can pick people up from the side of the road and they operate under a different licensing regime, would you believe, from private hire vehicles, which are the ones that you get on your app on your phone or you might phone up your local minicab office for? It is a completely different licensing regime. Some of it goes back to the 1800s or something ridiculous. That is what I have to deal with at base level.

Baroness Thomas of Winchester: Right. In London, of course, all London taxis have a ramp. That is something. It sounds as though the law in this area is a bit confused. All we need to know is whether there are enough taxis for disabled people, and at the moment there certainly are not. The law seems to be upside down. It does not sound as though it is fit for purpose.

Baroness Vere: If I could wave a magic wand and start the whole licensing of taxis and PHVs from scratch, I probably would, but unfortunately I am not in that space at the moment. There is an awful lot we can do. As you so rightly say, 100% of taxis in London are wheelchair accessible. Across all metropolitan areas, 82% of taxis are wheelchair accessible. I do not want us to end up with the haves and have-nots, and urban versus rural. Often, in rural communities, it is even more important that people have access to a wheelchair-accessible vehicle.

Later this year, we will be consulting on best practice guidance for licensing authorities that will cover how we expect them to get better in the future. There will be a consultation coming out this year. We will then draft the guidance and issue it. I encourage all noble Lords to think about taxis and private hire vehicles and feed back into that, because local licensing authorities have the powers to implement what we want to see, and we now need to give them that support, so that is what I propose to do.

Baroness Thomas of Winchester: What about the expense? I once had a private hire vehicle some years ago and it was very expensive.

Baroness Vere: They should not be more expensive, should they? That is against Section 165.

Baroness Deech: It seems to me that it has taken five years to discover that the law is not fit for purpose. Section 163 has been on the statute books for so long. I am sure that, out of London, private hire vehicles are probably much more important than taxis, so this must have priority. In the meantime, Baroness Browning has a question about justice.

Q21 **Baroness Browning:** Thank you very much. My question is for Lord Wolfson. In today's evidence session, we have had a lot of discussion about the costs of legal challenge. It was interesting to hear Minister Tomlinson preface one of his remarks earlier with the fact that it is difficult for the individual to lead the legal charge. If I may say so, it is not just the individual; charities and even conglomerates of charities working together now find this quite a challenge.

I should at this stage declare my interests as a vice-president of the National Autistic Society and an ambassador for the Alzheimer's Society.

The 2016 inquiry found that people find it too expensive to enforce their rights through the courts. Lord Wolfson, would you abolish tribunal fees for discrimination claims? That would counter the withdrawal of legal aid and the removal of the ability to claim back premiums for after-the-event insurance for discrimination claims. Would the Government extend qualified one-way costs shifting, QOCS, to cover discrimination claims?

Lord Wolfson: Good afternoon, and thank you for those two questions, which I will take in turn, if I may. First, I thank the committee for inviting me this afternoon. May I declare an interest, although perhaps it is a spousal interest? My wife sits as a tribunal judge. She does not sit in the employment tribunal—I will come to the employment tribunal in a moment—but in the social entitlement tribunal, which deals with a number of issues of disability. I thought it proper to mention that.

You have raised two separate issues. Perhaps I can deal with them separately. I appreciate that they both come under the umbrella of access to justice, which is one of the fundamental principles for the Ministry of Justice and indeed of the rule of law.

Let me deal first with fees. There is an underlying principle, which is that we run the Courts and Tribunals Service on the basis that those who use

it and can pay should pay. Otherwise, you find that people who could afford to pay are subsidised by the general taxpayer, which will include people on much lower earnings and with much lower levels of assets. The fees that are charged help to fund the system and therefore help to ensure access to justice.

The result of the UNISON case in the Supreme Court in July 2017 is that fees are no longer charged in the employment tribunal, because it was held that the Government had not struck the right balance in determining the fees for the employment tribunal. The present position is that no fees are charged in the employment tribunal, and that will include, of course, disability claims or disability-related claims in the employment tribunal. However, it is fair to say that in other tribunals the normal position still applies, which is that fees are charged for those who can afford to pay. For those who cannot afford it, there is help through the fees remission scheme. There are various criteria for that scheme. Indeed, those criteria are due to be reviewed and updated. We have had a recent public consultation on that.

It is also fair to point out that, since the UNISON judgment, receipts in the employment tribunal have risen. That includes disability discrimination complaints. For example, and without wishing to bombard the committee with statistics, in the quarter prior to the UNISON judgment, April to June 2017, 993 disability discrimination complaints were brought in the employment tribunal. In every quarter since then, the number of cases has been higher. That is the answer I would give on fees.

Should I go on to cost protection, Baroness Browning, before you come back?

Baroness Browning: Yes, please.

Lord Wolfson: Forgive me. I did not want to monopolise the time. Once lawyers start talking, we generally do not stop.

We are considering an extension of cost protection to discrimination claims. What we are dealing with is a mechanism that provides, essentially, that if the claimant loses, the claimant does not have to pay the defendant's costs. I am simplifying it, but that is essentially what we are talking about. This form of cost protection, which is not the only form of cost protection—you can have cost caps, for example—was originally developed specifically for personal injury claims as part of the Jackson and LASPO reforms. It has been used in personal injury claims since 2013.

The present position is this. In our post-implementation review of Part 2 of LASPO, we left open the possibility of an extension of QOCS, if I can call it that, because we were, and still are—I underline "still are"—actively considering whether to extend cost protection to discrimination claims. You may know that there was a judicial review on this point recently.

Baroness Browning: Yes.

Lord Wolfson: Essentially, if I may respectfully summarise the judgment, the court basically held that, because the matter was still under consideration, a judicial review based on the proposition that we had made a determination by not doing something failed. I accept that, at some point, not doing something will be taken to be a decision that we are not going to do it, but the present position—I really want to underline this—is that it is under active consideration, and we will set out our position in this area as soon as we can. Forgive me for taking a bit of time, but they were two important questions.

Baroness Browning: Thank you very much. On that last point, you said that it would be as soon as possible. Do you have any idea of the timeframe involved?

Lord Wolfson: I suspect that, as with many things, this will be well above the decision-making powers of a junior Minister like me. I will discuss it with the Lord Chancellor. I suspect that we will be able to give a much firmer indication of timing in our response to the committee's report. I hope the committee will find that helpful.

Q22 **Baroness Browning:** Finally, in the last Session of Parliament, there was a proposal before both Houses from the Lord Chancellor's Department to increase probate fees significantly. It went through the House and was then rescinded. In the arguments that were put to the House, certainly the House of Lords, it was suggested that the money that would be raised from what would have been quite considerable increases in probate fees would help to offset some of the costs that individuals faced, not necessarily when challenging discrimination on disability but when challenging government. Has the fact that that was rescinded—quite rightly, in my opinion—had any impact at all on your decision-making in this area?

Lord Wolfson: To the best of my knowledge, it has not. Can I take that away and write to the committee on that particular point? It is a point of quite subtle detail and I do not want to give an incorrect answer. I think the answer is no, but can I respond in writing on that?

Baroness Browning: Thank you very much.

Baroness Deech: Can you go on to Section 36, Baroness Browning?

Q23 **Baroness Browning:** Yes, this is a question for Mr Bell. We have heard quite a lot in evidence today about the ongoing difficulties of adjustments to common parts. Mr Bell, you will be familiar, I am quite sure, with the fact that, when the Government responded to our 2016 report, they said they were waiting to bring into force Section 36 of the Equality Act on common parts until they knew about the experience in Scotland. We have heard today that the Scottish provisions have been implemented, although they may be slightly different, but the section is still not in force. When will the provisions be commenced?

Marcus Bell: Thank you. I think Charles Ramsden will pick up this question.

Charles Ramsden: Thank you. That was the 2016 response. In the letter that Justine Greening, as Minister for Women and Equalities, wrote to the committee in December 2017, she said, "Government now intends to commence Section 36, subject to any parliamentary passage of any regulations", and that remains the case. Work is continuing towards firming up a commencement date.

It is actually quite complicated in a number of ways. I recognise the view that was taken in an earlier session this afternoon that the law is correct. It is not deficient in any way. None the less, its interactions with commonhold and leasehold law are quite complicated. It seems to have taken the Scottish Government about six or seven years, from an initial decision, to implement the parallel devolved Section 37 before they could actually commence that section in Scotland.

We are preparing a consultation, which we hope to issue soon, covering issues such as absentee landlords, sublets, service charges, facility grant applications, and a number of technical points on interaction with leasehold and commonhold law. We then need to consider whether any regulations have to be brought in before the implementation can be done. We are quite hopeful about progress at the moment, and would be looking to take further steps in the near future to get to the actual commencement.

Baroness Browning: Thank you. Are you anticipating any legal justifications for further reviews or testing on this?

Charles Ramsden: No. It is the technical issues of law that we are slogging our way through. We are not aware of any need for a further review or reassessment of the position.

Baroness Browning: Would you like to put some sort of timeframe on that?

Charles Ramsden: It is difficult. We are thinking in terms of a consultation paper pretty shortly that would pave the way for commencement not long after that.

Baroness Browning: I do not know that I am quite fixed on the calendar, but thank you.

Baroness Deech: This is all very familiar stuff. We were here five years ago, and in general our committee found it very upsetting, and not good for democracy, that there are sections of the Equality Act that held out so much promise for all sections of society, especially disabled people, that are still not in force after 11 years. They are sections that we have referred to this afternoon. That is very important to us in our review of what has been happening.

Q24 **Lord Faulkner of Worcester:** I should have declared earlier my

interests as a vice-president of the Level Playing Field charity, which Justin Tomlinson knows. I am the chair of the Great Western Railway advisory board and president of the Heritage Railway Association.

My question is about the PSED. We recommended that the Government replace the Equality Act 2010 specific duties regulations 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. Can one of our witnesses—I am not sure which one it would be—please explain what progress has been made and whether action plans are planned for this to happen?

Charles Ramsden: Would other witnesses like me to take this one?

Marcus Bell: Yes, please, Charles.

Charles Ramsden: Thank you. It would perhaps be helpful for the committee if I also picked up the public sector equality main duty, the primary legislative due regard duty, because I am conscious that the committee made recommendations about that at the primary legislative level, as well as the specific duties to which Lord Faulkner has just referred. Somewhat different considerations apply if you are talking about the main due regard duty or if you are talking about the specific duties.

A proposal to change the main due regard duty, whether to a more purposive duty or some other proposal, could affect at most about six or seven sections of the 2010 Act—six or seven sections in an Act of 218 sections. First, any such change—this would apply to the primary and the secondary duties—would require discussions with the Scottish and Welsh Governments. The public sector equality duty is in part devolved.

A key issue is that, by legislating at the primary level on the public sector equality duty, the Government could open up the whole Act to parliamentary amendment, or the rest of it. It is a very broad Act, as you know. Single-sex services, gender recognition as a protected characteristic, religion and belief, and many other things would all potentially be in scope. I think the Government would need to be pretty sure about what they wanted to get out of a review or a change before embarking on a decision to work on and revise legally the primary due regard duty.

To go back to Lord Hayward's review in 2013, the report noted: "It is clear, however, that there are divided views on the Duty—whether it should be removed, reduced, strengthened or even expanded to cover other characteristics and sectors. This debate is for another time". That to a degree has remained the position since the 2013 review. Those factors have all tended to stand in the way of a change to Section 149 of the Act.

As for the specific duties, some of those difficulties do not apply, and in particular they are amendable by secondary legislation. However, what sort of change should be made remains a significant issue. Obviously, the committee is concerned that the specific duties be changed in a particular way for local authorities, as opposed to other public bodies, and is keen

that those changes help disabled people particularly. The EHRC, for example, wants the specific duties restructured on a sectoral basis, perhaps rather than primarily on a protected characteristic or action plan basis. There are a number of differing feeds into this.

Lord Faulkner of Worcester: You presumably agree, Mr Ramsden, that the lack of action has not exactly been good news for disabled people.

Charles Ramsden: I am aware from the session this afternoon and the views of the committee that the public sector equality duty is lacking in a number of key respects. Certainly, as far as central government acknowledgement, recognition and compliance with the duty is concerned, we think it has made reasonable steps over the 10 years, and, indeed, earlier witnesses said that there had been improvements resulting from the duty.

As an immediate point, the equality hub in the Cabinet Office runs a cross-government public sector equality duty network for departments and regulators to raise the profile of the duty and share best practice, driving more effective use of data and evidence in policy-making. We extended that group to regulators following a report from the Women and Equalities Select Committee. Consideration of extending it to local government, and working on best practice in local government, is something we can certainly look at.

The specific duties were under consideration at the time, a bit more than a year ago, when we were all plunged into the Covid crisis. As earlier witnesses have noted, that was a particularly key issue and test for the public sector equality duty, and, at that point, reform work almost inevitably had to take a back seat to simply trying to ensure that government departments and other public bodies kept pace on the proper due regard of equality in taking really major and urgent decisions about healthcare and related issues.

Lord Faulkner of Worcester: Thank you.

Q25 **Baroness Deech:** We only have a minute or two left, so can I close by asking our three Ministers—we are very appreciative that they have come this afternoon—whether they think the situation for disabled people has improved or deteriorated in the five years since our report? Minister Tomlinson.

Justin Tomlinson MP: Thank you. As I set out earlier, I think it has improved. I still think there are many areas where, collectively, we all have to try to unlock opportunities and potential, and remove barriers within society. Whether you are looking at record disability employment, improved engagement to make sure that real lived experiences are embedded into policy development, and promoting the ability rather than the disability, I think that we as a society have made significant progress. As I said, I do not shy away from the remaining challenges. We will be setting out in the national strategy the Government's clear commitment to address those collectively.

Baroness Deech: Thank you. Baroness Vere?

Baroness Vere: Thank you. Yes, I think it has become significantly better. I understand that transport will always be a very difficult area, and there will always be cases where people will be disappointed until we have the time to sort them out. Trains and buses used not to be accessible, and now 99% of trains and buses are accessible.

Since 2016, we have been very focused on accessibility. In 2018, for example, we published our inclusive transport strategy, and we published progress reports in 2019 and 2020, since that report was originally published. We have also made very significant commitments to continue improving accessibility in buses and in rail. You will have seen in the national bus strategy, and in the Williams-Shapps plan for rail, big accessibility commitments backed up by funding, which we believe will make travel for disabled users more user-friendly in the future.

Baroness Deech: Thank you. Lord Wolfson?

Lord Wolfson: The focus of the courts, obviously, has always been on doing justice in individual cases. The overriding objective, as it is called, was actually amended to set out in terms that dealing with a case justly includes ensuring that parties can participate fully, and that parties and witnesses can give their best evidence.

Across the justice system, we have made a number of changes that will help a number of groups—including disabled witnesses and parties, but also vulnerable witnesses and parties—such as online hearings, evidence being recorded in advance and other changes. It is fair to say that the justice system is now more aware of and focused on the needs of different groups than perhaps it was previously. There is a lot of work to be done, especially as we rebuild out of the pandemic, and nobody is complacent at the MoJ, least of all me. I think it is fair to say that there are changes embedded in the justice system that will help a number of groups, and disabled parties and witnesses will be one of those groups.

Baroness Deech: Thank you all very much. That has been extremely informative. We really appreciate the fact that you have all made the time to come here this afternoon.

The Chair: May I reiterate on behalf of the Liaison Committee our gratitude to all three Ministers and officials for what has been a very valuable and illuminating 52 minutes? Thank you.