



HOUSE OF LORDS

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Inquiry on

EQUALITY ACT 2010 AND DISABILITY

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Heard in Public

Questions 1 - 13

TUESDAY 7 JULY 2015

3.30 pm

Witnesses: Charles M Ramsden, Pat Russell and Tracey Kerr

Members present

Baroness Deech (Chairman)
 Baroness Brinton
 Baroness Campbell of Surbiton
 Lord Faulkner of Worcester
 Lord Harrison
 Baroness Jenkin of Kennington
 Lord McColl of Dulwich
 Lord Northbrook
 Baroness Pitkeathley
 Baroness Thomas of Winchester
 Baroness Wilkins

Examination of Witnesses

Charles M Ramsden, Deputy Director, Equality Framework, Government Equalities Office, **Pat Russell**, Head of the Office for Disability Issues, Department for Work and Pensions, and **Tracey Kerr**, Head of Legal Advisers, Government Equalities Office, and

Q1 The Chairman: Good afternoon, Mr Ramsden, Ms Kerr and Ms Russell. I am sorry that you are so far away. Next week, we will try to rearrange things. I do hope that you will speak up, because some of us, on top of everything else, are hard of hearing, albeit that you are of course being recorded. I wave to you from here.

I will not go around the table introducing people because there are name tags, so I hope you will see who we all are. Welcome. Thank you very much for coming. The session is open to the public, and a webcast goes out live as an audio transmission and will be accessible subsequently on the parliamentary website. There will be a verbatim transcript of the evidence, which will also go on to the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. It would, of course, be helpful if you could tell us as quickly as possible if it needs correcting, because it will immediately go out to the members of the Committee.

If, after this evidence session, we run out of time, you wish to amplify points or there is anything extra you want to say, you are, of course, welcome to submit supplementary evidence to us. This is not the whole of the opportunity open to you; there will be more if you want to send in any supplementary evidence.

We have divided the questions among us, and I think you know what the questions are. As we ask them, we will also declare our interests. One member has so many relevant interests to declare that I hope you will allow us to put them on a piece of paper rather than spending a lot of time reading them all out, but we will be transparent about all the interests that we have around the table.

Would the three of you like to introduce yourselves briefly and tell us what your role is in relation to disability?

Charles M Ramsden: I am Charles Ramsden from the Government Equalities Office. My role is head of the equality framework team in the GEO. The team's role is in part the oversight of the 2010 Act. We then have a rather similar role for the remaining segments of the 2006 Equality Act and, along with that, a sponsorship responsibility for the Equality and Human Rights Commission. Finally, we are the GEO's liaison and front team for Parliament more

generally, co-ordinating the work on Oral Questions, Written Questions and a whole series of bits and pieces of parliamentary business. That is our scope.

Pat Russell: I am the director of the Office for Disability Issues. The ODI's principal role is to support the Minister for Disabled People in his cross-government role. We have four main functions. The first is to develop and monitor the cross-government disability strategy, currently the Fulfilling Potential strategy. The second is to co-ordinate the representation of UK interests in the UN convention. The third is to promote engagement with disabled people as part of routine policy and programme development and delivery. The fourth area is to promote actions and activities that remove the barriers that disabled people face. That includes challenging others to take account of the needs of disabled people and to involve them in matters that impact on them.

Tracey Kerr: My name is Tracey Kerr. I am deputy director of the Government Legal Department. I head up the team of lawyers who advise the Government Equalities Office. We advise it on the operation of the 2010 Equality Act and what remains of the Equality Act 2006. We have also advised and led on the Marriage (Same-Sex Couples) Act, the Civil Partnerships Act and the operation of the Equality and Human Rights Commission. We also lead a cross-government legal team on the public sector equality duty, and we deliver training and advice to other government department lawyers on the operation of the duty.

Q2 The Chairman: Listening to the three of you explaining all the different issues that you have to deal with, it makes one wonder the Equality Act has been a success for disabled people, along with all the other protected characteristic people under the Act. How does their position compare now with what it was under the Disability Discrimination Act 1995? What criteria do you use to make your judgment when you are comparing the position before and after the Equality Act?

Charles M Ramsden: I will respond first, if I may. It is obviously easier for us to see the position as it would have been for disabled people and for disability as a protected characteristic going into the Equality Act as it began its life than as what the position might be perceived to be in 2015. As you will be aware, we very recently published the government memorandum to the Women and Equalities Select Committee on the post-legislative scrutiny. That is largely a factual statement of what has been happening, rather than a subjective or survey-based document. The Equality Act as it was set out in 2010 and was implemented, largely in 2010 and then in 2011, was first and foremost a consolidating measure and intended as such to bring together a large number of pieces of existing primary and secondary legislation that had grown up over a period in the equality and diversity area. So in many ways the Act simply reflected earlier legislation. However, some of the exceptions involved disability. The provisions on disability included a number of changes and what were seen as improvements: a streamlined definition of "disabled" and "disability" without a list of capacities that had to be demonstrated; the creation of the prohibition of discrimination arising from disability to replace earlier protections that had been undermined in the courts; and a lower threshold of "substantial disadvantage" rather than "impossible" or "unreasonably difficult" for access to reasonable adjustments in goods, facilities and services.

Our perception is that under the Act as it was implemented, the position of disabled people was intended to be, and broadly was, strengthened compared both to the Disability Discrimination Act and, to some extent, to other groups whose legislation did not significantly change. It was really just a consolidation arrangement as far as they were concerned.

One further point is that throughout the 2010-15 period, the Equality and Human Rights Commission has been heavily involved with the Act, in part as a regulator, in part as an enforcer and in part as a guide to the legislation. Within the commission, once again there is a slight but perceptible leaning towards disability interests, given that the statutory Disability Committee has continued to exist in respect of disability as a characteristic. That is not echoed across any of the other characteristics. Under current arrangements and legislation, the committee will continue to operate until 2017. That was our perception of the situation as it was in 2010-11.

The Chairman: Mr Ramsden, I note that and I have read the memorandum. What I do not hear from you is a qualitative assessment. You have told us what the law is. I note at the back of the memorandum that many parts of the Equality Act have not been brought into force, which is rather worrying. I do not hear what criteria you might use to see whether the position of disabled people is actually better or worse.

Charles M Ramsden: In terms of their position under the Act, one criterion that we look at is the sort of litigation that has gone on. You mentioned that case law is set out in one of the sections of the memorandum. What sort of cases were these? Did they result in the changes in the law being required by the courts? Did anything within them that appears to be, or at any rate appeared to the courts and tribunals to be, a significant weakness? Also, how have disabled people's interests fared in the context of other characteristics? As the memorandum shows, the Government have not found it necessary, and indeed the courts have not found it necessary, to require changes to the provisions in the Act that involve disabled people.

In terms of the relationship with other groups within the Act, we are not conscious of disabled people being in what might be called conflict with the other groups. That is not the case for, say, religion and gender—or maybe religion and LGBT. Generally speaking, cases that concern disability have been considered in a fairly pure sense on disability-related issues. One possible exception that might be in the minds of the Committee is *Paulley v FirstGroup*, the case in which the Court of Appeal relatively recently ruled in favour of a mother with a buggy using space on a bus and against a disabled man in a wheelchair. That is the only case that we are aware of where there seems to be any kind of potential conflict or difficulty within the protected characteristics. Of course, at the moment, that case is under appeal to the Supreme Court, so who knows what the eventual outcome will be?¹

The Chairman: Can I invite Ms Russell and Ms Kerr to add to this? Has the legislation been a success?

Pat Russell: From the perspective of the Office for Disability Issues, our responsibilities are not directly about the implementation of the Act; rather, they are about taking the Government's disability strategy, rolling that out and seeing how it is performing. Our role is very much an enabling one that seeks to ensure that government departments, for example—if I can put it this way—do disability properly. Our role is to encourage and support other government departments in making sure that as they take policy making forward it is within the requirements of the Act and that they think about, for example,

¹ See however the written evidence of *FirstGroup plc*, paras 20-26, (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/20887.html>) and the supplementary written evidence of the Government Equalities Office (letter from Charles Ramsden, Deputy Director, Equality Framework Team, Government Equalities Office, to Baroness Deech, Chairman of the Committee (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/22168.html>)).

engaging disabled people in developing policy in partnership. We do not have a particular view on whether the Act is working for disabled people per se; rather, we are looking at fulfilling potential strategy and the provisions within it. We have an outcome framework that measures against some of the themes that disabled people told us were important as part of that strategy. If it would be helpful, I could go through that strategy in a bit more detail for Members if they are not familiar with it.

The Chairman: It would probably be better if it came up later or in written evidence.

Tracey Kerr: We have seen no great increase in cases relating to disability. There have been a number of cases on the reasonable adjustment, but that is to be expected, given that it is an objective test and it is usually for the courts to set that out. We have found that as the case law has developed it becomes clearer and clearer for people to understand what a reasonable adjustment might be in certain cases. So we think that that has been a successful development of case law.

In relation to the additional provisions for disability that were put into the Equality Act, the success that we have seen has been the introduction of Section 15 on the discrimination arising from a disability, which addressed a lacuna in the law that had been created by a previous case, the Malcolm case. We have seen no real case law on infringements of Section 60 on the restriction on making pre-employment inquiries about disability and health. We would see that as a success, too.

Q3 Baroness Campbell of Surbiton: My name is Lady Campbell. I am afraid that I am the one with the range of interests. I would like to explore with you current government policy, its key features and how it impacts on equality for disabled people, especially how it fits in with the Equality Act. I was interested when you said, Ms Russell, that you felt that you had very much an enabling role for government departments. I am sure that one of your main enabling roles is to make sure that the Minister conforms to the Act and to see how current government policy will impact on that. Perhaps you could tell me to begin with where the Equality Act fits in with current government policy. Then I will ask you to give a couple of examples. Perhaps we could start with you, Ms Russell.

Pat Russell: All government departments in developing policy have to take account of the public sector equality duty, and the GEO has published guidance to ensure that departments understand what that is. It is not the role of the Office for Disability Issues to police that. We expect government departments to do that appropriately and properly. So the support that we give to the Minister is to help him to have conversations with other departments about policy development and how it impacts on disabled people. One of the ways in which that happens is through stakeholders perhaps identifying their concerns and issues on policies that have been developed in other departments, and they might raise those conversations with him. We can then help him to have conversations with his opposite numbers; we can work with officials in other departments to explore where things may perhaps not be working as disabled people would expect that to work. There have been examples of that, which some Members may know. With the previous Minister for Disabled People, stakeholders were concerned about changes that were being made to the disabled students' allowance. We then had contact with the Department for Business, Innovation and Skills and have been working alongside it to ensure that stakeholders are properly engaged in a consultation process. One of the outcomes of that was a Joint Written Statement that the Minister for Disabled People and the Minister for Universities and Skills made in September last year. That was a tangible example of the way in which we support the Minister in operating at that level. There are other mechanisms by which the Minister will also talk to

his opposite numbers. The current Minister for Disabled People has made it very clear that he wants to be seen to be working jointly with other Ministers and has already had a number of bilateral meetings on some important issues that disabled people have raised with him. He has, for example, had a meeting with the Solicitor-General, and I know they talked about hate crime. That again is as a result of a conversation that the Minister had with a stakeholder. So there are a number of examples in which we give effect in that way.

There is another layer of activity of the Office for Disability Issues, which involves working directly with officials on cross-government groups or other structures. Work is going on with, for example, the Department for Communities and Local Government on a round-table discussion it held with professional organisations on the built environment. An action plan has been jointly sponsored by both departments, so that there is more—

Baroness Campbell of Surbiton: What if you felt that the Government were moving into the direction of maybe a breach in the Equality Act? Is that where you and Mr Ramsden will get together with Miss Kerr and say, “What can we do about this? Let us look at the current government policy—the proposed cap on access to work, for example, and the closure of the ILF, and how that is very much against development policy on halving the employment gap”. How do you work together as a team to reconcile that situation?

Pat Russell: In terms of individual policy areas, we very much expect individual departments to ensure that they meet the public sector equality duty. I certainly look to legal colleagues to explain how that is manifested through guidance and through the Treasury. We would certainly treat the Office for Disability Issues, for all that it is housed within the Department for Work and Pensions, as still being in some regard independent, and we would look to policy officials within the Department for Work and Pensions in a not dissimilar way to other policy officials.

Baroness Campbell of Surbiton: How would you work with Mr Ramsden on compliance?

Pat Russell: Well, we both have colleagues at our level and at working level, and I have regular meetings with the director as well to identify issues that we have in common. This is always an area where we can develop that, look at things that get raised particularly by stakeholders, and see where we can take that.

Lord McColl of Dulwich: Would it be fair to say that in assessing whether the Equality Act has been a success for disabled people, you seem to be concentrating on process—what people are doing? What about outcome?

Pat Russell: The Fulfilling Potential strategy has an outcomes framework attached to it. When we went through a two-year consultation process with disabled people to develop the strategy and published that, alongside that we also had conversations through a consultative approach on the things that disabled people felt were important that we measured and that were outcomes. They did not directly reflect the Equality Act; they were on themes that disabled people told us were important. That outcome framework was published in 2013, along with the Making it Happen policy. Last year, in 2014, we published the first annual update on that, which lists the measures that we have agreed with stakeholders are important to be measured. It is a long-term view, so we have some data. Obviously some of that evidence is drawn from just one year’s data, so we cannot say whether there are any trends or impacts, but it is a starting point that gives us a baseline against which we can measure whether there is progress against the themes that people have said are important.

Lord McColl of Dulwich: Could we have a copy of those outcomes?

Pat Russell: Yes, of course, we can make that available.

Q4 Baroness Thomas of Winchester: I looked at the outcomes on the web, and under “choice and control” it simply says, “Transform the care and support system, to promote well-being and independence”. But that does not sit very well with the closure of the ILF. I wonder whether that means anything. How are you going to monitor what the closure of the ILF means to disabled people? Are you going to talk to local authorities to see how they are fulfilling their part of the bargain, which is what disabled people are very worried about?

Pat Russell: The closure of the Independent Living Fund and the arrangements that are now being put in place are under the remit of the Department of Health, which will have responsibility for monitoring how local authorities are delivering against their new requirements. So that is not something that will appear as a result of the Fulfilling Potential strategy.

Baroness Campbell of Surbiton: So how does that fit in with your enabling cross-government responsibilities? Saying that that is not your responsibility does not sound very enabling.

Pat Russell: We are not a policing forum, we are—

Baroness Campbell of Surbiton: Enabling.

Pat Russell: Yes, so we cannot police and we have no powers to require other departments to do things. However, I can say that the Minister for Disabled People has already had a meeting with the Minister for Communities and Social Care and has raised this, and we can certainly get a response for you from the Department of Health on how it plans to do that. I am sure that when you call the Minister, which I understand you are doing in September, you will want to ask him how he is progressing.

The Chairman: We must move on now to Lord Harrison.

Q5 Lord Harrison: My name is Lyndon Harrison, and I have no relevant interest to declare. Could you tackle the question of the division of responsibilities between Ministers and government departments and, for that matter, the funding of what you do, which may well find itself split necessarily among a variety of departments because of the nature of the cross-cutting exercise? Does that hinder the implementation of the Act? Could you describe that? Are there turf wars between departments? If it is a blockage to a satisfactory design, what would your better template be?

Charles M Ramsden: Yes, certainly. In terms of the division of responsibilities, I had better describe our current structure in the Government Equalities Office, because I might have added that to my introduction. At present, we report to the Secretary of State for Education, Nicky Morgan, who is the senior Minister for Women and Equalities, but our junior Minister, Caroline Dinenage, has joint responsibilities in Education and the Ministry of Justice. Our spokesman in the Upper House is Baroness Williams, who is actually a Communities and Local Government Minister. This is a pattern with which the Government Equalities Office has become fairly familiar over the years—a number of splits of responsibility. At the more strategic level, it is probably helpful to have this type of approach, not least because it enables the Government Equalities Office to have a direct entry into a number of other Whitehall departments. At present they are Communities and Local Government, Justice and Education, but in the past the pattern has been somewhat different. This helps in a number of ways, one of which is what Ministers sometimes refer to as the mainstreaming of equalities consciousness in Whitehall. You quite often have difficulties if you have a small self-contained unit that is rather isolated, particularly a small unit in this area where, if you are not careful, it becomes seen as slightly self-obsessed and preachy, and other departments take the view, “That is fine for the GEO, but we have other priorities to think

about". We are quite well networked within government, which is helpful. We have on occasion contributed funding to other departmental programmes, most recently on bullying and harassment work being carried out through the Department for Education and the Home Office. Once again, over the years, there has been a pattern of the GEO being able to fund smallish programmes where other departments have not been able to do so.

Lord Harrison: I understand the defence of mainstreaming and the reasons for it, but perhaps I may ask your other two colleagues whether they can give some ready examples of where there have been infelicities but the ambition has been to work across departments or with different funding streams—or, indeed, in trying to develop policy where clashes of ideas necessarily emerge.

Pat Russell: There are a number of ways in which we give effect to that joint working. The first is the Inter-Departmental Ministerial Group on Disability. This was initiated last year, in 2014, and set up at the commission of the Prime Minister. It was headed up by the then Minister for Disabled People, Mike Penning, and subsequent Ministers for Disabled People have retained the chair of that group. It has 14 government departments represented on it and met three times last year. It is a vehicle by which Ministers can get together and identify areas of common interest where there is a need to get better co-ordination across government.

One of the strands of work that came out last year was on improving government communications and making them more accessible. There were elements of good practice going on and areas where stakeholders had, frankly, identified practice that was not good enough. So cross-government discussions continue about the issues and how to address them. That is an example of a genuine cross-government piece. The need for government departments to join up on policies for all sorts of stakeholders is well recognised, so there are a number of other areas where government departments with their Ministers will come together on projects. For example, in the arena of sport, there is the Moving More, Living More programme, on which Ministers from different departments are represented. And there is a range of other things. More recently, the Health and Social Care Implementation Taskforce has been set up, chaired by the Secretary of State for Health, which contains a range of Ministers from different departments. There is therefore recognition that that there are themes whereby it is important for departments actually to join up.

A third area and a third way in which the Office for Disability Issues promotes and enables some of this is through the functioning of the Disability Action Alliance. This new structure was set up as part of the Fulfilling Potential strategy. It encourages membership, and nearly 400 organisations are members. The Office for Disability Issues provides secretariat support, which encourages organisations to work together on things that are of interest to them, and a number of projects are running that have brought together interests that also cross different government departments.

Lord Harrison: One last try. When has it fallen flat on its face? Give an example. It must have done.

Pat Russell: Some things are harder than others.

Lord Harrison: What things are harder?

Pat Russell: We have interesting conversations with the Department for Communities and Local Government, for example on building regulations, where there are issues such as how far government should regulate and how far regulations should go. There is the Red Tape Challenge and how far people should be given judgment locally. That was an example where

we know that there are issues that stakeholders come to us about around housing design and the built environment, challenges around street scenes—

The Chairman: If you think of any more, you could write in and tell us. I have been quite worried about the Red Tape Challenge and whether carrying it out might not be so good for the disabled. However, we must move on.

Q6 Baroness Thomas of Winchester: I receive DLA, and I am a trustee of Muscular Dystrophy UK and a member of the MCC disability access committee at Lord's. I hope I have not forgotten anything, but if I have it is in the register. I do not know which of you to ask about reasonable adjustments, because it is such a thorny issue. What we really want to know is what the Government have done to ensure that the reasonable adjustment duties are applied in practice. We all know about the theory, but the question is whether they are applied in practice. Those of us who are disabled feel that a great deal is not being done in this area. How well do you think service providers and employers know what a reasonable adjustment is and what their duties are? I do not know which of you would like to start.

Charles M Ramsden: I am happy to start by referencing the Equality and Human Rights Commission, which obviously has a key role across the whole area, and I believe you are taking evidence from it shortly. The EHRC has published a range of guidance, including on workplace adjustments, matters to be taken into account on determining disability questions more generally and adjustments for disabled people. The commission has also published technical guidance for schools in the matter.

Another point on the EHRC is that in quite a number of the cases cited in the memorandum, as it happens—I am sure it is no coincidence—in the bulk of the disability-related cases, including those concerning reasonable adjustments, the commission is assisting the disabled party or in some way intervening in the case to try to ensure a favourable outcome where there have been difficulties over reasonable adjustments and cases have reached the court. As my legal colleague said earlier, the reasonable adjustment concept, imported from the DDA into the Equality Act, is now the best part of 20 years old and case law has built up consistently over a long period. This is helpful in preparing this sort of guidance, particularly on some of the more difficult issues such as anticipatory duties and what they might require in practice. We are aware, not least from Lord Blencathra's Private Member's Bill in your Lordships' House last year, of concerns about specifying some of the reasonable adjustments, particularly those on premises.

The Chairman: I am going to invite Lord Faulkner to jump in here, because his question relates rather specifically to that.

Q7 Lord Faulkner of Worcester: I am going to ask you about education. Before I do that, I should declare my interests, which I have declared to the Committee. These are all unpaid. I am president of a body called the Heritage Railway Association, which has to do with accessibility, and chairman of First Great Western Trains advisory board. I am vice-president of the Football Conference and vice-president of the charity Level Playing Field. I have a Private Member's Bill in front of the House next Friday on access for disabled people to sports grounds. I am also a trustee of the Science Museum and of the National Football Museum.

How do you think the education world is coping with reasonable adjustment? Do you feel that it is falling rather behind what people would expect of it?

Charles M Ramsden: I have some answers on this that are largely taken from colleagues in the Department for Education, so we will see whether I can respond in further depth. The Department for Education's view is that the number of disability discrimination claims to

First-tier Tribunals has been reasonably and fairly consistently low, year on year. It has cited a figure that I am happy to give the Committee, although I apologise because I do not have broader context for it, of 135 claims to the First-tier Tribunal in 2012-13. Obviously, it is difficult to say in isolation how significant that is, and we may need to back some of that up with a letter to the Committee later.

The Department for Education provides schools, including academies, with non-statutory advice to help them to understand how the Act affects them and how to fulfil duties under it. The new special educational needs and disability code of practice from September last year reinforces the Equality Act. DfE tells me that it is currently doing outreach work with voluntary organisations to ensure that schools understand their responsibilities towards children with special educational needs and disabilities. It also tells me that the Ofsted inspection framework requires inspectors to take into account the effectiveness of a school in meeting the needs of disabled pupils.

Lord Faulkner of Worcester: There was a seminar on 30 June at which concern was expressed that the obligations on schools had not been properly brought to the schools' attention. Perhaps that is the reason why the number of claims is relatively low: people do not know what they ought to be doing or what the rights of disabled pupils should be.

Charles M Ramsden: As I mentioned a few moments ago, we should write to the Committee about the claims, if the Committee would find it helpful. We will certainly take that point on board in doing so.

Lord McColl of Dulwich: Can I ask you what happened to the 135 claims? Were they successful?

Charles M Ramsden: We can cover all those points in the letter that we send to the Committee. I am afraid that this is not my area, although I gather that my legal colleague has something to add.

Tracey Kerr: As Mr Ramsden has pointed out, there is guidance published and available to schools—schools have been alerted to this guidance—on the operation of the Equality Act for schools. It sets out what a reasonable adjustment is and points back to the EHRC guidance on what reasonable adjustments mean for schools. There is also a requirement in the Act for both schools and local authorities to set out accessibility plans, so although schools are not subject to the reasonable adjustment duty as it relates to making alterations for physical features, they are required to set out an accessibility plan, which is their plan for making schools more accessible to disabled pupils. Ofsted is able to take that into account in its inspections.

The Chairman: That takes me neatly to Lord Northbrook.

Q8 Lord Northbrook: I have no relevant interest to declare. Is the law on reasonable adjustment sufficiently precise in view of the bit of case law that has built up? We have mentioned *Paulley against FirstGroup*, which I understand is going to the Supreme Court. There is also *Natalie Black v Arriva North East* and the *Secretary of State for Work and Pensions v MM*.

² See however the written evidence of FirstGroup plc, paras 20-26, (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/20887.html>) and the supplementary written evidence of the Government Equalities Office (letter from Charles Ramsden, Deputy Director, Equality Framework Team, Government Equalities Office, to Baroness Deech, Chairman of the Committee (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/22168.html>)).

Secondly, as has been mentioned, there are two Private Member's Bills in this House: Lord Blencathra's Bill on step-free access to public buildings and Lord Faulkner's Bill on greater accessibility to sports grounds.

Tracey Kerr: Perhaps I can answer that one—to some degree, anyway. The Arriva North-East case was going to be joined with the Paulley case, but Arriva decided not to take it any further, so it is relying on the Paulley decision in the Supreme Court to see how it develops in that area.²

On the MM case, I may have to pass over to my colleague. There might be an appeal, but I am not sure. In relation to other reasonable adjustment cases, we think it important that it is for the courts to decide what is reasonable based on the particular facts and the particular disabled person who is before them. What is reasonable to one disabled person may not be reasonable to another, so it is very difficult to set standard criteria or give a standard example of what is reasonable. For example, on wheelchair access, there are different types of wheelchairs and different types of disabilities. We think it is most appropriate—and quite unusual; it gives claimants quite a lot of power—for claimants to go to the courts to explain what is reasonable for them and for the courts to decide. As I said, the case law is developing.

The Chairman: Is that not a bit late? How long is it going to take for something to go to court? Surely you cannot expect a disabled person to go through the whole judicial procedure just to get that determination. It is too late.

Tracey Kerr: One would hope that the employer, the service provider or the school would be aware of the need to make sure that they were taking into account the issues and the person before them. Also, it is an anticipatory duty, so they should be building that into their thinking about how they are going to provide their services or deal with their employees.

Baroness Thomas of Winchester: One important matter in relation to buildings is Part M of the building regulations, which we all know like the back of our hands. But a lot of hotels seem not to be following Part M particularly well, and they are not being pulled up by the building inspector, because a lot of building inspectors have not been employed by local authorities because local authorities are now very strapped for cash. What are the government offices doing about making sure that Part M of the building regulations is being followed by, say, new-build hotels?

Pat Russell: On the specifics of whether an individual building going through the planning process is for local authorities to pick up, we would certainly expect people locally to be challenging local authorities. If the Committee wishes to get further advice from the Department for Communities and Local Government on how it supports that, we can certainly give that.

Baroness Thomas of Winchester: How it is enforced is what we want to know.

Pat Russell: We can certainly get advice, and I guess the Committee can decide whether it wants to call officials from that department to give further evidence.

On the broad range of reasonable adjustments that members of the Committee have alluded to, this again goes back to the enabling role of the Office for Disability Issues, so while it is important that the law works effectively, there is also a big education piece to be done in this space. There are a number of projects and initiatives which the Office for Disability Issues is party to that seek to create some of that knowledge. Among them is the Accessible Britain Challenge, which was launched last year by the then Minister for Disabled People, which was very much about challenging communities, local authorities and businesses to demonstrate and celebrate where there had been greater inclusivity and

accessibility. That culminated in an awards process, and awards were given out in March this year. Disabled people were involved right the way through that process on the design of the awards, the judging panel and the awards themselves. There is the Disability Confident campaign, which the Department for Work and Pensions runs, which is very much about seeking to promote to employers the fact that there is a rich pool of workers among disabled people but also that reasonable adjustment need not be the scary thing that a lot of people seem to think it is and that in many cases reasonable adjustment pays for itself many times over. That campaign is being run by and is supported by disability stakeholders and organisations both large and small. That is rolling out across the country. We have a lot of organisations locally championing this in local areas. We are running the Accessible Stadia project with the Department for Media, Culture and Sport. In that project we surveyed disabled people and, indeed, organisations: football grounds, rugby grounds, cricket grounds.

The Chairman: I shall have to cut you off there. Perhaps you can write to us about that, because it is more factual stuff.

Baroness Wilkins: I am in receipt of DLA and I do not think that I now have any other interests to declare. Just to follow up on that, what you have been talking about is educational campaigns, which is what we had before we had the DDA and the Equality Act. The Act is supposed to be enforcing things, not educating the public. Where is the enforcement?

Charles M Ramsden: Yes, indeed. We have referred to the Equality and Human Rights Commission. I am obviously aware that there are concerns about the EHRC's functions. The commission, though, retains all the enforcement functions that it was originally given in the 2006 Act, so it can still assess compliance with the public sector equality duty, carry out investigations, issue unlawful act notices, require the production of action plans and assist people in taking cases to court. I mentioned that clearly from the way the key legal cases crop up in the memorandum, these are responsibilities which the EHRC takes very seriously. Clearly there is a difficulty, given the observations that one or two Committee members have made about it—that it is too late by that time because it has reached court. The nub of the issue, and the extremely difficult thing, is trying to get some kind of handle on enforcement at the very earliest stage, before there has been any kind of dispute. Clearly that is the \$64,000 question and the element that is invariably the most difficult to solve.

I am being prompted on Part M of the building regulations and separate enforcement legislation for that. I am sure that that is the case and that it may be useful, but, as I say, once again this is, I suspect, about trying to get right to the very earliest stage of enforcement and dealing with it there.

Baroness Campbell of Surbiton: I think it is very important to get to enforcement, but I am very concerned that you seem to be emphasising the Disability Confident programme on employment when there is an organisation, the employers' forum, which has been doing this for 10 years. Disability Confident is its work. Why are we reinventing the wheel when there is already an organisation that is doing really good work and when you could be doing the enforcement practices on employers who are Disability Confident but still do not undertake the reasonable adjustments so that employees can come to work every day? It seems that we are spending a lot of time on the various campaigns that already exist and not enough time enforcing the Equality Act. Can you tell me why you are doing the Disability Confident programme? It is already being done.

Pat Russell: The function in terms of the DWP's responsibilities rather than the Office for Disability Issues', if I can make that distinction, was, as I described earlier, very much about the DWP's role in helping people who are out of work to get back into work, and therefore it is about their relationship with employers and supporting that process. It has been determined that part of that process is about education.

On the work that you have already referred to, I believe and understand that colleagues are working alongside the Business Disability Forum, so the department is not seeking to replicate that work but to support it. It is not the department's policy responsibility to look at enforcement. As Mr Ramsden has explained, that enforcement function sits elsewhere.

Baroness Wilkins: As part of the Red Tape Challenge, as you have already mentioned, there was a review of the public sector equality duty. What has been the effect of that review? Has it been damaging, as it seems to have been? I was going to bring up the issue of housing.

The Chairman: Could I ask Lady Brinton to put her question now, too? It is more specific, but it is on the same topic, and I think it would help our witnesses.

Q9 Baroness Brinton: I should declare my interest first—I have a blue badge. I think that that is the only thing that I need to declare for this item. How have the Government applied the public sector equality duty to financial decisions affecting disabled people, and are they able to assess the cumulative impact of such decisions, particularly in the light of the EHRC's report in 2010 recommending that the Treasury, among other departments, do that assessment?

Charles M Ramsden: First, to take the question about the review of the public sector equality duty, it reported in the late summer of 2013. In terms of the actual review and to some extent its recommendations, this exercise tried to focus on a number of different issues—the effectiveness of the PSED, if I can use that jargon, and what was seen as overcompliance. Quite a number of its recommendations were attempts to scale back what was seen as overcompliance. This has been something that we have taken into account in our work with government departments and others in the past 18 months or so. However, at the same time we have also been extremely conscious that how the courts have interpreted compliance with the duty has sometimes been rather different and much more substantive. We tried to put this into a balanced product towards the end of the last Parliament. We at the Government Equalities Office issued revised guidance to government departments in September 2014 and then reissued it in the run-up to the election. It is intended to be a complete set of guidance for government departments on how to apply the duty in a proportionate and sensible way, very much with an eye to not being taken to court and not having to waste money in revising processes and starting again, or whatever, and basically getting the decisions right in the first place. We were careful to ensure that lessons that had been learnt from the Bracking case and others involving disability interests were prominent in that guidance.

On the financial side, the concerns of the EHRC that were mentioned were taken forward in what was initially and inevitably a somewhat difficult process with the Treasury, in 2011, 2012, or thereabouts. I am pleased to say that the Treasury has worked extensively and at length with the EHRC and others on the financial side of government decision-making and the PSED since then. Agreement on a lot of the approach and methodology has been reached to the extent that, at one point towards the end of the last Parliament, the Treasury at ministerial level reminded departments of the importance of having due regard to the duty when taking spending decisions. So that went around Whitehall at a very senior level.

Baroness Brinton: Much is being heralded about the Budget tomorrow, and obviously we do not know what is going to be in it specifically. Mention has been made of the ILF, the bedroom tax and a whole string of things. Is there somewhere at the moment where we can see a Treasury assessment of the cumulative impact on disabled people of all those changes?

Charles M Ramsden: I know that the Treasury will be very mindful of the interests of disabled people and the public sector equality duty when going into the Budget and the spending review. My understanding is that one of the remaining points of difference is that the Treasury does not accept the scope for doing cumulative impacts across government, partly because of the amount of control that spending departments have over financial allocations in practice and because of modelling limitations associated with benefits paid to households rather than individuals. Although agreement on that important area and one or two other points has not been reached finally, none the less there has been a good deal of discussion and agreement between the commission and the Treasury on the central government approach to these very wide programmes.

Q10 Baroness Jenkin of Kennington: I have no interests to declare. Could I ask about the provisions on taxi accessibility? You will know the background to this and how the provisions replaced the provisions in the DDA, which were never brought into force. The previous Government said that they would be brought into force before April 2011, but they have still not been. We would like to hear what the plans are in this phase.

Charles M Ramsden: I am aware that these are long outstanding in the sense of being unimplemented since the DDA provisions. I am afraid that I do not have very much to offer the Committee on this issue. I am aware that they were part of the equalities Red Tape Challenge in 2012. I am certainly not aware of any plans to commence them. I suspect that if this is an issue that the Committee wishes to pursue further, it would be best done directly with the Department of Transport, which has an oversight role for that particular part of the Equality Act. It would certainly be through that department that decisions would be made about commencement on taxis.

The Chairman: We will, but I want to express my concern that there are so many parts of the Equality Act which the Government have enacted and the public believe are in force that are not in force. That is quite inexplicable.

Q11 Baroness Pitkeathley: I am Jill Pitkeathley, and the only interest to declare is that I am vice-president of Carers UK. I would like two sentences from each of you in answer to my two questions, starting with Miss Russell—and please note that I am asking for your opinion about this. How effective has the Equality and Human Rights Commission been in promoting and enforcing compliance with the Equality Act? We have mentioned the EHRC a lot this afternoon. How effective has it been, and is it better or worse since the changes in its duties and responsibilities? Could you start, Miss Russell—and, please note, one sentence in answer to each of those questions.

Pat Russell: I am not clear—you asked for an opinion, but I do not have a personal opinion on this. In terms of how the ODI operates with the EHRC, we do a lot of work with it and support it in some of its work. Where we operate on that basis, we have found it to be helpful and effective and we expect to carry on working with it in that way.

Baroness Pitkeathley: Has there been any effect since the changes?

Pat Russell: I was not working on this subject area before the changes, but certainly the advice that I have been given by colleagues is that we cannot point either to improvements or to deteriorations. Some of it is often down to individuals and individual areas of interest.

Tracey Kerr: In the important pieces of litigation that we have seen, it is very common for the EHRC to intervene in that case. One of its strategic aims in intervening is to encourage enforcement and development of the Equality Act. We have certainly seen that; the EHRC has pushed that strongly. In the Bracking case, for example, it raised its concerns that the UN Convention on the Rights of Persons with Disabilities was not being applied or implemented properly. It has been very effective in some of the high-profile pieces of litigation. We have also worked with it in the past when it was developing its codes of practice on the Equality Act. It is clear that it takes that very seriously. When we have had differences of opinion, it has been very clear about its opinion and made it clear that just because we have a different opinion, that does not mean that it will change its opinion—it is very strong in that sense. Since the changes made by the Enterprise and Regulatory Reform Bill or Enterprise and Regulatory Reform Act some time ago, it is fair to say that it has been looking at its strategic approach, which has included developing its legal strategy. I have a working relationship with its legal director and we meet from time to time to discuss issues as they arise.

Charles M Ramsden: In response to the first question, I would say that it has been reasonably effective, given the limitation that it has always had as a body—for various reasons, it has only been able to concentrate on strategic cases and not to spread its activities throughout the courts and tribunal system.

On the second question, there have been two developments, which I think are both favourable. It has become more focused since the reforms, in our view. It does fewer things—its span of powers has been reduced but, as I mentioned, the enforcement areas remain, and I think that it has been more focused on those. The other point I would like to raise is that it has become more business-friendly and more able to interact with employer and service-provider groups and it is taken much more seriously by those groups than might have been the case a few years ago. That is good for trying to get more into the first stage of enforcement, as we were talking about.

Q12 Lord McColl of Dulwich: I think this question has been answered quite a bit already but, specifically, is reliance on individual litigation an effective means of enforcing compliance with the Equality Act?

Tracey Kerr: It is difficult to see how else one can enforce rights that fall on individuals. As Mr Ramsden set out, the EHRC has powers to assist individuals to bring claims, financially and otherwise. It can also intervene in claims that have already been made. It has the ability to conduct investigations if it thinks that employers, service providers or others are acting unlawfully in relation to the Equality Act and can issue unlawful act notices. So there is a two-pronged attack. The EHRC also takes a more strategic approach. I would hope that for example it would look to see where there are a lot of cases that involve a particular issue, which might mean that it starts to conduct an investigation into that area. At the same time, if it sees a particularly important case or it becomes aware of a particularly important issue for an individual, it can assist them with that. It is two-pronged in that sense. As I said, given that rights are available to individuals, I cannot see how else compliance could easily be enforced other than through the methods provided in the 2006 and 2010 Acts.

Lord McColl of Dulwich: Do we have any figures on how effective the EHRC is? How many cases has it dealt with and how effective has it been in those?

Tracey Kerr: I think you would have to ask the EHRC. I do not hold that information.

Charles M Ramsden: Yes, it will have those figures, not least because from time to time we ask it how many times it has intervened using certain powers.

Lord McColl of Dulwich: Could we have that information?

Charles M Ramsden: Yes, we can certainly supply that. Obviously, it is going to give evidence, too.

The Chairman: What about the impact of the cuts in legal aid? I have seen some figures showing a dramatic drop in the number of cases brought by individuals. That must surely be due to the cuts in legal aid. Have you noticed anything?

Charles M Ramsden: Our consciousness is that the changes in the statistics, which are set out to some extent in the memorandum, more generally involve concerns expressed to the Government about the imposition of fees for employment tribunals rather than changes to legal aid. I am not sure that I have a lot to say on the legal aid changes. Obviously, in respect of fees, the Government have recently announced a review of employment tribunal fees, which is expected to report later this year.

The Chairman: Proportionately, does the EHRC not have fewer resources at its disposal for the disabled than the Disability Rights Commission had 10 years previously? Can the EHRC devote as much time and resources to the disabled sector as was the case before the Equality Act 2010?

Charles M Ramsden: The answer to that question is rather overlaid by the fact that we are dealing with a number of different changes at the same time. Obviously, as you say, there was the change in the structure, but there have also been changes to the EHRC's budgets, as well of course as the whole background to the 2010-15 Parliament and so on, so I find it difficult to give an answer to that question.

Q13 The Chairman: Now we are coming towards the end, and there are two themes that seem to have come up. I have not formed a very clear impression of the quality of the impact of all this on the disabled, although I feel better informed about the law. I do not know whether the rest of the Committee agrees with me. I also wondered about the cross-government role to which you have made many references. For example, how often do your two offices meet? In your concluding remarks, could you tell us again very briefly about quality and how often you meet? Maybe today is the first time you have all come together—I do not know.

Tracey Kerr: I cannot comment on quality. As a lawyer we only measure the fallout in terms of what cases we are successful in and what cases we are not, so on that front we are successful in some and not successful in others, and you will know as well as I which ones those are. As for legal advice on equality to government, my team and I advise the Government Equalities Office, but I also chair the discrimination lawyers' working group, which has representatives of legal advisers to each government department sitting on it. We meet quarterly and also email each other fairly regularly as well. The aim of that meeting is to take a strategic, cross-government approach to legal advice on the Equality Act. With cross-cutting legislation, it is expected that all government lawyers will be able to advise themselves on that legislation—the Human Rights Act, the Freedom of Information Act and so on. They should hold that knowledge themselves and be able to advise their own Ministers in whichever government department they work. But when there are issues arising that are cross cutting and where there is no clear agreement about how that should be argued, we are frequently contacted by those government department lawyers to discuss the correct interpretation of the Equality Act. So from that respect, at a legal level I would say that there is good connection between each of the government legal advisers.

Pat Russell: On the level of contact, in factual terms, Mr Ramsden and I have met once previously in the last six months to have a face-to-face conversation, and I have also met the director of the Government Equalities Office similarly to talk about where the strategic

direction is. Officials in both organisations are in regular contact, which is not dissimilar to how lawyers speak to each other, as my colleague described, when issues come up in daily business. So it is very much the case that the two bits of the organisation work together. The Office for Disability Issues points to all the other departments that we have spoken to, which is our day-to-day bread and butter activity.

Charles M Ramsden: On the quality point, I acknowledge again that the memorandum is largely a factual account of what has been happening over the past five years. I agree that not much quality assessment comes through there. There are a couple of points. First, we are dealing with legislation that, although it is only five or six years old, spans three different Governments, which makes some of the quality assessments rather more difficult. Secondly—and this picks up interestingly on a response to an early question—where the shifting around of departments has not been terribly helpful is in not having a Select Committee in this area, holding hearings on this subject, for a number of years. Obviously, we now have such a Select Committee in the Commons, as well as your Lordships' Committee. That may be a way in which Parliament can consider the quality issues.

As one final plug for the EHRC, I mention that later this year a publication—its second major review of the area—called *Is Britain Fairer?*, is due to be published. That is intended to go into a good many areas that a memorandum could not do.

The Chairman: Thank you very much for your time, the three of you. There were various places where we encouraged you to send in more written evidence or you offered to do so, so we look forward to hearing more from you. I thank all of you very much indeed and wish you good luck in the very important work that you do.