HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the Equality Act 2010 and Disability

Inquiry on

EQUALITY ACT 2010 AND DISABILITY

Evidence Session No. 2 *Heard in Public* *Questions 14 - 26*

TUESDAY 14 JULY 2015

3.30 pm

Witnesses: Fazilet Hadi and Liz Sayce

Members present

Baroness Deech (Chairman)
Baroness Brinton
Baroness Browning
Lord Faulkner of Worcester
Lord Foster of Bishop Auckland
Lord Harrison
Baroness Jenkin of Kennington
Lord McColl of Dulwich
Lord Northbrook
Baroness Pitkeathley
Baroness Thomas of Winchester

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Baroness Wilkins

Examination of Witnesses

Fazilet Hadi, Managing Director RNIB Engagement, Royal National Institute of Blind People, and **Liz Sayce**, Chief Executive, Disability Rights UK

Q14 The Chairman: Good afternoon and welcome, Ms Sayce and Ms Hadi. Thank you very much for coming. We are very pleased to have you. Before we get going with the questions, as you know this session is open to the public and a webcast of the session goes out live as an audio transmission and is subsequently accessible via the parliamentary website, so you can see and hear yourself, if you are so minded, in a couple of days' time. A verbatim transcript will be taken of the evidence. You will be sent a copy of it a few days after this session and you can check it and advise us of any corrections that you feel should be made as quickly as possible, please.

If we do not get through everything, if you find at the end that there is more that you would like to tell us, please write in to clarify or amplify anything or to add any points that you made in your evidence. Our time here is rather limited and you might find you do not have a chance to say everything that you want to. We do not have very much time. Also we may well be interrupted. If a bell goes, our Members will be going off to vote and I am afraid that breaks up our session by about 10 valuable minutes, so you will have to bear with us if that happens. That is why I am very much hoping that you will be as concise as possible in your answers. We really want to hear your opinion and your evidence about what is happening and not happening, but we do not need to hear about the law and so on because we have other people who supply us with all that. We want your personal experiences and opinions on what has been going on in relation to disability and the Equality Act.

I think we should go round the table for the sake of Ms Hadi, not to mention Ms Sayce, and just say who we are so you can hear our voices. I am the Chairman and I am Ruth Deech. On your left, Lord Northbrook, just say who you are.

Lord Northbrook: Lord Northbrook, Conservative Peer, House of Lords.

Baroness Wilkins: Rosalie Wilkins, Labour Peer.

Lord McColl of Dulwich: Ian McColl, Conservative.

Baroness Thomas of Winchester: Celia Thomas, Liberal Democrat.

Baroness Brinton: Sal Brinton, Liberal Democrat.
Lord Faulkner of Worcester: Richard Faulkner, Labour Peer.
Lord Foster of Bishop Auckland: Derek Foster, Labour Peer.
Baroness Browning: Angela Browning, Conservative Peer.
Baroness Jenkin of Kennington: Anne Jenkin, Conservative Peer.
Baroness Pitkeathley: Jill Pitkeathley, Labour Peer.
The Chairman: As our Members put questions to you, they will start by mentioning any interests they have that are relevant. Some of them do not have any interests, as it were, but if they do they will mention interests that are relevant to this inquiry, so we all know where we are coming from. Do you have a very brief opening statement about your position, either or both of you, before we get going on the questions? Is there any opening brief statement you would like to make?
Fazilet Hadi: Could I say a few words?
The Chairman: Please.
Fazilet Hadi: I have been blind, maybe not as severely blind as I am today, since I was about nine and I think that there has been a real cultural shift in this country in attitudes to people with disability. I know it is not perfect, but if I talk to people from other countries I always feel very privileged. My feeling is that the Disability Discrimination Act in the mid-1990s played a real part in supporting that cultural change and promotion of better public understanding and more positive attitudes. I think that the Equality Act again helped to cement that change. I know it is not necessarily the purpose of Acts, but I think they have an influence, so I am personally very positively disposed to our legislation on equality.
My main comments, which I will come on to in more detail later, would be that I do not think the Act is taken seriously enough by institutions, particularly central and local government and others, but I would single out government. Finally, I do think there are some real problems and challenges in expecting an Act of this sort to be enforced by Joe Bloggs in the street. I think we need to find some other ways of making the Act real.
The Chairman: That is very interesting. For the sake of the recording, I am mentioning that you are director of engagement at the Royal National Institute of Blind People, the RNIB.
Liz Sayce: In the 1990s, I was involved in mental health advocacy policy. I was policy director of Mind. I was very involved in promoting the benefits of the then Disability Discrimination Act in the mental health sector, because people with mental health issues had faced such severe discrimination, and I then joined the Disability Rights Commission. During those early days there was real hope and a sense of a number of progressive changes that were being made quite regularly: a law that did not just give redress after the event, that said you have to treat people differently in order to get equal outcomes through adjustments; then the public sector equality duty; then the definition of who was covered being expanded and more, and more things covered, such as education. I think there was real hope, including to some degree in the mental health sector, where perhaps people traditionally did not think of themselves as disabled people.
But I think it has become a bit more difficult. Some of those progressive changes moved into the Equality Act—for example, employers are not normally permitted to ask questions about disability or health at the point before job offer. There was a real campaign where groups came together in a fantastic way, such as Macmillan Cancer Support, the National AIDS Trust, Rethink Mental Illness, and pan-disability organisations such as mine. But the sense of this is moving in a positive direction seems to have slightly stalled. I meet a lot of people who say, "Yes, but what use is the Equality Act really?"— not that it is not, but it could be better

promoted and used more systemically, as Fazilet said, not just left to the individuals to pursue things, more leadership and engagement of disabled people to make sure that the public sector equality duty really works well. So I sense that perhaps the hope attached to it is not quite as strong as it was, and I would be very keen to explore further what might remedy that.

Q15 The Chairman: Again, for the sake of the recording, I just mention that you are chief executive of Disability Rights UK.

You have both almost answered the first question that I am going to put to you. You may want to add a bit to it, but I have a sense from both of you. Has the Equality Act 2010 been a success for disabled people? How does the position under the Act of those you represent and work with compare with their position under the Disability Discrimination Act 1995? I have already sensed something not quite so good from Ms Sayce but a sense of optimism from Ms Hadi.

Fazilet Hadi: From our point of view, the Equality Act did not change significantly what was in the Disability Discrimination Act. I know there were some technical changes, but really it carried on as is. The purpose of the Equality Act was to bring lots of things together. We have been left with the positive provisions of the Act, but as Liz was just saying, some of the challenges around making it real have continued and—we will come on to this a bit later—maybe with the added complexity of dilution alongside lots of issues.

The Chairman: Yes, the rolling in of all the characteristics together. Ms Sayce?

Liz Sayce: I think that at the level of individual access to justice there have been some real challenges. I am sure you are familiar with the Low commission, which is looking at the gap in advice services generally, including in relation to the Equality Act, in many parts of the country. There has also been some impact from the changes in legal aid. We have an information line at Disability Rights UK and we hear from people who are facing real unfairness and discrimination. It seems like discrimination at work or in goods and services, but actually people are finding it very difficult to exercise their rights. More positively, the more people know about their rights the more they know that you do not always have to go to court or a tribunal, and I think the word has spread: "What is an adjustment at work? What could I ask for?".

I think awareness is higher among disabled people than it was, say, a decade ago and among some employers, but there is always the challenge that small and medium-sized enterprises, which is often where the job growth is coming and which are often really important to people in their local communities as providers of goods and services, are less familiar not just with the law but with what good practice is and what they can do, which will be in their interests as well because it will get them good-quality people.

One final thing is that I think we need a sort of revived high-level commitment to the public sector equality duty and to the principle of systemic change, not just reliance on individual redress.

The Chairman: One of you made the interesting suggestion that the man and woman in the street need to know more about this. How could that be achieved?

Fazilet Hadi: I think the man and woman in the street might have a sense about fairness, and, as I say, that might have increased in all sorts of issues, including disability—a sense that injustice needs to be got rid of. The provisions of the Act are quite technical and complex and not that straightforward, so concepts such as reasonable adjustments are not straightforward to explain. We can get across that people have a measure of protection

against unfairness, but it is quite hard to make people conversant with the actual detailed provisions of the Act.

Q16 Baroness Pitkeathley: I want to declare that I am vice-president of Carers UK. I want to ask you something very specific about something else that might be quite difficult to explain—the protected characteristics. What do you think has been the effect of disability being one of those protected characteristics?

Liz Sayce: In principle it seems a good thing, because people are not segmented. You are a disabled person and a woman and you may be from a minority ethnic community and so on. An holistic approach seems to make sense. It says something about what kind of society Britain wants to be. The difficulty comes when some employers and service providers extrapolate from what they were used to with race and gender legislation, which is that you just treat everybody the same. They extrapolate from that to disability, where actually with disability you might need to make a workplace adjustment. In that sense, disability is not completely different; you might need to do positive things in race and gender as well. We probably do not have time to go into that.

The other thing is that increasingly we find that employers and service providers put on training on equalities, for example, and it might just be half a day. They might in any given year decide, "We are focusing our equalities work this year on reducing the gender pay gap, let us say, so this year it is not disability". When you had a more specific focus on disability, it was slightly easier to discuss the need for that disability-specific attention. There are some fantastic employers and service providers who are doing it really well, but I think some are just covering equalities in a very generic way and are not exploring what they need to do to be inclusive on disability, which would be beneficial to them as well to disabled people.

Fazilet Hadi: I agree with Liz. Rationally we all think that you cannot just, as Liz said, tackle all these things in different buckets. "Let us join them up and let us make it easier for employers, business, government to look across". That is rational, but emotionally it is quite interesting. I was just thinking that as a disabled person I could identify with the DDA, the Disability Rights Commission. In a way I find it more challenging now with the Equality Act and the Equality and Human Rights Commission, because it is so generic.

I also agree with Liz about that kind of dilution of, "We have to work across all these nine areas, so we will give them each a dob". The public sector duty is suddenly so broad that the question is whether it is meaningful when you look across the nine. The same is true of the codes of practice when you look across the nine. It is all very rational and it is all very tidy, but does it really make people emotionally own the issue and the need for change?

Baroness Pitkeathley: Might the very genericism that was sought in the Act be disadvantageous to people with disabilities?

Fazilet Hadi: I think so, in terms of the focus and the impetus that Liz was talking about. Have we lost that drive and that energy? I think that is partly due to putting it all in one bucket neatly. Do not get me wrong, I understand why that was wanted, but one of the consequences has been a kind of stalling of the energy around the need for change on disability.

Q17 Lord Foster of Bishop Auckland: Does the government policy on disability support the implementation of the Equality Act? Can you think of any additional action that you would like to see the Government take to improve implementation?

Fazilet Hadi: I know this is a very sad thing to say, but I think that we have seen better implementation of the Act from the banks, the utilities, the John Lewis-es, the private sector, than we have ever seen from central or local government. That is a bit of an indictment,

given this is government legislation. I say that because in 2015 there are still government departments that do not have proper mechanisms for giving blind and partially sighted people and other people with disabilities information in accessible formats. This is not rocket science. They should have been doing it since 1999 and they are still not doing it. We have inaccessible websites, inaccessible streetscapes, inaccessible services, and government really should be leading the way. They should be role models for this stuff and they are not. There are countless examples of government departments that still send me bits of paper that I cannot read—the NHS does it as well—and so it goes on.

I think this goes back to other point about the Act: is it really speaking to institutions and making institutional change, or is it just there so that the person in the street, with no resources, no money, feeling quite powerless, is meant to enforce it?

Liz Sayce: I think there is something about the narrative of different Governments. I have noticed a trend—and this may be partly to do with successive Governments' commitment to welfare reform and austerity and so on—for a strong commitment to look after people who are vulnerable, but I think what is being lost in that kind of narrative is a commitment not only to offer social protection to people who may face the biggest barriers and disadvantages but to promote equality of participation for people whatever their experience of disability. People with very significant impairments can and do do all sorts of things with their lives with the right support, but there may be people who may not be classified as vulnerable but for whom a few adjustments make all the difference and they can successfully raise a family, go to work or go to college or whatever. I think that has got a bit lost in the debate about protecting people who are vulnerable, which is obviously a well-intentioned strand of debate but we are slightly over-depicting disabled people as vulnerable people who need looking after, and we have moved away from the idea that for disabled people to have real independent living, some support is often needed. It is not something that you can just do on your own, but we have to get those adjustments and supports right and then people can really participate. It makes economic and social sense, because people are not isolated and so on. There is something about the narrative.

Leading on from that, I think it would be good to have stronger and clearer cross-government leadership on these issues. There are some real opportunities at the moment. We have a Government right now who are committed to halving the disability employment gap, for example, and maybe some of that could be framed in relation to equality. Things like the public sector equality duty are tools to help that happen, but I do not see the equality frame being used all that much, and I think it would be really useful if it was.

The Chairman: We are very aware of the different silos that the government departments seem to work in.

Lord Foster of Bishop Auckland: Do you think that any amendment to the Act is necessary, or is it is all about implementation?

Fazilet Hadi: One of my colleagues made the point to me today that you do not really know what amendments are needed, partly because there has been so little test case law around the Act, but I suppose I would make a point about the lack of clarity on whether digital TV is covered—coming back to some of the issues we are concerned about at the RNIB. When I get my Virgin TV or my Sky TV, is it a service, is it a manufactured good? Should I have to worry about that? We do not know whether that is covered by the Act or not. Washing machines, dishwashers, tumble dryers, microwaves are definitely not covered; they are goods and we feel they should be covered. We feel they could be designed inclusively. Digital has moved on now so that it is not even that expensive to design a washing machine

with a readout that you can look at or a voice you can hear, or a smart meter or whatever. Goods are definitely not covered by the Act.

The other thing that needs changing is that we need to get a bit more imaginative about the implementation enforcement provisions of the Act and, as I said earlier, not leave it to the person on the street to carry the weight of changing and testing the law. We need to find other mechanisms.

The Chairman: This ties in with the cuts in legal aid and the greater hardship for those who want to go to a court or tribunal, does it not?

Baroness Thomas of Winchester: Just before we leave Ms Hadi's reply, do we know why there have been so few test cases?

Fazilet Hadi: I do not know. Even though the Act is there, it may be partly because individuals do not come forward in huge numbers. The funding for those cases might be questionable and there might be complexity in what is covered and not covered, but I am probably not the right expert on that question.

Liz Sayce: We will send in a written submission. We want to consult our members over the summer on this question of potential amendment to the Act, but I will just mention a couple of things that we are concerned about. One is that under the Red Tape Challenge there was an intention to take away the power of tribunals to make an order for systemic change. There have been a number of cases where that has been really important. For example, there was a woman who had panic attacks and lost her job, but she also overheard really discriminatory and nasty things being said about her. The tribunal ordered that not only should she have some compensation but, very importantly to her, that there should be training on disability equality for the HR staff and the key managers.

If we want this law to be a real engine of change, we do not want to hamper it. There is a theme in some of the things I am saying, which is that the systemic aspects of this legislation are very important, otherwise you just get an individual who may or may not get some redress, but it does not change anything else, and that is not the best use of public money in terms of the tribunal system. That is one area.

Another area is transparency about employment levels. This is something that I know employers grapple with: how do they know how many disabled people they employ, and so on? A 10-minute rule Bill was introduced recently that advocated that kind of transparency but only for larger organisations, a bit like what is done on gender pay gap issues. We think that is really important, because if you are trying to get real change, say on employment, and you do not know your baseline position, how do you know if you are making any progress? If we can create cultures where people feel comfortable about being open, they understand why they are being asked those questions and they feel that if they are open perhaps adjustments will be made for them, that could have a transformative effect. We need to do some more work on the detail of amendments and what that would mean.

Q18 Baroness Browning: I am Angela Browning. I am vice-president of the National Autistic Society and a patron of Research Autism and Action Against Elder Abuse.

Could I ask you about the comment you have made about individuals approaching the commission to see if test cases can be brought forward? My experience has been that if you go with an individual case, unless they can immediately see that it has a wide read-across, they do not take any notice. As two people who represent charities, can you explain why the charitable sector, charities, do not cluster together to put the sort of pressure on them that would give them that critical mass to encourage them to take cases to the court? It happens with judicial review. I wonder why it does not happen with the commission.

Fazilet Hadi: We recently asked blind and partially sighted people what experience they had of getting accessible information from the Department for Work and Pensions, and without a lot of trouble we had around 50 cases and are now up to about 90. We could have taken individual cases or referred it to the commission, but going back to Liz's point, what we really wanted was systemic change in the Department for Work and Pensions. Those 50 people and their cases enabled us to open up a conversation, a discussion, with the Department for Work and Pensions about changing things across the board—what could be done within their systems for changing things. We could have won individual cases ourselves, as you say, or gone to the Equality and Human Rights Commission, but that individual case would not have necessarily resulted in a root and branch sort of review of what the systems were. That probably does not fully answer your question, but I suppose it just shows that sometimes it is not the individual case that is the big issue; it is the way that institution is not building equality into its systems.

Q19 Lord McColl of Dulwich: Has the failure to bring provisions on taxis and adjustments to common parts of buildings into force had an impact on those you represent and work with?

Liz Sayce: Can I respond on taxis in particular? Those of us who operate in London—and it is not perfect in London—get a slightly overly positive view of taxi accessibility, because there is a fleet of accessible black taxis, black cabs, at least in principle. I know there are still issues with that sometimes with driver behaviour and so on. In some parts of the country there is an absolute lack of accessible vehicles. Over time, disability groups have campaigned for stronger regulation and at least requirements that say that a mini cab company has to have some accessible vehicles, even if you do not go as far as to say that every vehicle has to be fully accessible but that they have to be able to provide a service to people with access requirements, remembering here that we are talking not only about wheelchair access, hugely significant though that is. We have some vehicles out and about in taxi fleets that have hearing loops, good grab rails and so on, that are accessible for people with a whole range of different impairments. It is not working in some parts of the country.

Fazilet Hadi: Your question has made us want to go back and ask our own members about common parts. We do not know the answer to that question and we need to find out whether that is a big issue.

On taxis for blind and partially sighted people, the Act already covers being able to take guide dogs and assistance dogs. Fifteen, 16 years later we still find prosecutions and people being denied taxis, but that is already in force.

Lord McColl of Dulwich: I was rather surprised to find that if we are talking about access to, say, a block of flats or something, a landlord is not obliged to put in a ramp, and in fact they may make the disabled person pay for it. I do not know if you have come across that.

Fazilet Hadi: I am sorry, I have not.

Liz Sayce: Yes, we have come across examples of that. There is a wider debate, because the other thing we come across sometimes is new developments that are still not accessible, which is a separate point. I do not have data to hand or examples. We will look into it with our members as well and can get back to you, but, yes, we have come across it. I agree with you.

The Chairman: Is it not really a question of there being so many million people—I have forgotten the number—who are impaired either permanently or temporarily, that it is only common sense for every area of society just to take that as mainstream? Is that not it?

Liz Sayce: Particularly with an ageing society. There are more and more people living with impairments, many of them acquired, and to create inclusive communities just makes sense.

Then everyone can participate. People can go to college, can go to work, and if they are older they are not isolated and can be grandparents and so on.

The Chairman: Any one of us could break a leg tomorrow, or whatever, even without thinking of ourselves as disabled permanently. Yes, quite. I take your point.

Q20 Baroness Thomas of Winchester: We come to reasonable adjustments. I should say that I receive DLA. I am a trustee and vice-president of Muscular Dystrophy UK and various other organisations—I do not know whether I need to go into all of them—the MCC Disability Access Committee particularly. In your experience are the reasonable adjustment duties applied in practice? What measures have been shown to promote compliance with the duties? Are the failures to apply duties due to any particular barriers? If you have any examples it would be very helpful to have them.

Liz Sayce: Talking about adjustments in the workplace, I think the best employers—and there are some that have adopted very good practice—do not ask first, "Is this reasonable?" They say, "What is the adjustment a person says will enable them to work at their best?" and they just do it if it is straightforward and they try to do it fast. That is transformative, because conversely if you start a new job and the adjustment is not in place—and we hear from people in this situation all the time—you have the anxieties of being in a new job and you cannot perform because maybe you are waiting for your accessible software or for a desk that you can actually sit at or whatever, or you are waiting for the transport to be in place. Sadly, that happens all too often.

The first thing is that we do know something about what good practice is and it does not overly focus on reasonableness, although of course if it comes to something that is really tricky or very expensive, you do have to start thinking, "Is this reasonable or not?". So I think that we know something about what good practice is. Unfortunately there are still too many examples of employers not knowing what to do, being nervous, not having advice to hand. One thing that would make more difference than anything else would be free advice for employers at the point when they hit the issue, not like a generic disability campaign—and I am not knocking it—to let you know in theory how important it is to employ disabled people. What the employer needs is, "Well, now I have Mary in front of me. She has bipolar disorder and she wants this, and I do not have the faintest idea what to do. I have never encountered this before", and so on. I think that would make an absolutely massive difference.

Baroness Thomas of Winchester: Who ought to provide this advice?

Liz Sayce: In relation to small and medium sized enterprises particularly, I think Government have a role and indeed Government are taking some steps towards that with their Fit for Work service, but I am not sure how expert that is on workplace adjustments. Big companies should be able to find those things themselves, put them in place themselves, join organisations for money that will provide that. There was another point but it has slipped my mind. I will come back to it.

The Chairman: What about the disabled charities themselves? Could they not provide this advice?

Liz Sayce: Yes, and we do do that. In Disability Rights UK, for example, we have done a number of things. At the moment we have a career development programme run by and for disabled people, which is enabling both the disabled person and their company to know how to enable them to progress in their careers, because some people get stuck below their potential. We also offer training and consultancy advice and so on, and we are not the only ones. Other people do that. It is just that it is a bit patchy, I would say. Australia, by contrast,

has a free helpline for both employees and employers, and they have thousands of webpages of all the different adjustments and what they could be. We do not have anything like that here.

The other thing I was going to say was that we recently undertook a study for the Cabinet Office on the experience of civil servants. It was particularly about whether disabled civil servants progress in their careers. We found that while there was some very good practice, and the Civil Service does employ quite a lot of disabled people, there were some real barriers to career progression that were about adjustments not being put in place in a timely way. In the Civil Service you have to move from job to job in order to progress, but you could not move from job to job because this job had managed to make your adjustments and you could not get the adjustment in the next job. We heard that again and again and again. This report is published on the Cabinet Office website if you want to look at it. There were a number of issues like that. There were also issues in the performance management system whereby if people did not get the adjustments they did not perform as well, and that knocked them back and so on. I think the Civil Service is taking those findings very seriously and trying to do something about it.

The Chairman: We would be interested in seeing that report. Also, if you have a link to the Australian system, it would be of great value if you could send that in later on.

Baroness Thomas of Winchester: Before we get on to Ms Hadi, is the mental health support service provided by Remploy Employment Services in the Access to Work programme working satisfactorily under the heading of reasonable adjustments, as far as you know?

Liz Sayce: I think it has helped in the sense that Access to Work used to have something like 1% of people using it having a mental health condition, whereas a huge proportion of people on benefits or wanting to move into work have mental health problems. Access to Work overall serves only 35,000 people per year, and people with mental health problems are a very small proportion of them, whereas there are 6 million disabled people of working age and significant numbers of those have mental health issues. So it is the tip of the iceberg, I would say. More needs to be done.

Fazilet Hadi: I benefit every day from reasonable adjustments, from the audio announcement on the train on my way to work, the personal assistance I get from the railways or the aeroplane companies, from lift buttons that are in Braille or lifts that talk, from the fact my bank sends me a statement in a format I can read. It is all good, but—and this goes back to the point Liz and I have been making about systemic institutional responsibility—there is an anticipatory duty in the Act. Going back to the point the Chairman just made, we are a society that includes 12 million disabled people. Get over it. That is how it is, and you should plan for it: plan for it when you are designing your services, designing your goods, delivering your information and designing the streetscape. Why is the anticipatory duty not taken seriously?

As an individual I should not have to find personal redress. Institutions should be taking it seriously by providing me with the information in the format I want it in, designing the service so that all disabled people have an equal chance at it, or the employment, and making sure that they buy the right IT, the right building. You do not purposely get IT that only some people can use, and you do not build streetscapes where blind people do not know where the kerbs are or wheelchair users cannot get around easily. Reasonable adjustment is great, but it should not all have to be about advice to individuals; it should be about what we can do as a society to make institutions that have the resources to spend

those resources in an inclusive way that builds in reasonable adjustment from the beginning so that we do not need things retrofitted at the end.

The Chairman: Yes, that is very clear.

Baroness Wilkins: May I ask for views on the new housing standards and the fact that Government have made it optional on local authorities, and that developers will have to prove a need in order to build the equivalents of wheelchair and lifetime home standards?

Liz Sayce: We have worked with the Habinteg Housing Association and others to say that we think that these provisions need to be strong and should not be watered down.

Baroness Wilkins: Anticipatory duty.

Liz Sayce: Exactly. It just makes sense, does it not, for new homes and housing developments to adhere to lifetime home standards. It also makes life simpler for everybody. People do not have to move so often, and if you acquire impairments you do not need to move later. So, yes, I think that is a retrograde step.

Q21 Lord Northbrook: Francis Northbrook. No relevant interests to declare. Do disabled people know their rights under the reasonable adjustment duties? Can you give examples of where the law on reasonable adjustment is or is not sufficiently clear? From my perusal, there seem to be about three cases. First, the DWP has had its knuckles rapped for failing to take reasonable steps for claimants with mental health problems assessing eligibility for the DSA. The other two cases, which I understand are under appeal, are about the rights of wheelchairs on buses as compared to pushchairs.

Liz Sayce: On the question of awareness, the proportion of disabled people who knew that there was a law that protected them used to be tracked, and I would need to check that out. I am not sure whether it is still tracked, but perhaps we could look into that. Every day more people are having accidents, being diagnosed with MS, acquiring hearing loss and so on, so there are always newly disabled people, and I think it would be fair to say that many of them do not know their rights. It is a constant challenge. We would like people working in the health service, in social care, people who are in direct contact with people when they acquire that impairment, just to signpost them quickly and give them the decent information. They do not have to be experts themselves but just to give all that good information and let them know where they can get more advice.

In terms of the clarity of the reasonable adjustment provisions, I know that employers sometimes say, "Well, yes, but how do we know what is reasonable? It is very confusing. It is a confusing concept", but I think the concept of reasonableness is quite useful, because you simply cannot expect the same of the corner shop as you do of BT. What is reasonable for one company is completely not reasonable for the next, and I think the law rightly takes that into account. It means that it is not quite so crystal clear for the employer as saying, "You just have to do this", but it means they have to think about what they can do, given the nature of their service and their budgets and so on, and I think that is no bad thing.

Lord Northbrook: We have two Private Members' Bills before the House, one to improve step-free access to public buildings and Richard Faulkner's Bill to make provision for greater accessibility to sports grounds.

Fazilet Hadi: I agree that reasonable adjustment is a great concept. As Liz says, what is reasonable now might not have been 10 years ago. I was just thinking that we have recently worked with and challenged banks to make their cash machines talk, and when it got down to it, because of the way digital has moved on, for most of them it was a software upgrade. It was not like ripping out the machine and putting in a new one, so of course that becomes reasonable. Maybe 10, 20 years ago it would not have been reasonable because they would

not have been able to do it. So the concepts changes, and as Liz said that then makes it harder for all these people who are becoming disabled, and some of us who have been disabled for a long time, to interpret what it means for us. We have a sense that there is some fairness and some law, but the detail—what is reasonable, what is a substantial disadvantage—is all quite complicated.

What is also quite complicated is if my GP is communicating with me by letter, not by email or text or something that I can read or listen to, I do not feel that I want to challenge him or her. They are in charge of my health, I have a relationship with them. Do I really want to be sitting there going, "Right, give me this in a format I can read", or to be talking to someone about my medical, so I think there are issues, even if the public person in the street could understand it, with the extent to which emotionally they are ready to insist on their rights.

Q22 Baroness Thomas of Winchester: How effective has the public sector equality duty been in advancing equality in public services affecting disabled people, and can you give examples of good practice and poor practice?

Liz Sayce: Since the Disability Discrimination Act first brought in the disability equality duty, there have been quite a few examples of public sector organisations that have used it really positively. I have brought with me—I can email a link to this—something from before the Equality Act. It is called *Lights, Camera, Action* and it includes quite a lot of examples, such as universities that have taken proactive steps in looking at the proportion of their students who are disabled and doing something to increase those numbers and achieving that, or health services looking at why people with, say, learning difficulties do not live as long as other people and doing something about that. We have quite a lot of examples of people using it well.

We have recently published some work on inclusive communities, and some local authorities, with their partners, have used the public sector equality duty alongside other drivers for example to look at how they can increase economic growth in their area by enabling more disabled people to be economically active or how they can improve health and well-being using the public sector equality duty. We have had examples such as local authorities working with young disabled people to improve health and well-being opportunities for young disabled people. So there are examples out there.

The one slight regret I have is that, first of all, the disability equality duty was actually a bit clearer. It was about engagement and evidence and then action and review and so on, and that engagement piece is so crucial. All the best examples of use of the public sector equality duty involve a lot of engagement. Secondly, the public sector equality duty seems to have been less promoted, and this goes back to what I was saying earlier. In a way the argument was that by reducing some of the paperwork and not having to have schemes and so on, it would be used more and would not be a burden and so on. I do not have systematic data on this, but my sense is that that has not really been the case, that if anything the public sector equality duty may be less heavily promoted. Also, because organisations can say, "I will select an outcome", we go back to, "This year we are selecting gender".

Baroness Thomas of Winchester: You do not think it has anything to do with the Red Tape Challenge?

Liz Sayce: I think the Red Tape Challenge has been unfortunate in terms of narrative. We had cross-party agreement on disability equality going back to the 1995 Act and a strong commitment to promoting disability equality and equality more broadly, and suddenly the Equality Act was positioned as something that was going to be burdensome. That just did

not give the right message. Of course you want to make sure that things are not too bureaucratic, but it was just unfortunate that that got a lot of attention in the media.

Fazilet Hadi: I am going to be a little more negative than Liz and say that our experience is that institutions do not really implement it. We think it is a great tool and we would not want to lose it, but we think there is a bit too much lip service. We do not believe that we could point to an example of where an authority or business has changed what they were going to do as a result of looking at it, but maybe we are just bit jaundiced and Liz has better examples. We do not feel that it is really biting, I suppose.

Q23 Baroness Brinton: How well do you think the Government take account of the public sector equality duty in major financial decisions such as the recent Budget? I will just put that into context. Last week I asked officials if the Treasury took a view of the cumulative impact of some cuts, and I was told that they did not believe that an assessment of the full cumulative impact was possible.

Liz Sayce: I believe the Equality and Human Rights Commission said that it thinks that an assessment of cumulative impact is possible, so I think that is an interesting debate. There have been a number of decisions where the impact on disability equality has not been sufficiently analysed. I would take one example as well as the Budget, which is the proposal to make changes to disabled students allowance. We and others supplied evidence that showed that the disabled students allowance both encourages disabled people to go to university and, very importantly, prevents dropout. You waste public money if people start degrees and then drop out. I am very glad to say that those arguments have been listened to and that there is now consultation rather than just jumping to the decision, but sometimes there is not enough analysis of the impact at an early enough stage.

On the Budget, we are worried about potential perverse incentives. For example, on the reduction in the benefit levels from 2017 for people in the work-related activity group on ESA, as far as I can understand if you are an existing person and are still protected on the higher level, you try work and it does not work out after a certain amount of time, you then go back to a lower level. That creates a disincentive to trying work.

There are issues like that that really need to be bottomed out, and there are a number of things in the Budget. Obviously some things have been protected such as PIP and DLA, which is good, but the WRAG ESA thing could have a very significant impact on disabled people, as well as some of the changes on tax credits.

Fazilet Hadi: I agree with Liz. Equality assessments on some level are probably done, but they are not robust enough, and because we still think of budgets in particular silos or buckets, government struggles to look at the overall picture, never mind the equality picture. If you cut in health, what does that mean for social care, and if you cut in social care, what does that mean for something else? So I think that government does struggle with joining the dots in these issues.

Q24 Baroness Jenkin of Kennington: Anne Jenkin. No interests to declare. How effective do you feel the Equality and Human Rights Commission has been in promoting and enforcing compliance with the Equality Act? Can you give examples of where you think they have been particularly effective or where their performance could improve?

Liz Sayce: At times they have been good at creating a debate, a narrative. As an example, they did a very good piece of work on social care called *From Safety Net to Springboard*, that asked what the purpose of social care is. It is not just to look after you. Say you have a learning difficulty and you have somebody, a buddy or whoever, who can go out with you, then you go out and do things. If you do not have that, you cannot. I thought that was very

good. They have sometimes brought a lot of evidence together and used that to influence, such as in their Hidden in Plain Sight formal inquiry into disability-related hostility, harassment and hate crime. Obviously we have the comparison of the Disability Rights Commission, so I should probably declare an interest because I used to work for it, but I think that had more focus on working with the range of stakeholders. For example, when the Disability Rights Commission produced codes of practice, it would bring in the teachers unions and the parents organisations and come up with a code of practice that had ownership and was then disseminated and distributed. It worked with the Federation of Small Businesses and all sorts of people.

As a stakeholder in the Equality and Human Rights Commission, I do not see that kind of engagement. The budget has gone down, the engagement has gone down, and although there are some examples of good initiatives I do not see evidence of a kind of systemic approach to really moving forward on disability equality that is strong enough. There are some good pieces of work, but they are slightly isolated.

Fazilet Hadi: I agree with all that. I think their role in test cases is important, although I cannot give you an example. We also think that they could widen that to supporting people in the lower courts as well, because that is a way of enforcing the Act. One of our thoughts was on whether, as well as codes of practices, or instead of them, the Equality and Human Rights Commission could be given a strengthened role for setting standards in particular sectors or industries. Just last month in June we saw NHS England agreeing a mandatory standard on access to information and saying to all NHS bodies in England, "You will implement this by next summer". Of course we could say that the Disability Discrimination Act provisions on accessible information have been in force since 1999, but health bodies could say, "We do not know what that means. What does it mean for us in health?". Now NHS England has set those standards. There is no wriggle room. That is what it means. Get on and implement them. I wonder if we could look at ways that EHRC could extend that standard-setting role to other sectors.

Baroness Jenkin of Kennington: You said that the level of engagement had gone down. How would you describe your organisation's relationships with the commission, and do you find that they are responsive to the concerns of your own charities, disabled people's organisations and others in the sectors?

Liz Sayce: There is engagement. When the Equality and Human Rights Commission first started I think it was very concerned, which I understand, to reach out to the wider British public and not to be overly involved with the disability groups, the BME groups, the lesbian and gay groups or whatever. They did not want to be seen as a lobby group; they wanted to be there for the whole of society. To my mind, I think the pendulum has swung a bit too far. For a while we felt that there were no real mechanisms for involvement. There are some. For example, tomorrow there is an event looking at how fair is Britain and their triennial review. They have some fantastic people working in the EHRC and on their board and so on on disability issues who deserve great credit, but sometimes they do not have quite the depth of knowledge across all disability issues.

Just to give you one example, in the last triennial review they set as an ambition closing the employment gap on disability when their own data showed that the pay gap was a massive issue. It was as though they were not being very ambitious. For women, you wanted careers; for disabled people, any old job is probably all right, never mind if it is on minimum wage. I am paraphrasing but it came across like that.

Fazilet Hadi: I am sure their role has changed hugely, because they have had to refocus and they have a different budget than they had years ago, but I suppose my observation would be that I personally as a director of a disability charity have very little contact. I am not saying that as a critical thing. It may be, as Liz says, that their strategy has changed, that their relationships have changed, but when the Disability Rights Commission was around I would go there regularly, we would talk to them regularly, and so on. None of that is a criticism, because roles change and it might have justifiably changed.

Q25 Lord Faulkner of Worcester: I want to ask about enforcement mechanisms and the access that disabled people have under the Act. My declared interests are all unpaid, but they are relevant in that I am a vice-president of the organisation Level Playing Field and I have public and heritage transport interests, and on Friday I am promoting the Private Member's Bill, which Lord Northbrook referred to, on disabled access to sports grounds. My question is this: have you found that the fact that disabled people now effectively have to bring individual actions to prove discrimination has led to a substantial decline in the number of cases that are being considered? What do you think should be done about that?

Fazilet Hadi: I do not know if things have changed, but there are certainly the points that we made earlier about the complexity of the law, so it is quite a challenge for people to get their heads round the law. If it is about goods and services they possibly have to take it through the small claims process, which is not completely straightforward for an individual, which again can pose some accessibility problems. The costs of both employment cases and goods and services cases could be a barrier. I made the point earlier that a lot of people still tend to say that it is the principle of it, that it is just wrong, but if they get the redress for their own personal situation it does not mean that that institution changes it for everyone. So case by case, individual by individual, might not be the way to really embed equality into the system, into the institution.

There is no ability at the moment to bring any sort of class action. If the RNIB knew that 90 blind people were prejudiced by some new shared space scheme somewhere, we could not step in. It would be great if we could, but we cannot. Sometimes we take cases to the ombudsman when the small claims court seems just too onerous for people, and we find that their expertise on these discrimination issues is not always as good as it should be. So another thought, in addition to the small claims process, is whether the ombudsman could be given some sort of discrimination remit.

The Chairman: Which ombudsman is this?

Fazilet Hadi: I do not mind which one you give it to. It could be local government when it is to do with local government. It could be the financial ombudsman when it is relevant, but they should actually feel that discrimination is part of their remit and employ experts.

The Chairman: Perhaps we need a disabled ombudsman, a disabled champion.

Fazilet Hadi: Yes, a disabled or equality ombudsman.

Lord Faulkner of Worcester: It sounds like a good recommendation already, Lord Chairman.

Q26 Baroness Browning: Could you say a few words about people who lack capacity? I know that assessing capacity has to be based on an individual instance, but it does seem to me that within the disability population there will be quite a large number of people who would just not have the capacity to exercise their rights under the Act. I will leave it as general as that. How do you assess their ability to access their rights?

Lord Faulkner of Worcester: Can I ask as a supplementary to that very important question whether the changes in legal aid arrangements and the fact that those charges have gone up has meant that a number of people feel that this is now beyond their means?

Liz Sayce: On that last question, there has been a huge reduction in the number of cases going to employment tribunals, for example, which seems to be to do with them having to pay the upfront fee. We talk to people on our phone lines all the time who feel that it is beyond them to do anything about their very difficult situation at work. In relation to goods and services, there has always been an issue about, say, going to a restaurant and getting treated badly. Ultimately a lot of people simply go to another restaurant. It is not quite as life changing as if your job is threatened – but it still matters to huge numbers of disabled people. There has been less case law and so on on goods and services, and I think that is an issue.

To come back to your point about mental capacity, I think this is hugely important. Again, there are some things that you can do through more systemic things like formal inquiries. The Disability Rights Commission did a piece of work looking at health inequalities experienced by people with learning disabilities and by people with mental health issues, and some of those individuals lacked capacity to make decisions and were getting very bad physical healthcare. It was not reliant on the individuals taking a case; it was done through an inquiry, albeit with every effort made to enable people to have a voice, which, under the Mental Capacity Act, is what you should do. That is one way.

I think that advocacy is really important to enable people where possible to voice that something is not fair or to voice discontent if they can, even if they are not able to completely absorb the nature of the legislation and so on—a bit like what has been done in the criminal justice system, where lots of efforts have been made to enable people to give evidence rather than saying, "You are not a reliable witness. We will just forget it", which is kind of what used to happen. I think there is an issue that people who lack capacity do not have sufficient access to justice in relation to their rights. I think we need advocacy and systemic approaches such as inquiries.

Fazilet Hadi: To add to that, your question has made me think not technically about not having the capacity but about 90% of people losing their sight in retirement age. A lot of them are over 75, and a lot of them over 85. Are we really suggesting that they trot down to the small claims court? Of course you have mental capacity issues, which are very real, but you have issues about how real a lot of people's genuine capacity, energy level or whatever you like to call it is to actually implement their rights themselves in the way we are talking about.

The Chairman: Good point, yes. I think that brings us to the end. I remind you that there is more material that you mentioned you might send in to us—I was particularly interested in the mention of Australia—and anything else that you can think of would be very welcome. Thank you for giving us such interesting and helpful evidence. We all wish you well in your campaigning work and the support that you give to others, which is so valuable. Thank you very much indeed, and I hope you will read our report in an accessible form next March.