



Revised transcript of evidence taken before

The Select Committee on the Equality Act 2010 and Disability

Inquiry on

THE EQUALITY ACT 2010 AND DISABILITY

Evidence Session No. 4

Heard in Public

Questions 43 - 51

TUESDAY 8 SEPTEMBER 2015

3.55 pm

Witnesses: Rachel Crasnow QC, Lucy Scott-Moncrieff CBE, Barbara Cohen and Douglas Johnson

Members present

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

Examination of Witnesses

Rachel Crasnow QC, Bar Council, **Lucy Scott-Moncrieff CBE**, Law Society, **Barbara Cohen**, Discrimination Law Association, and **Douglas Johnson**, Law Centres Network

Q43 The Chairman: Good afternoon to our witnesses. I am sorry that we have kept you waiting for a brief while. We are very pleased to see you and thank you for taking time out from your busy jobs to come and give us the evidence that we really need from you.

I ought to remind you that this session is open to the public. A webcast of the session goes out live as an audio transmission and is subsequently accessible on the parliamentary website. A verbatim transcript will be taken of the evidence and will also be put on the parliamentary website. A few days after this session you will be sent a copy of the transcript to check it for accuracy. We would be very grateful if you could advise us of any corrections as quickly as possible so that we can get all of that on the website too.

We are rather short of time, so I appeal to you to be as brief and concise as you can. You do not all have to answer every question. When you feel, as you undoubtedly will, that there is something you have not had time to tell us or that you wish to clarify, please do send in supplementary evidence after this session. For the next few weeks we are open to taking anything extra from you that you would like to send in that you do not have time to tell us about now.

Could I ask each of you to introduce yourselves very briefly and we will then move on to the first question?

Rachel Crasnow: Hello. I am Rachel Crasnow, speaking this afternoon on behalf of the Bar Council. I have a short opening statement that I would like to make, if that is all right with you.

The Chairman: I hope it is very short.

Rachel Crasnow: We are delighted to have the opportunity this afternoon to give evidence on this very important issue. The Bar Council represents 15,000 barristers in England and Wales and has a number of key functions, including the promotion of the interests of its members and ensuring a high standard of representation and advisory services. We have long played a key role in serving the public by evaluating the administration of justice and ensuring fair access to legal remedies for all in our legal system. The Bar Council has long engaged with Parliament on legislation and other issues which impact on the administration

of justice. In recent years these have included issues from legal aid and vulnerable witnesses, to the future of our relationship with the EU.

Barristers are specialists and independent advocates. They enable the public to uphold their legal rights and duties. We frequently act on behalf of the most vulnerable members of the public. As a pool of professionals from increasingly diverse backgrounds, we do make a significant contribution to the efficient operation of criminal and civil courts.

Our chief concern for your assessment of the Equality Act is that, unless that legislation is fit for purpose, it cannot provide an accessible means of individual enforcement; otherwise, the expansion of rights that we have seen intending to provide those with protected characteristics will have achieved nothing. The rights that have been consolidated and enlarged by the Equality Act make it all the more important that the individuals affected do have access to specialist legal representation.

Today we are concerned that access, both to that representation and to the forum that is intended to uphold disability rights, is impeded chiefly by funding obstacles. We welcome the opportunity to have some input into your report, which we hope will go to addressing these concerns. I will say more later in answer to your questions, but thank you again for the opportunity.

Lucy Scott-Moncrieff: Good afternoon. My name is Lucy Scott-Moncrieff and I am here speaking on behalf of the Law Society. The Law Society represents and regulates the solicitors of England and Wales and has a mandate to uphold and promote the rule of law.

Our concerns about the Equality Act do not relate to its intentions or provisions, which generally seem fine although we do have some suggestions and comments to make for improvement, but to the difficulties in enforcing its provisions, which are so well laid out by so many of the submissions that you have received and that we have read.

Barbara Cohen: Thank you and good afternoon. My name is Barbara Cohen and I am here representing the Discrimination Law Association, which I will refer to as the “DLA” for succinctness. The DLA is a membership organisation. Like the Disability Discrimination Act, we are celebrating our 20th anniversary this year.

The DLA has some 300 members, which include practising lawyers, academic lawyers, people working in advice centres, trade unionists, equality rights campaigners and others. Our members are concerned with discrimination law from a complainant’s perspective. The DLA was very involved in the development of the Equality Act, preceded by the Discrimination Law Review, which will be familiar to many of you.

We think it is extremely important and valuable that Parliament is now going to scrutinise how well the Equality Act is working. We think that looking at it, particularly through the prism of disability, will expose some particular strengths and weaknesses, but we also believe that your findings are likely to be relevant not only to disability but to many of the other protected characteristics.

Douglas Johnson: I am Douglas Johnson, speaking for the Law Centres Network. As its name implies, it is the organisation that links together the various law centres around the country. It is important to know that it is a federated organisation. All the law centres are separate and independent bodies and the Law Centres Network is the body that brings them together. I have worked at Sheffield Law Centre since 2007, mostly doing disability discrimination cases in the field of goods and services rather than employment.

The Chairman: Thank you. The members of this panel will be asking you questions. If any of them have a relevant interest to declare, they will tell you so at the outset. The first question is going to come from Lord Foster.

Q44 Lord Foster of Bishop Auckland: Thank you, Chairman. I have no relevant interest to declare. I want to ask you about employment tribunals. After the introduction of fees in employment tribunals in July 2013, the number of claims fell by 70% and remains at this low level. What evidence is there that discrimination claims with a good chance of success are not being brought forward simply because claimants cannot afford the fee or cannot risk losing it?

Rachel Crasnow: I would like to address that and I thank you very much for having the opportunity to comment on that. As you say, there has been an incredible drop in the number of claims lodged with employment tribunals over the last two years. There have been a number of competing reasons why that might be.

We at the Bar Council are very concerned as to the impact that has had on all individuals who wish to bring claims, and in particular the most vulnerable litigants who are often those with disabilities. Two weeks ago there was a Court of Appeal judgment following a judicial review brought by UNISON, the trade union. The complaint was that the drop in claims brought arose from the difficulty in affording the fee and that the fee had put off people from bringing those claims. That claim failed in the Court of Appeal because their Lordships said they could not be convinced that the fees themselves made it impossible to bring a claim.

When you and your colleagues are considering this key question, we do not think you need to be troubled by the impact of that judgment in itself because you are not answering a legal claim here. The drop in claims has clearly had a significant outcome on people's access to justice. One clear way that we think you can tell whether the fees introduction has had the impact—as was a hope of Government at the beginning—of wiping out vexatious or unmeritorious claims is that, if those had simply been wiped out by the introduction of fees, one would expect a significant increase of success for those claims which are now brought.

When you look at the statistics which the MoJ have published every quarter since then, you do not see the increase in success rates of claims that do make it through to a full hearing. For us, that was very significant. The fees introduction has had a chilling effect on people from the very poorest sections of society to those who might, if they chose to adjust their household budgets, be able to manage the fee but feel far too unsure to risk it, especially when the actual worth of their whole claim may not be hugely more than the fee itself.

We are concerned to remind the Committee that it is not just claims in their tens of thousands or hundreds of thousands which matter to disabled litigants. Sometimes their claims are not worth a huge amount of money. It is clear that if you are being asked to pay a fee which may represent a high proportion of your claim, and no one can promise to you that you will get it back if you lose, it has a significant chilling effect.

Lord Foster of Bishop Auckland: Thank you. Would anyone else like to add anything?

Lucy Scott-Moncrieff: I agree with the point that you do not need to worry about that particular decision. Anecdotal evidence is still evidence and it is perfectly clear that the drop-off came in following the introduction and level of the fees. In the old saying, if it looks like a duck and it quacks like a duck, it probably is a duck. That is what this is—it is a duck.

Barbara Cohen: I would like to contribute. In relation to claims of disability discrimination, the drop between 2012-13 and 2014-15 is 59%. This is not as great as that for claims of every sort in the employment tribunal but it is a very substantial drop. What is significant is that, in relation to discrimination, employers do not now have the same kind of imperative to make sure that they are operating a discrimination-free workplace. The drop in claims has had that effect.

The other thing to think about is that for many claimants—with the lack of legal advice and assistance that we will talk about more fully later—they are looking at a risk of spending up to £1,200 to be a litigant in person without good legal advice.

Douglas Johnson: I do not do employment law but I have checked with my colleagues who do. At the front line, they are saying that there is a very big drop in people who bring those claims, which might well be good claims. The nature of discrimination claims is that you cannot always tell until you have issued proceedings.

It is worth remarking that that is particularly the case with the abolition of the statutory questionnaire procedure. That was designed to try to bring some of the information out earlier on so that people could make an informed decision before deciding whether to issue a claim and therefore commit to the fee. That certainly has not helped.

The other thing the Committee might well want to note is what my colleague says about the early conciliation process through ACAS. Claimants are now required to engage in this process, which invites the employer to conciliate if they wish to do that. Far more, there is a shift towards employers saying, “No. Issue your claim and then we will talk”.

The Chairman: You are saying that, financially, employers are now very much more tempted to get away with it because they do not have so much to lose, whereas it is having the opposite effect on the claimant. They have so much to lose that they cannot afford to bring that claim basically.

Douglas Johnson: Yes.

Baroness Thomas of Winchester: Could you just tell us a bit more about the statutory questionnaire?

Douglas Johnson: Yes. This has got history to it.

Barbara Cohen: Since the 1970s, the equality legislation has provided a mechanism so that a prospective claimant, before they begin their case in the county court or the employment tribunal, can send a questionnaire to the alleged discriminator saying, “I believe that you have discriminated against me for the following reasons”, and then the employer or service provider will respond. Sometimes they come back and explain that what they did is not discrimination; the claimant then decides not to take it any further and that is the end of it. So in fact it helps to make sure that only the better claims go forward.

On the other hand, if they respond unhelpfully, or if they do not respond, the legislation says that the court or tribunal can draw an inference from their failure to respond, including an inference of discrimination. There was a lever. It did not always work and people did not always respond, but there was a kick there that said you should and that helped the prospective claimant. As I said, many cases did not go ahead because the person saw that they did not actually have a case.

Baroness Thomas of Winchester: And now it has gone.

Barbara Cohen: It was repealed.

Douglas Johnson: It was repealed. It is a statutory provision that has since been repealed in 2013.

Barbara Cohen: We think it should be restored.

Douglas Johnson: That is right. It does increase the costs of litigation when it goes ahead because the effect of the questionnaire procedure was to bring in at an earlier stage the provisions of disclosure of documents which are a formal part of court proceedings. It applies to courts and tribunals, but certainly in the county courts we see that where we do not have the questionnaire procedure, it delays that process until later on, at which point all parties tend to have lawyers involved, and things becomes much more costly, much more

contested and much more formal. It actually makes the whole process of litigation much more—and unnecessarily—expensive.

Lord McColl of Dulwich: Do you have any idea what proportion of cases was not justified before all this started?

Baroness Jenkin of Kennington: If I can add to that, can you give us some idea of the numbers we are talking about—not the percentages but the actual numbers?

Rachel Crasnow: In the written submission we submitted on behalf of the Bar Council we included details of the numbers of the drops. We had a link there to the Ministry of Justice statistics. You can see very clearly the actual figures which have dropped, so I would refer you to those.

Barbara Cohen: I can say that in employment tribunals in 2012-13 there were 7,492 disability discrimination claims, and in 2014-15 there were 3,090. That is a drop of some 4,400.

Rachel Crasnow: I would add a quick one-liner to what has been said about the impact on employers of the introduction of fees. That is an important thing to consider as well as the impact on the claimants.

We have heard anecdotally that because employers are facing far fewer claims, as fewer are being brought, they tend to have a more bullish approach to conciliating those claims, partly because their budget for legal expenses is not being used up in the same way and because they feel there is less pressure to settle matters. That has a huge impact on industrial relations as a whole and on how workplace policies are updated and renewed. There are significant impacts on workplaces as well as on individuals who wish to take their claims to court.

Q45 Baroness Brinton: What has been the effect of the changes in legal aid for disabled people bringing discrimination claims? Mr Johnson, to what extent have law centres and other similar bodies been able to compensate for these problems?

Lucy Scott-Moncrieff: Legal aid is granted on the basis of scope and financial eligibility. As people with disabilities are more heavily represented in the lower levels of income, they were more likely to be eligible for legal aid for getting advice and assistance. That has now gone. Proportionately, they have had a worse deal than the general population in terms of having access to legal aid for their employment rights.

Douglas Johnson: From the law centres' point of view, it is important to realise that law centres and the not-for-profit sector generally have been far worse hit than anyone by the cuts to legal aid. The cuts in legal aid for bringing cases of discrimination, and for advising where there is no case of discrimination, has been really difficult. It has ruled out a lot of advice for people.

The question is to what extent law centres will be able to compensate. Law centres have lost a lot of funding to provide this essential advice. Law centres and other not-for-profits have lost the legal aid work and also the grant funding that certainly we had at Sheffield from the Equality and Human Rights Commission.

There is practically no funding now for advice on discrimination law. People are all at sea with this. It is quite important to realise that, when we are talking about legal aid, one of the most important aspects of it is the basic advice and assistance under legal aid. Legal aid brought in the idea of two hours of advice and assistance. We are not necessarily talking about legal aid for big cases. It is about people getting basic information and advice on whether or not they have a case for discrimination.

The consequence of not having legal aid and that advice not being available is that those people who do have cases for discrimination cannot work out if they have one and cannot get the advice and the assistance on how to take it forward, which might lead on to an application under a legal aid certificate for a fuller case. It also affects those people who are sure they do have a case for discrimination but, when they get proper advice, they are told, "No; you are wrong, you do not have one because of this. This is the legal explanation. Don't waste the court's time by bringing your claim." Of course people are not getting that advice and so the courts are actually filling up with misconceived claims for discrimination, which does not do anyone any good.

Barbara Cohen: I do not know whether your Committee is fully familiar with the way the process currently works, but if I were a disabled person and I wanted advice on discrimination, I would need to telephone something called Civil Legal Advice, staffed by a non-lawyer. If I said I am having trouble at work, they might say, "Well, there is no legal aid for employment; sorry, dear". To diagnose that I have a disability and a discrimination problem is something for which I need legal advice, but I do not get it then.

If somehow or another I get through that telephone line and transferred to a different telephone line, again I have to try and explain that I have a problem that fits with discrimination because employment is not covered. Then I get through. The three firms in the entire country who have the mandate to be able to provide advice on discrimination are not getting the number of cases they were expecting because of all this sifting by others and people not being able to explain adequately by phone that their problem is a disability discrimination problem.

The Chairman: So an investment in early advice would be almost more valuable than an investment in more legal aid in the courts; is that right?

Douglas Johnson: Yes, that is absolutely right. It is the early advice that is really important.

Barbara Cohen: And face to face.

Douglas Johnson: One of the real difficulties about discrimination advice is that it has been hived off from other areas where legal aid is still available. It is only available through a mandatory telephone helpline, but it is incredibly inaccessible. You could not really design a worse system if you wanted to think about access, given that people with disability discrimination issues will often have access barriers. It is really difficult.

If you had a cost-neutral proposal, you could say that the telephone gateway is not working. There is now ample research to show that the figures are just not getting through and people are not getting advice. You could have the same number of cases being dealt with by face-to-face contracts. We say it would be a much better step forward if the Legal Aid Agency would re-tender for those contracts with organisations like the Sheffield Law Centre and others. We could have what they call low-volume contracts where they have just a small number of matter starts. It means that people can go to a place in their own town and see a discrimination specialist to work out whether they get advice or not.

Rachel Crasnow: Earlier this year the Public Law Project carried out some research into the legal advice gateway that we have just been talking about and went through in an enormous amount of detail the data that existed already. It is an extremely useful piece of research and I commend it to the Committee for consideration.

The Chairman: Could you send us a link?

Rachel Crasnow: Of course I will.

Lucy Scott-Moncrieff: I also want to point out that early advice does not necessarily mean, "Oh, you've got a case to take to court", or, "Oh, you haven't". It might mean, "Oh, if you do

this, we might be able to sort it out for you without any need for going to court. Yes, you've got a case but it doesn't need to go to court". A court or a tribunal has to be the last resort. It is so wasteful to make it so difficult for people to do anything other than go to court.

Lord McColl of Dulwich: Do we have any figures on the increase in the number of cases going to court as a result of all this? You say the courts are filling up with cases.

Douglas Johnson: I said that. I realised afterwards that that is not the best explanation. The courts are not filling up. What we are seeing is that there are a number of cases that are misconceived and taking up court time. The figures you have seen from Barbara on employment tribunals show that there has been a big drop. Cases in the county courts never were very high, but we do see a number of cases now where people launch cases in the court themselves because they cannot get advice and then later come for advice if they find some other way in. We might look at it one way or another and realise that it is a hopeless case, but by that time they have gone so far down the line and so much of their time and other people's time has been incurred by that point. It is not so much the number of cases filling up but the amount of court time.

Lord McColl of Dulwich: So they are not filling up.

Douglas Johnson: Not in numbers, no, but in terms of court time, which is important. Certainly the practice we know of in Sheffield county court is that everyone's cases are being delayed because the cases that are being brought are taking so much longer. That is because people are not getting the advice to get to the point quickly, which is one of the real benefits. They are also not getting the assistance to settle their cases, as Lucy Scott-Moncrieff said, without going to court. Certainly in my practice only a minority of cases advised on under legal aid would result in a court claim being issued.

Lucy Scott-Moncrieff: The point I was making about wastefulness was that, if you are trying to enforce a piece of legislation, then if what you are saying is, "The only way to enforce your rights is to go to court", that is pretty dumb and wasteful. There have to be layers of trying to resolve disputes before you go to court. Taking away legal advice or advice from someone who knows what they are talking about at the first level means that those opportunities do not arise.

The Chairman: I am going to move on to Baroness Campbell's question, which is the third one. For the sake of convenience I will just mention her interests. She is a patron of Just Fair and of the National Disability Archive. She is a founder and member of Not Dead Yet UK. She is the recipient of a social care personal budget, disability living allowance and Access to Work. She has been a Disability Rights Commissioner throughout the life of the Disability Rights Commission and a commissioner of the Equality and Human Rights Commission for three years.

Q46 Baroness Campbell of Surbiton: I would like to widen this out a little more. I am incredibly interested in access to justice in its wider form. What about non-employment cases? What are the problems with enforcement through the county courts and tribunals? Is reliance on individuals enforcing equality law through courts and tribunals effective? As a rider to all of that, in relation to the Criminal Justice and Courts Bill discussed and enacted last year in terms of interveners, again do you think that will have a bearing on the ability of disabled people to access justice? That is a long question, but you can all have a go at it.

Douglas Johnson: I am going to ask my colleagues to help out on the answer in relation to, for instance, what the Equality and Human Rights Commission might do with wider enforcement mechanisms.

Speaking as someone who has worked in law centres, doing basic enforcement of ordinary cases, on the non-employment cases as opposed to employment cases, the whole point about the initial funding by the Disability Rights Commission of a number of law centres up and down the country was simply that, because there were so few cases being brought in goods and services, it was quite clear that the Disability Discrimination Act was simply not being enforced in those areas. There was mention of 53 cases in total in the whole country being brought after the Disability Discrimination Act had been in force for a number of years. The point about this was to marry up enforcement by helping people to bring cases in the courts with that public education and awareness project. When I started at the law centre, 50% of the time, my job was going out talking to community groups, disability organisations, and to whoever else, about their rights under the Disability Discrimination Act and therefore what they could do once they realised that they were suffering things that were unlawful. The other half of the time was spent in helping them in practice deal with those. In some cases, those would end up in court claims. In some cases, they end up in court claims in the higher courts; those are very rare. It is still a massive problem to get cases enforced. I describe that in longer detail in the written evidence which you will be able to have a look at. The specific things that we think worked well were that network project because, as I say, it did marry up the public education along with enforcement to make sure that they both worked hand in hand with each other. I thought that was very important. That is something that the Government could arrange again with a relatively small amount of funding. That would be outside the legal aid system. It is a far more effective way than legal aid of tackling discrimination in a systematic but also much more strategic and wide-ranging way. You are trying to change public attitudes and also making the most of any opportunities to explain what the law is and why it is what it is.

As I have said, I am no longer working at the law centre. I have moved to a private firm of solicitors. It is a very unusual firm in that it will actually touch disability discrimination cases. As you will probably be aware, there are precious few firms of solicitors in the country that will go anywhere near a discrimination case. That is why the Act is not being enforced. It is simply not cost effective for most firms of solicitors to take that risk from a business sense. Unity Law—the firm I am working at—does this under a conditional fee agreement. It is no win, no fee, so that, where there are good cases, they can be run. We are just at the tip of the iceberg there. We have put in the written evidence about Qualified One-way Costs Shifting. We think that is a very important thing. It might just be me, but some of us believe that the QOCS system does cover discrimination cases. It is a question of whether injury to feelings is personal injury. Of course it is, in my view, but of course it is not written down in the court rules. That could be changed very quickly. We would certainly urge the Committee to look at that as a way forward.

The idea of that is that, if it was realistic for commercial firms of solicitors to say, “If we can run a personal injury case, we can run a discrimination case”, that makes the enforcement deterrent so much more effective. It might actually achieve the long-term aim of making the Equality Act a properly enforced Act.

There are always lots of negative connotations around personal injury and no win, no fee arrangements, but actually those are really important. People do suffer physical and mental injuries because of other people’s negligence. Those cases can be brought even if the person is a person without money and they have to tackle a large corporation with a huge amount of resources. It is a way of levelling up the equality of arms on both sides.

The other interesting thing is that with the Jackson reforms that came into the court from 2013 there has been a bit of a change. Good personal injury cases still run. A lot of the more spurious ones just do not run any more.

Baroness Campbell of Surbiton: What about individuals? I am extremely worried about some of the developments in the courts and tribunals. Do any of you have anything to say about that? There will be a problem with interveners because they may have to take some of the court costs. It seems that the individual is having to take on more and more responsibility. Do you have anything to add to that?

Barbara Cohen: I would like to talk about the problems of enforcement as it applies to individuals and whether it is the best way to enforce the law. Thinking about individuals, for all parties litigation involves delay and uncertainty. That is bad for everybody. For claimants, and particularly disabled claimants, it is a terrible ordeal. Once you get there, you are being challenged on things that are fundamental to your identity and who you are. Are you disabled? Is it true that you cannot do the job without this adjustment? Is this the right adjustment and so on? It goes right to the heart of your identity in that role, and it is very difficult. It is not fun.

For many disabled claimants the tribunal ordeal itself is very difficult. It is a technical process. You have to get it right. There are issues about access—all different kinds of access. There is physical access, access to documents, access to the process, and communication. There is a whole range of things that make it particularly difficult. For claimants, individual litigation is not necessarily the best way to get good protection against discrimination.

The other question is whether it is the best way to enforce the law. Simply because I have been around a long time, I wanted to read very briefly from the 1975 Racial Discrimination White Paper when they were discussing whether they should move on from the 1968 Race Relations Act. I will try to skip a little bit.

It says: “The 1968 Act gives undue emphasis both to motive and to the identification of ... victims. Its enforcement depends excessively upon the making and processing of individual complaints ... complaints are random in their incidence and significance. Most victims do not complain. Many do not know that they have suffered discrimination. Others are reluctant to complain because they do not want to relive the humiliation which they have suffered, or because they have no confidence in the effectiveness of the ... procedure ... Some complaints are trivial; others are misconceived. Although it is necessary for the law to provide effective remedies for the individual victim, it is also essential that the application of the law should not depend upon the making of an individual complaint”.

This then led to the establishment of the Commission for Racial Equality and the Equal Opportunities Commission, which were given quite substantial enforcement powers. The expectation was that the bulk of the enforcement of those laws would fall onto those bodies rather than onto individual complainants.

Rachel Crasnow: I want to come back very briefly to something that Douglas Johnson said a moment ago. He commented about discrimination cases in the county court being far fewer in number than those brought in the employment tribunal. It is relevant for the Committee to consider what the reasons might be for that. Is it because far more alleged legal wrongs are committed in the workplace than, for example, in the arena of goods and services, or is it because of two possible alternatives that I can suggest to you?

First, is it the difference in the costs regime in the county court, where the loser pays the other side’s costs? That is a huge deterrent to someone considering bringing a claim. The tribunal is largely a cost-free tribunal at the conclusion of the case.

The other important reason to reflect on is about general awareness of disability rights, particularly in the goods and services area. We think an enormous number of disabled people have no idea that the obstacles they come across on a daily basis, whether to do with accessibility, charges or a whole range of matters in their local communities, are simply unlawful. The question of how to educate both the provider of goods and services and the individuals themselves is a really key concern for us.

The Chairman: So what we see here is ignorance, the deterrent effect of costs and the lack of a champion to bring these cases where individuals cannot afford to for one reason or another.

Rachel Crasnow: At the moment the emphasis is on individuals enforcing their rights. Whether that is the most constructive mechanism for educating the population and achieving resolution is an important issue.

The Chairman: You have shown us just how painful it can be for the individual. We will move on to Baroness Thomas.

Q47 Baroness Thomas of Winchester: Before I start, I have to declare that I receive DLA. I am a vice-president and trustee of Muscular Dystrophy UK. I am a member of a user group at Lord's Cricket Ground and a patron of Thrive. We have touched on this question. Are there changes to current enforcement methods, or alternative models of enforcement, that could work better? Of course, one question would be mediation. I know that Lucy Scott-Moncrieff talked about this a few minutes ago.

Lucy Scott-Moncrieff: I have taken a slightly different approach in terms of alternatives. Dealing with this issue of individual cases, it seems to me that there are existing roles that are not being exercised as well as they could be—for instance, by those who license premises, by regulators and possibly by complaints handlers of one sort or another.

If we think about who the Equality Act applies to in the provision of goods and services and so on and so forth, many of these organisations are either regulated or licensed, or in some way need to get a tick from somebody to be able to do what they want to do—to be able to do their business. You would not even need a change in the law.

If all these organisations really understood that they had a duty to ensure that the Equality Act was being applied properly by the people whom they were licensing or regulating or whatever it might be, and actually pushed that forward, then that would take away some of the agony of having to bring individual cases. It would give a different route in for people who wanted to make a complaint that the regulations were not being complied with or whatever it might be.

It has to be an alternative. As a lawyer, of course I think that going to a lawyer is the best thing anyone could ever do in any circumstances whatsoever, but as somebody who has been through litigation I know how agonising it is. Anything else that can be offered would raise awareness among the regulated community and licensed community, but it would also raise awareness of where people could turn apart from having to go to court or getting legal advice.

There is much more that could be done with existing bodies to remind them of the power and the duty that they have in this area.

Rachel Crasnow: I would add a comment very briefly about the current judicial mediation scheme within the employment tribunals. It is a mechanism which applies to live claims prior to them reaching the full hearing where their complaint will be resolved by an employment judge.

The problem about the way that is operating at the moment is not that both sides have to agree to mediate. It is rather that you have to pay a fee of £600 in order to take part in the mediation. Were that simply a deposit—suppose your mediation failed, as sometimes they do, and you then went on to decide, “Okay, I am going to pay the fee for my full hearing”, which is up to £1,200—if you could set off the cost of the mediation against that, then you could see that there would be an incentive there, but that is not a possibility.

If you want to try to mediate your claim, you have to pay £600 and then it is not refundable. The concern is how that is acting as an incentive to both sides to take part in that. We really think consideration should be given to removing that judicial mediation fee. For one thing, for the Courts Service itself, it is incredibly expensive to go for a full hearing compared with a single day of mediation where you have an employment judge taking part just for one day. There is a cut-off of one day; you cannot have longer than that. A considerable number of cases do successfully resolve themselves during that process. It is clearly one of the objectives of Government that more cases are resolved outside the litigation framework. To see that operate in a wider framework, we would like you to consider how to make that a more attractive option to those within the tribunal system.

Baroness Thomas of Winchester: Would anyone keep statistics about court settlements in cases?

Barbara Cohen: There are a lot of settlements which drop out of the statistics. The figures I have given you for the number of disability discrimination claims started in the employment tribunal is 3,090 in the last financial year. When you get down to the number of cases that have gone to a full hearing, it is a very much smaller number. Many of them are withdrawn because there has been a private settlement, but they might be withdrawn for a whole range of other reasons. So far as I am aware, it is not precisely recorded how many cases get started and then are not there at the end of the process.

Rachel Crasnow: The tribunal service is not given that information. If someone writes my client a very large cheque, he or she will then withdraw their claim. They do not need to litigate any more, but we will not tell the tribunal why we withdrew. The matter is simply ended. The detail of that data does not exist, as far as I am aware.

Barbara Cohen: Regretfully, in some ways, most of the settlements are on a confidential basis, which means that really important issues are never disclosed. There ought to be ways to know if a large supermarket chain settles a claim for reasonable adjustments for a person with HIV. That should not harm the confidentiality of the settlement terms.

Q48 Lord Faulkner of Worcester: I have to declare interests, all unpaid. They relate to my vice-presidency of the organisation Level Playing Field, my trustee membership of the Science Museum and positions with various transport and heritage undertakings. My question is about the public sector equality duty. I would be very interested to have your view because it seems to me that it does not really matter what the duty is, provided that the consultation which is undertaken in order to assess it appears to be acceptable. The outcome of the challenge does not seem to matter, as I say, provided that the various boxes are ticked and the consultation is all right. Is that a fair assessment of how it is?

Lucy Scott-Moncrieff: That is a masterful assessment. Somebody in my firm was involved in the Independent Living Fund litigation, where initially the public sector equality duty was found to have been breached. Subsequently, despite apparently not having done very much more, it was found not to have been breached. It was very much to do with process. That is also politics.

The trouble is that the wording of the duty is, frankly, weasel wording. It looks like it is saying one thing but actually it is saying something completely different. We have put in the written submission that you will shortly be getting a way of trying to beef that up so that what the duty appears to be saying is reflected in what the actual duty is.

I want to talk about the history very briefly. It is central to all of this and what it is that you are doing. I can remember when the Disability Discrimination Act was brought in by the previous Conservative Administration and how transformative it was in the way that it introduced very powerfully the concept of the social construct of disability and how disability is actually a function of how society is organised rather than the impairment or difference of an individual person. Therefore, as it was part of the way that society was organised, society could do something about it. That is what the DDA was all about and it was absolutely brilliant.

The next Government did not do anything as brilliant as that, but it did sign and ratify the United Nations Convention on the Rights of People with Disabilities back in 2007-09. Then it brought in the Equality Act as a consolidation and strengthening Act. That was good.

I have not discussed this with my colleagues, but I am sure they will tell me if they think I am wrong. The coalition Government have not covered themselves in glory in the way that they have dealt with the Equality Act. The example of the ILF case is an example in point. They stick very rigidly to the interpretation of the law rather than looking at what the Equality Act is all about. They have simply failed to do that. The law was on their side but justice was not on their side.

Lord Faulkner of Worcester: Or common sense.

Lucy Scott-Moncrieff: Or common sense. I do not know if we will have a chance to get that far, which is why I am saying it now. One of the things we really hope this Committee might do is to think about ways of restoring that radical transformative approach to the social construct of disability.

The way the Law Society would like to see it done would be to encourage the Government to incorporate within domestic law the United Nations convention. Douglas will be able to talk about the way in which this will give a lot of teeth to the Equality Act which it currently lacks.

Barbara Cohen: I want to interject a couple of other events between 1995 and 2007 into Lucy's history. In 1999, the Stephen Lawrence inquiry reported and they referred to the issue of institutional racism across all of the public sector. Following on from that was the 2000 Race Relations (Amendment) Act, which not only brought all public functions within the non-discrimination provisions but introduced the race equality duty. For the very first time, the law was putting obligations on public authorities to take proactive steps to eliminate discrimination and advance equality.

That was followed in 2005 by the Disability and Discrimination Act 2005, which included the disability equality duty. The DRC was very energetic and produced some fantastically good guidance and codes to make sure that public authorities understood that things had now changed and it was not just, "Don't discriminate", but in order to meet the social model and advance equality you had to take some positive steps.

While I understand that some of the litigation has led to people being somewhat cynical about whether the public sector equality duty means anything or not, my impression from working with different community organisations is that the kind of cases that are brought to lawyers secure change without needing to litigate. That is in the vast majority of instances where someone comes in and says, for example, "They are about to close down this

disability centre without looking to see the disability impact". There is an exchange of letters and the threatened action does not happen.

While it is about process and not content because judicial review is not about content, I am nowhere near discouraged. I would just mention that when the Equality Act was going through Parliament many members of this Committee may remember that at the report stage in the House of Lords an amendment was put forward by the DLA and a coalition of disability organisations which was going to add to the duty. It was not only the due regard obligation, but in carrying out their functions—

Lucy Scott-Moncrieff: I should say that the Law Society have pinched this from them.

Barbara Cohen: The duty involved taking appropriate steps to achieve the aims that were set out to which they must have due regard. It was appropriate steps to eliminate discrimination, advance equality and foster good relations. Had that been part of the duty, then we would be looking to see not only consideration of these matters in developing policies but making sure that as the authority carried them out they would need to be there.

Q49 Baroness Campbell of Surbiton: Is it true that the local authorities welcomed the disability equality duty because it helped them understand how to plan the environment and it actually cost them less money in the end because they did not have to put more in grants, or is that a myth?

Douglas Johnson: There is a theme there about a clear statement of what the law is and what service providers and local authorities have to do to comply with it. Lucy's point about the benefit of incorporating the United Nations convention into domestic law means that those who have to deal with it would have a far clearer statement of this. At the moment we are in the situation where the United Kingdom Government have ratified the United Nations convention. It is incorporated in some sort of way that I do not fully understand by virtue of our international treaty obligations. It would be much easier for judges on the front line who have to deal with it to know, "Yes, this is in force now by virtue of this Act".

Similarly, when you talked about the disability equality duty, it would be far more helpful to local authorities to have a clear statement of this. This reflects a little bit what we have put in our written evidence about the statutory codes of practice. We said that the codes of practice were very helpful. In my experience in courts, judges find them very helpful. They say, "I have here the code of practice. I know I am required to take this into account when making my judgment", and that is that. People do not mess around with that. Those codes were drafted. They were very helpful, very clear and very practical.

From the point of view of a local authority officer who has to make a difficult decision in the climate of cuts and so on, if you have a clear statement of what that guidance is, then you know, as an officer, what you have to comply with. That will be a step forward. I am not sure that answered your question.

The Chairman: I am afraid the Government's so-called Red Tape Challenge has meant a rolling back of these positive duties rather than forward, which is unfortunate. It is also the case that the UN—although I do not have the details—is taking an interest in British disability law, so there is more of that to come.

Rachel Crasnow: On the point you made about red tape cuts, certainly that has had an impact with the requirement upon public bodies to produce equality impact assessments following their exercise of the public sector equality duty. We would think it useful if you could consider whether it was necessary to remove that requirement once one had carried out the exercise of undergoing the duty. Was it just red tape that bodies found it annoying to comply with and wasted time and resources, or was it something which was a

demonstration of how the duty had been properly carried out and a check and a balance on all the requirements of the duty as laid down in statute and aided by the guidance that Douglas has been talking about?

Lord Harrison: Provision on the transport of disabled persons in taxis has lain silent on the statute book for 20 years. What on earth is going on there? Why is Parliament being flouted? Indeed, is it possibly unlawful that it has not been so implemented? Do you extend any of your thoughts to other forms of public transport?

Rachel Crasnow: One thing to note about Section 165 in the Equality Act, which has not been brought into force after 20 years of existing in writing, is that all the provisions are there set out for the exemptions to be put into place for those taxi drivers who will be unable to comply with, for example, taking wheelchairs in their taxis. If I am a taxi driver with a back problem and I have a letter from my GP showing that carrying wheelchairs even once a week would have a significant effect on my condition, then I can apply for an exemption to the duty to have to carry wheelchairs. If that is turned down, I can appeal against that process.

This provision was never intended to force all taxi drivers to carry wheelchairs regardless. An interesting point to consider is why it is that this particular strand of providers has been given carte blanche to ignore the provisions of an Act, which had recourse into all areas of workforce law and all areas of goods and services, especially those that interacted with disabled people's everyday living. As we all know, taxis are a vital means of transport for many people with mobility problems. We think that there needs to be far more public awareness of the failure to legislate thus far and bring that law into force.

Lord Harrison: Answer your own question: why do you think it was formed in a way that it could be circumvented?

Rachel Crasnow: They intended it to be brought into force much earlier on and to be a user-friendly piece of legislation which would strike a balance between the disabled person requiring a taxi and the taxi driver who had genuine reasons not to be able to provide that service. You would think that would be a piece of legislation which, with sufficient regulations and guidance surrounding it, would be workable. The answer as to why we are still where we are we have not been formally given.

Lord Harrison: Perhaps some of the others would say whether what is happening is indeed illegal.

Lucy Scott-Moncrieff: I do not think it is illegal. It is not illegal not to implement something. I wonder whether, in fact, it is part of a mindset which does not really get it. The way that I would like to describe it is when you look at the ongoing consultation on court closures, where they say that 80% of people with their own cars are going to be able to get to court within an hour. That drops down to under 60% for people who need public transport. It would be interesting to know where it drops to for somebody who is in a wheelchair, who cannot get a taxi, where there is not a bus and they do not have a car. I think taxis are probably seen as nice to have rather than as an essential, and that feeds its way through.

The Chairman: Is it not deplorable that Parliament passes an Act intended to help the disabled, and then for 20 years Government departments, or whoever it is, do not bring those provisions into force? Indeed, one has fear for the future—that someone will say, "Well, it has not been brought into force for 20 years. We don't need it". I find this quite extraordinary.

Lucy Scott-Moncrieff: Yes; it is deplorable.

Rachel Crasnow: But who is making the fuss about it?

Baroness Thomas of Winchester: There have been questions asked and the Government's response is, "It is still under consideration".

Baroness Campbell of Surbiton: For 20 years.

Douglas Johnson: From my point of view in Sheffield, we have been lucky in that I have rarely had taxi cases. I cannot think of any, but that is partly because we have quite an active disability group and they work in good partnership with the licensing department of the council, who have been interested and have taken that on. They have quite a workable system and are quite rigorous with the way they test their taxi drivers for compliance with access requirements. That is good, but I suspect it is quite different in other parts of the country. I personally do not know about that.

Lucy Scott-Moncrieff: It brings us back to the question of licensing and whether licensing organisations could put that in as a way round the problem.

Douglas Johnson: It would seem very strange that those additional powers that some licensing authorities will need have not been given to them to use as they best think in their local areas. The question we have not asked yet is where the leadership is on this—which is a very important thing—from the Government's Equality Office and the Equality and Human Rights Commission. Surely those bodies should be taking a step forward to say, "This was passed by Parliament for good reason. Let's get on and get the details done so that it can be brought into force and streamlined with all the rest of the Act".

The Chairman: You go to the heart of the very issues that have come to us so far. I am sure what you say is right and I am sure our report will have something to say about the failure to bring these provisions into operation. It may even be that the United Nations rapporteur who is coming would also be interested in that too. It is not just a question for the disabled. It is simply wrong for Parliament to go through all the effort of getting these provisions on to the books and then they do not operate. This is a really bad situation.

Douglas Johnson: I want to follow up on that point, if I may. I think it is more than that. What I am saying is that there is a failure of leadership there among those organisations that really should be driving that.

The Chairman: That is a very important observation.

Rachel Crasnow: I want to add that, in terms of parts of the Equality Act not yet brought into force, there is of course the protected characteristic of socio-economic discrimination. Very often, it is unfortunately disabled people who are among the most deprived in our communities. There is a real crossover there between those two protected characteristics. We would ask you to give some thought to that. Whether discrimination on grounds of socio-economic status should be made unlawful or not is not a separate topic. It is a provision which like the one covering taxi drivers, has sat on the statute book doing nothing for a number of years.

Q50 Baroness Jenkin of Kennington: How effective do you feel that the EHRC has been in promoting and enforcing compliance with the Equality Act? How effective in your experience is the helpline now that it has been contracted out?

Barbara Cohen: I would like to answer that in three parts. The DLA is particularly disappointed that the EHRC has been so reluctant to use its statutory enforcement powers. It has very strong powers—stronger than the previous Commissions—to carry out investigations and to require organisations found to be discriminating to set out action plans and to enter into binding agreements which require organisations to eliminate discrimination in the ways that they operate. They can apply for injunctions to stop discrimination taking place and they have other powers to secure enforcement of the public

sector equality duty. Sadly, they have been extremely reluctant to use those powers. Since 2007, when they were established, they have now embarked on their very first investigation. That is a great loss. If we are talking about how to make enforcement work, they have powers to do it and it can be extremely effective, as the work of the previous Commissions has illustrated.

They will rightly raise an issue about resources. A different role is far less demanding on reduced resources. The impression we have is that the EHRC has far too often chosen not to use its unique position to engage in public discussions regarding policies and practices which their own research or inquiries, or those by other reliable bodies, expose as discriminatory or involving significant disadvantage to disabled people. Issues come and go. We listen, but we look for and we do not often hear the EHRC helping us to understand when there may be some real equality issues there.

Thirdly, at two levels, the EHRC is not carrying out what we think is a fundamental educational role. One is the issue of statutory codes of practice that has been mentioned. Codes of practice are far better than guidance because courts must have regard to statutory codes of practice when cases come before them and an issue within the code is relevant.

Secondly, it is that educational role in the communities helping us all better to understand disability and what disabled people need in order to participate on equal terms.

We can all recall the excellent poster campaign of the Disability Rights Commission that helped all of us to understand how disability is part of our society. We miss the strong influence which a single statutory equality body should be providing.

Lucy Scott-Moncrieff: When I was reading the evidence of previous witnesses to your Committee, I noticed that they referred to their duty not to embarrass their sponsoring department. I do wonder how they interpret that. It may be that they think they must not speak out against their sponsoring department. I do not think that is how that duty manifests itself. If their department is getting something wrong, then I think their duty to speak out is much more important than their duty not to embarrass their sponsoring department.

Rachel Crasnow: In terms of the choices that the commission makes in relation to funding litigation, the strategic litigation which the commission currently gets involved with is generally intervening at the appeal stages of cases. While there have been significant cuts to the budgets which the commission has to use for representation, and indeed advice in challenging claims, there is a concern that strategic litigation can include first-instance decisions. It can include cases which are not necessarily going to take place in the Supreme Court or the Court of Appeal and so on. By only stepping in at a late stage in the proceedings, sometimes a lot has been lost because arguments have not been explored when fact findings have taken place in important cases lower down. We would ask that you give some thought to how that definition of strategic litigation is having an effect on such an important organisation being able to assist with important litigation.

The Chairman: What about the helpline, Mr Johnson?

Douglas Johnson: The helpline does not provide advice, and that is a very important point.

Lord Faulkner of Worcester: Or help?

Douglas Johnson: It might provide help, but when the EHRC ran its helpline, yes, it did provide advice and assistance. The remit of the Equality and Advisory Support Service helpline is very specifically not to provide legal advice. It provides information only and some limited amount of assistance, but it will very explicitly steer clear of giving any sort of view on the merits of whether someone has a discrimination complaint that is valid or not, or

what they should do about it, which is the bit that people really need. So it is quite ineffective.

It is also startling how many calls they get. We have some figures which you have in the evidence now. It is 90,000 calls over three years. That shows that there are a lot of people who are trying to get advice about discrimination issues and about their own personal circumstances presumably, and they are just not getting it.

I attended a small conference that the EASS was running a little while ago and I put the question to them. I should explain that on the employment side they really pass people straight over to ACAS, who also just give information but not advice. On goods and services they do that, and they will sometimes contact service providers and say, "It looks like you have discriminated and we think this was wrong".

What happens is that, if that service provider is basically a good service provider, they say, "Yes, you are quite right and what can we do about it?". That is good and they will sometimes get a result there. But if they respond negatively there is not really much more that the helpline can do.

I put the question to them, "Does that not really mean that you are taking action against those service providers who are willing to be more accessible, but those service providers who are just not interested and are quite happy to keep on discriminating, even once they know about it, are getting off scot-free?" The response to that was, "Well, that is really a question you would have to address to government". That does illustrate the issue. In some ways it can make things worse by saying, actually, discriminating or not is optional.

The Chairman: How many calls a year did you say they were getting?

Douglas Johnson: I think we have a figure of 94,000 over almost three years. I do not know if that has escalated. That is the figure we have had just recently. I have inserted it somewhere, but if I cannot find it I can provide it afterwards.

The Chairman: Is it sufficiently staffed or is it one of those lines where you have to hold on for a very long time?

Douglas Johnson: I do not know. I think you can get through reasonably well. You can get through by phone and there is e-mail. It is certainly more accessible than the legal aid helpline.

Baroness Campbell of Surbiton: Do you think it worked more effectively when it was housed within the Disability Rights Commission? Can you tell us anything about the link between the EHRC and the helpline? Obviously the helpline helps to enforce and guide the legal committee as to what cases should be taken. Can you tell me about that relationship?

Barbara Cohen: It did in the past when it was in-house. They monitored the issues and then fed that into the legal department.

Baroness Campbell of Surbiton: That is right. So what happens now? Is there a relationship between the EHRC and the helpline?

Douglas Johnson: My understanding was that there was going to be a referral mechanism for those cases that were significant enough to be referred to the EHRC. Of course, it is now referred to an external organisation rather than an internal one where people are physically further apart.

Baroness Campbell of Surbiton: So it cannot inform the work of the EHRC at all.

Douglas Johnson: I am not sure how much contact there is between the two organisations. It is certainly a lot less than was envisaged, so probably not very much really.

Lucy Scott-Moncrieff: We will do a bit of research and put it in our written submission so that you have the information.

Baroness Campbell of Surbiton: We have an inkling, but I just wanted to know your thoughts.

Baroness Thomas of Winchester: Does the Law Society have any sort of helpline? If anyone rang up the Law Society to ask about a discrimination case, would they be referred to the EHRC?

Lucy Scott-Moncrieff: We have something called “Find a Solicitor”, so if somebody phones up and says, “I have a discrimination problem”, we can tell them where the nearest solicitor to where they live is who would deal with that. We do not give advice over the phone.

Q51 The Chairman: As a way of summarising, what gaps are there in the legislation? We have heard from you about a number of those. Are there provisions such as reasonable adjustment which are unclear? What could be done to clarify them? In other words, bringing all this together as lawyers and legal advisers, what changes or gaps should we be concentrating on?

Lucy Scott-Moncrieff: As I said at the beginning, we think most of the Equality Act is all right in terms of its provisions. We do think bringing back in the statutory questionnaire would be really helpful and we do think that the public sector equality duty needs to be beefed up, but what we are really talking about here is lack of leadership and a lack of commitment to making this work. If we had that commitment in the way that the 1995 Government were committed to disability discrimination, an awful lot of the problems would fall away because there would be a sense that this was something that was important and that people should commit to it.

We do feel that incorporating the United Nations convention into domestic law, as I mentioned, would be a helpful indicator of that commitment and would make a practical difference to enforcement of the Equality Act and, indeed, bringing in other provisions. That is our wish list. A bit of leadership—quite a lot of leadership, actually—would be nice.

Rachel Crasnow: One of the things that the Bar Council has been seeking to look into for your assistance is how good the judicial training is on the Equality Act as a whole. There certainly is training on disability rights for all forms of the judiciary. Whether it is mandatory to have regular top-ups in this very fast developing area of the law is far from clear. What the Judicial Office says is, “We would hope that every judge who encounters the Equality Act has had some opportunity to be trained on its essential features”.

Where you have comments such as, “And of course many of these judges will have encountered Equality Act issues in their own private practice”, it does leave us with some concern that there is a reliance on what the judge knew or did in their former life as a practitioner.

We would say there should be consideration to ensuring uniform, continuing professional development about the Equality Act across the board for everybody who is going to be given Equality Act cases to determine. It is not enough simply to have that as part of your induction. It is not enough simply to have a brief summary of what disability rights are and how the Equality Act provides for them.

The Equal Treatment Benchbook, which all judges receive, has admirable sections on how the court should interact with disabled litigants, but that is a different point from how you determine and rule upon these very complex provisions within the Act itself. There is a whole range of different causes of actions that exist to give disabled litigants their various remedies. We think that is something which is important in ensuring that all these different principles are applied in a consistent and uniform way, subject of course to the different facts which arise in different cases.

Barbara Cohen: In preparing our written submission, we canvassed our DLA members as to whether there was a need for the Act to be amended to provide greater specificity in relation to reasonable adjustments. The general consensus was, 'NO', that the flexibility of reasonable adjustments as it is currently within the legislation is one of its real benefits because it fits a variety of situations and can be developed as technology changes and so on. What is urgently needed is really clear guidance and an updating of the codes of practice, based on some of the case law development, so that there are solid references for litigants, employers, service providers and others as to what reasonable adjustments could include.

I would like to use this moment quickly to add a couple of other gaps in the law where we think additional legislation might benefit. As you will be aware, the Stott case indicated that there was a gap in terms of protection against discrimination in air travel for disabled passengers. There is also, but not yet in force, the reasonable adjustments to common parts in relation to housing matters.

The DLA strongly supports the recommendation from the Bar Council relating to Section 1 of the Equality Act concerning the socio-economic obligation on public authorities because of the disproportionate representation of disabled people within people who are socially and economically disadvantaged.

We would also ask this Committee to consider recommending bringing into force Section 14 of the Equality Act, which is the provision on dual discrimination. All of us have many identities but very often people who are disabled are further disadvantaged because of their ethnicity, gender, sexual orientation and often because of their age. The legislation was intended to provide protection because of the combination of two protected characteristics, and we hope that you might look at that.

My colleagues have very strongly recommended that you recommend to restore the statutory questionnaire procedure. We also think it would be really useful to restore the power of employment tribunals to make a recommendation, when they have made a finding of unlawful discrimination. Up until 2013 when it was repealed, they had a power—not a duty—to make a recommendation that went wider than the individual claimant: that the employer within its workforce should make certain changes so that the discrimination that they had found would not recur. This is particularly important because in many instances the claimant is no longer there. He or she has left the job or lost the job, and so the recommendation power would not operate. Speaking to an employment tribunal judge, she has actually used this as a way of saying to employers, "I am thinking about making a recommendation. What would be most helpful to you in making the changes which you now see are necessary as a result of the findings of this tribunal?". I hope it is something you will consider; thank you.

Douglas Johnson: I would agree with all the comments that my colleagues here have suggested. The fundamental point is that the legislation itself is fine. We could do a lot with it, but it is the enforcement of it that is lacking. I would not like to see amendments enacted to close up all these gaps but then still to remain unenforced. The enforcement is critical. Linked to this, what we would like to see are some updated and statutory codes of practice. Those are the ones that flesh out the legislation and make them useable for individuals, employers, service providers and local authorities. We need to have them on a statutory basis, but certainly the enforcement is key.

Rachel Crasnow: I would add that when the employment tribunal started (originally called industrial tribunals) in the early 1970s, they were intended as a forum for litigants to argue their cases on their own without legal representation. The way that equality rights, and in

particular disability rights, have evolved up to today's date makes them extremely complex even for lawyers to understand and work with them. For anyone to suggest that courts and tribunals are now places where you should be expected to cope and argue your case without specialist legal advice, is simply to deprive those would-be users of the Equality Act of the scope of those rights.

We would ask you to give really serious consideration as to how all those problems with enforcement, funding and fees act as a huge impediment to access to justice for these vulnerable users of the courts.

The Chairman: Thank you. Are there any final queries around the table?

Lucy Scott-Moncrieff: I would just make one last point. It is not a statement. The Law Society has very recently produced a discussion document on reforming employment tribunals. We will send you the link because it might be interesting for you.

The Chairman: Thank you. I think I speak for the whole panel in saying that we have been really impressed by the amount of expertise that you have brought together and given to us. It has been very impressive indeed. We are very grateful. We are also grateful to you for all that you do for the people that you are attempting to advise and help. We hope that you can continue doing so, albeit that circumstances are really very adverse. We do appreciate what you do. Thank you very much, and thank you for coming to us this afternoon.