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Inquiry on

EQUALITY ACT 2010 AND DISABILITY

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Questions 72 - 78

TUESDAY 27 OCTOBER 2015

4.25 pm

Witnesses: George Selvanera, Mark McLane, James Lowman and Dr Peter Purton

Members present

Baroness Deech (Chairman)
 Baroness Browning
 Baroness Campbell of Surbiton
 Lord Foster of Bishop Auckland
 Lord Harrison
 Baroness Jenkin of Kennington
 Lord Northbrook
 Baroness Pitkeathley
 Baroness Thomas of Winchester

Examination of Witnesses

George Selvanera, Business Disability Forum, **Mark McLane**, Global Head of Inclusion and Diversity from BDF Partner Barclays Bank, **James Lowman**, Association of Convenience Stores and **Dr Peter Purton**, Policy Officer, Disability and LGBT Rights, Trades Union Congress

Q72 The Chairman: Welcome to the four of you, Mr Selvanera, Mr McLane, Mr Lowman and Dr Purton. We are very pleased that you have come to talk about issues of employment and deaf and disability issues. We have interpreters here in case they are needed.

A webcast of this session will go out live via the parliamentary website, which will show members, witnesses and the signers. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy and it would be helpful if you could advise us of any corrections as soon as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence or you have any additional points to make, you are welcome to submit supplementary evidence to us in writing. We are very grateful to all of you for the evidence you have already submitted, which has helped us to get a grip on the functions that the four of you carry out in this particular area.

The members sitting round the table will advise you, when they first put a question, if they have any relevant interests, but, for the sake of speed and because she has so many, I will now recite the many interests of Baroness Campbell on my right. She is a patron of Just Fair; a patron of Disability Archive UK; a founder and member of Not Dead Yet UK; and a recipient of a social care personal budget, disability living allowance and Access to Work. She was Disability Rights Commissioner throughout the life of the Disability Rights Commission and was a Commissioner of the Equality and Human Rights Commission for three years.

It is possible that a bell will go or that there will be a sign on the screens, because there is a possibility of two votes this afternoon. If that happens, we here round the table will be absent for about 10 minutes while we go downstairs to vote and then come back up again. We will have to adjourn the Committee for the time it takes for us to go and vote and come back. We are hoping that it will not happen, but the timing may be such that it does happen while you are here with us, so you will have to bear with us. Thank you. The first question is coming from Lord Foster.

Lord Foster of Bishop Auckland: I have no relevant interests to declare. You will recall the Government abolished the questionnaire procedure for discrimination claims as a result of the red tape challenge. Some witnesses have suggested that the procedure helped to deter

unfounded claims and to encourage early settlement. Would you support the reintroduction of the questionnaire procedure?

Dr Purton: Perhaps I could begin with the TUC's view on this. Yes, we would very much welcome the reintroduction of the questionnaire procedure. We published evidence at the time of the red tape challenge to point out how useful and productive it had been in avoiding taking disputes further down the legal road. If I could just draw your attention to one particular example we quoted in our evidence, the intervention of the questionnaire procedure meant the employer took legal advice and was advised to settle the case. We know of far too many cases where employers have refused to follow that route and have pressed on in supporting the manager who has taken the allegedly discriminatory act, and it has gone all the way down to a tribunal, which is very expensive and very stressful for all parties and eminently avoidable.

By establishing at a very early stage in the process whether or not there is a case to answer, the questionnaire procedure is one way in which the individual can know what their rights are and the employer can be advised, "Look, accidentally or otherwise, you have trespassed over the law and you would be advised to reach a settlement in this case".

Mark McLane: If I might address this from a slightly different point of view, we believe the early conciliation process does address some of these concerns. We would be in support, of course, of any legislation that is drawn, but there are more avenues today for employees to make certain that their voices are heard.

It is incumbent on employers like ourselves at Barclays to make certain that there is not one pathway in but that there are a multitude of pathways for an employee to come forward for early reconciliation of their issues or concerns, not necessarily only through an HR or ER department, or externally, but also through colleague support. The work we are doing is to make certain that there are multiple avenues to bring forward a concern long before we would have to go into a questionnaire or a legal proceeding.

James Lowman: My contribution would be more on behalf of smaller businesses that do not have a HR or an ER department or where it is the individual small-businessperson who provides that role. We do not take a view on the questionnaire itself, I have to say, but what is now in place through ACAS seems to meet many of the requirements of that questionnaire.

Ultimately, as Dr Purton says, the objective should be trying to keep cases out of court, where possible, and trying to seek resolution before it gets to that stage. There is always a balance here between businesses wanting clarity, which a formal questionnaire procedure might give, but also flexibility to deal with issues as they come up in the most appropriate way. Our members, especially smaller businesses without that head office HR function, can struggle and be intimidated by a questionnaire process that can take time and can be seen as immediately making the issue bureaucratic. We are pleased the ACAS guidance is in place to replace that. We do not take a strong view on whether the questionnaire should be there or not, but that is the flavour of some of the practical issues for smaller businesses.

George Selvanera: From the perspective of the Business Disability Forum, the point Mark from Barclays has made is something that makes perfect sense from our perspective, which is that good employers are always committed to a best-practice approach, which recognises the challenges that claimants who have a disability—and, indeed, some of the other protected characteristics—face. Whether it is a questionnaire procedure or similar, they are mechanisms that take some of the emotion out of what is invariably a very sensitive and fraught process, and can help clarify, through a process of questions and answers, both for

the employer and for the employee, the nature of what has gone on. It helps with that discovery process and, in and of itself, can support conciliation between those parties. There is value to having those sorts of processes in place.

The Chairman: We are very well aware of how the costs of going to court have gone up. We have had many, many submissions on that. We are on top of that and we understand the difficulties that face both employers and employees.

Q73 Baroness Campbell of Surbiton: Many witnesses have cited problems faced by those with hidden disabilities. When accessing their rights, they are told, “You are not disabled enough. How disabled are you?”. Those with mental-health conditions say the reasonable adjustments for their mental health are simply not understood, that they are either frightening or people just do not understand. I would like to know from all of you how businesses and service providers are responding to that challenge. How effective is the sort of support available to businesses, large and small, from Government and the Equality and Human Rights Commission? I would like to learn more about how you feel about the whole issue of hidden disability. Do you recognise it as a big issue? Where are you getting that information and support from, both from the Government and the Equality and Human Rights Commission? Go ahead; jump in where you want.

Mark McLane: If I might address the Baroness’s question of hidden disabilities, we take seriously all forms of disability and it is very difficult, as I am sure the Committee understands, to define clearly the need around disability in each workplace or in society.

As a workplace of 130,000—versus James talking about a smaller employer—we have taken multiple steps. The first is what we call a disability listening group. Regionally, around the world, because this is not only a UK-based issue we are facing as an international organisation, we are listening to our colleagues who have disabilities about what the needs within the organisation are and then sitting with colleagues and force ranking how we can start to improve the need around disability, whether it be a hidden disability or what we would consider a visible disability. That is helping us define how we get to the work.

One great example that is now in its second year is what is called our “This is Me” campaign. It began in the UK and it has now expanded to Africa, the Americas and soon to Asia. It is colleagues talking about mental health and wellness in the workplace, telling their story about how they are utilising the assets that are available today to be successful at Barclays in the workplace. That has started to take away some of the barriers this Committee was talking about earlier, by removing fear of what we are unsure about talking about. It is colleagues giving colleagues permission to ask the right questions and have what we would think of as being the right dialogue, in a sensitive way, to remove the barriers around hidden disabilities. For us, it has continued to expand our definition of need in the workplace and it enables us to put a plan in place to address those needs.

Through relationships such as with BDF, we are sharing those best practices, because it is not always about monetary investment to bring resources to bear for smaller organisations to be able to utilise best practice such as “This is Me” or the idea of a listening group to help inform and then move forward.

James Lowman: There is a challenge around the perception of hidden disabilities. That is common in our sector. We produced a guide around supporting and welcoming disabled customers. Talking to our members about that, the starting point for all those conversations was about widening aisles for wheelchairs. That is where everything started off. It was about trying to explain to people that—when I say “explain”, I am not an expert on this, but learned through working with the Business Disability Forum and others—there are issues

around customers who are hard of hearing or have dementia and all sorts of other issues related to this, and therefore there are training requirements for staff and so on. It is hard to keep getting those messages through, but it is an ongoing learning process for people.

The process many of our members go through is exactly the same as Mark is describing but in a smaller environment. It is about trying to get members of staff talking to one another about adjustments and ways of working in a very practical way. In most convenience stores, there will be anywhere between one and five members of staff on a shift at any one time. It is about finding ways to work around and support people with disabilities. There are practical issues around how you do that, so it needs those members of staff to work closely together. This guide deals partly with that and with those issues around supporting customers.

Q74 Baroness Campbell of Surbiton: Dr Purton, from a union perspective, in the past there have been a lot of problems with people with hidden impairments saying they are not believed when they come for advocacy support from various unions. Is this still a problem?

Dr Purton:¹ We are in a phase where some organisations are doing well. I am sure Barclays is an excellent example and that the members of the BDF are in the vanguard, but they are in the minority, in my view, certainly in terms of the information that disabled trade union members give us through our representative structures. It is a very timely question. I am collecting examples from our members at the moment to publish a TUC guide, which will be entitled, “You do not look disabled, do you?”. That will be out in the next few months, I hope.

That reflects the real truth behind the question: there is a massive popular ignorance, which obviously feeds into all workplaces, about what a disabled person is. We could have our discussions—and I will say what I think in a moment—about what the Government and the EHRC could be doing about that, but that is at the root of it all. We have a very stereotyped view of what disability is. The mental-health angle is the sharp end, if you like. Certainly in terms of numbers, it is probably the biggest invisible disability. We have come across so many examples, particularly in the present stressed economic circumstances, particularly in the public sector, where people are being asked to do several people’s jobs now because of job cuts. The degree of stress in those sectors is enormous, leading to depression, leading to mental illness, leading to people losing their jobs and never getting back in again, because of the stigma associated with mental illness.

There is a massive challenge there, which is down to a lot of different factors. It has always been there, of course; it has just got worse at the moment. How we deal with that is a responsibility for employers, which comes down to training, essentially. Here, we have argued countless times—I have been doing this job for 18 years, and I seem to have made the same argument every year—that it is about training. It is about not just the board of the organisation adopting a disability-friendly policy; it is about providing regular training for everybody who has to administer that policy at all management levels, in particular, within the organisation. We have come across so many examples where it is at line-management level that an excellent policy fails to work. In small businesses without that structure, it is

¹ Subsequently Dr Purton wrote to say: “I misheard Q73 from Baroness Campbell and thought she was asking about people not being believed by employers, she was in fact asking about unions. I would have said that while there may still be cases, these are increasingly rare and that most unions are now much better at representing disabled members with any kind of impairment. I have gathered case studies of many such examples, where the manager has failed to accept that someone is disabled because it is not visible, and the union has had to intervene to persuade them otherwise, or to secure medical or occupational health evidence to confirm that the worker is covered by the Equality Act.”

down to the awareness, understanding and support available to the business owner and the manager to be able to carry that out.

That is the first question. The second question is about people being able to respond in the workplace—colleagues and managers—to issues like mental health. We have picked up some very good examples where unions have worked with the employer; they have developed a mental-health first-aid scheme; they have jointly trained managers and workers to support each other, identify early symptoms and, obviously in a completely non-judgmental way, point them in the direction of support that will keep them in work through early intervention, rather than causing the cumulative crisis. In mental health, the solutions are there, if employers could be persuaded to take them through. We are working through our structures to try and make that happen.

Finally, in terms of what could be done and Government action, words need to be turned into deeds, frankly. That is the shorthand slogan to deal with that. One of those deeds could be reinforcing the Equality and Human Rights Commission instead of reducing it, because the loss of the previous Disability Rights Commission helpline was a major blow. It was used by large numbers of people. You have heard all about that, yes. The loss of that and its replacement with a non-expert advice service was a major blow in terms of providing an ability for early resolution of these problems. If we all share the same objective of wanting disabled people to get into work and wanting disabled people to stay in work when they get there, support for employers to know what to do and support for the individual to know how to access their rights are equally important.

Unfortunately, we do not have enough trade unionists these days to be everywhere. We try to do that where we can, but it is a challenge for the Government to take that on and put the resources in to make it happen. It can happen, and we have excellent examples where the employer knows how to do it, but so many employers do not.

Baroness Campbell of Surbiton: Mr Selvanera, I have some scepticism about the EHRC's, or perhaps the Government's, Disability Confident project, because, when it first came out and I met the Minister, he said it was his first big idea, coming into Government. I remember saying to him, "Is that not the Employers Forum on Disability? Have they not been doing it for 10 years? Perhaps you should go and get a bit of advice". I am not sure he was very pleased with my cheeky response. I would like to know whether you feel it is a good idea, although some people think it is a bit old hat.

George Selvanera: What an interesting way to frame your question. I am one of those people who think we need to come at these issues in terms of non-visible disability in a whole raft of different ways. While I agree that training, for instance, is certainly a component of the solution, it is much bigger than that. We are not just talking about a workplace issue; we are talking about a much bigger social issue. We are talking about how we think about and understand issues of mental health, autism, and dyslexia—a whole spectrum of different sorts of conditions.

One thing that Barclays, again, does really well is it seeks to impact its culture. It is about raising awareness within its own organisation and using its own people as its ambassadors. You have this peer-to-peer sharing of information, which helps to shift the culture. Then, of course, it is supported by training and other sorts of guidance that are provided, whether to line managers or others.

To answer your question more directly, a campaign like Disability Confident is helpful in raising awareness of the importance of recruiting people with disabilities. That has largely been its focus. Certainly, it is not a challenge that we have not raised directly with the

relevant Ministers or the Department for Work and Pensions at various points, but one of the challenges of thinking about how you make a recruitment process accessible is that it has to involve the IT department, because that is often an online recruitment process. It means involving the premises department, so that the building is physically accessible. It means involving the learning and development department, so that there is adequate training and line managers are equipped to know what to do. It cuts across the entire organisation.

That is part of what makes disability fundamentally different to the other protected characteristics: that there are these technical adjustments and “hard” adjustments that need to be made. To the extent that the Disability Confident campaign can raise awareness of the value of recruiting people with disabilities, that is a good start, but it requires so, so much more. You already know from our written submission that we think the Disability Rights Commission, for instance, made a lasting impact as it relates to the law as it was understood by employers, disabled people, service providers and others. The EHRC has been far less effective in that respect.

The Chairman: Is it the view of all of you or some of you that the EHRC is a step backwards? Obviously it is not deliberate, but in effect it is a step backwards from the commission that existed before.

George Selvanera: Yes.

Mark McLane: We have seen a positive interaction with the commission when we have been brought forward. We have also then taken the recommendations more broadly across the organisation, so I would not see it as a step backward. It is also about, as an employer, how you are utilising the resources today. The question that was raised by the Baroness was one of: “What is the right equation?”. There is no right equation today. As I look at all the assets that are available around disability, I would not narrow it down to saying one asset that is available, such as the Disability Confident campaign, is not the solution, but it can be a part of the solution if you are looking at it more broadly.

Barclays did step up for the Disability Confident campaign, because we saw an opportunity to bring best practice to the community. We then brought that into our own Disability Confident campaign within our branch network and invited non-profit organisations, and colleagues and customers, in to look at the work we are doing around customer and colleague, to give advice and to move Barclays agenda forward. The question is: “What is the right equation for an organisation?”. You have to pick and choose what is going to have the greatest impact. More visibility in the community, such as a campaign like Disability Confident—or what that may evolve into—also drives greater awareness and greater education, which is what we are talking about, and that is not always sitting in a classroom. It also takes away the fear that is associated, within business or in the community, with the broader conversation of disability. I do not believe that there is one right equation, but I do believe that all the aspects that we are talking about have their point in time if utilised correctly.

Q75 Baroness Campbell of Surbiton: What is your direct involvement with the EHRC? You said that you find it to be a useful body. What have they done for you? What have the Romans ever done for us, so what has the EHRC done for you and your work?

Mark McLane: Baroness, I would have to come back to you, because I do not personally have direct involvement with the commission. It is not part of my remit, but I am happy to come back.

Baroness Campbell of Surbiton: That would be very useful.

Mark McLane: Yes, I absolutely will.

The Chairman: Does anyone else want to say something about their involvement with the EHRC?

Dr Purton: At the TUC, we have regular involvement with the Equality and Human Rights Commission, as we did with all the predecessor equality commissions. I just want to say, in case it is misinterpreted, we are very strong supporters of the existence of an EHRC. We think what has happened is that progressive reductions in the resources provided to that organisation, as already referred to, have made it much less effective in terms of the support it is able to give to any of the protected characteristics, but disability particularly, because the DRC was such an excellent example of a really effective equality commission previously. It was always going to be difficult to retain that in a merged body, but, at the beginning, they had some of the resources to do that; now, they are really struggling. They are just not able, therefore, to fulfil the full remit that we think they should be fulfilling in terms of advice to employers and advice to individuals to access their rights. They have to provide both of those roles; they are struggling with their resources to do that.

Baroness Campbell of Surbiton: Is it just a resources issue or is it anything else?

George Selvanera: It is also about the functions. There is a perceived lack of enforcement capability. The EHRC does not take or support claims. That is about functions; it is not simply about resources. The functions are less than those of the DRC. I have no doubt that you have had person after person come before this Committee to talk about the value of the DRC. It really did make a lasting impact.

Baroness Browning: We heard what you have said about the resources and we understand that. Could I just ask you: would you regard the EHRC as a proactive body? In your experience of dealing with them, are they proactive?

George Selvanera: No, not particularly.

Baroness Browning: Does anybody think they are proactive?

Dr Purton: They were, for example, with the splendid work they did on disability harassment a few years ago. That was an example of a proactive intervention, which was most welcome and very useful. The function of the EHRC has to be double-edged, does it not? It is both representing individuals for them to gain their rights and to spread awareness of those rights, but also influencing and intervening in cases, as it still does—and we very much welcome that role—and in terms of education and support. Clearly, it needs to be resourced to do it properly, because it would make a big impact.

Q76 Lord Harrison: Gentlemen, I would like the four of you to respond to the proposal that the duty to anticipate reasonable adjustments should be extended to employment. I cannot forbear, with the presence of Mr Jamie Lowman from the Association of Convenience Stores, to illustrate what I am thinking of. Using Dr Purton's forthcoming publication, "You do not look disabled, do you?", I have the instance of a type 1 diabetic, who was therefore taking insulin, working in a very famous convenience store chain, finding great difficulty and finally losing his employment because accommodation was not made for him to enjoy privacy when he was taking his insulin, or indeed when he was having to have timed and regular meals or snacks. I wonder whether you can put that in context in reply.

I have to tell you I am a very strong supporter of small businesses, and convenience stores are sometimes viewed as right at the other end of the small business spectrum in interest from Government and politicians. I have enormous sympathy for the world that you inhabit, but there was an example crystallised for me of where there was discrimination.

James Lowman: There seem to be two issues there. In that particular case, or in any case where a member of staff has a disability or an issue that needs specific support in order to deal with it, I would see the law as being pretty clear that you have to make reasonable adjustments to allow that to happen. In that case, provision should have been made to do that, as in a whole range of other cases where there are different disabilities and different issues at play. That is very different from a requirement to anticipate all eventualities in terms of employing people with disabilities.

Some of our members operate in newly built sites, which have been custom-made and would be built with many of those eventualities catered for. There are many more of our members who operate in old buildings, where space is constrained. I am not trying to go back to argue that case; it does seem particularly bad from the way you have described it there. Often, when I go into convenience stores, there is no back office. Often, the office is actually on the shop floor. There is not significant storage space. There might not be, naturally, many areas that would allow privacy.

I am not trying to argue that case, which was pretty bad, but, where we are dealing in old and space-constrained buildings, then particularly, for physical adjustments to support people with disabilities, it is one thing to make adjustments for people who are there and on the payroll, and, as we said, to listen, to adjust and to make those reasonable adjustments. First, it is the law, and, secondly, it is good practice anyway as an employer, and obviously that is transferred across to dealing with customers as well. Trying to anticipate all eventualities, or even a large number of eventualities, for businesses of that nature is incredibly hard. When people are rebuilding or refitting, yes, there can be more done at that stage, but, in those established premises, it can be extremely difficult.

Lord Harrison: What you hope for is the mind-set, which is open to the possible need for adjustment for an employee.

James Lowman: Absolutely. I talked there about physical constraints, but clearly many of the constraints are not physical. Actually, many of the constraints are about the approach and management, and management training and management understanding. There are people under pressure who may not understand or not take the time to think about the things they could do, which might not cost anything or very much, but are a practical way of helping those people. We would absolutely encourage that.

I would say as well, looking at the convenience sector, there are many people with disabilities employed in the convenience sector for whom allowance and adjustments are made, and they are supported in doing that. We play a very important role in providing employment opportunities for all sorts of people—whether that is people who have to combine it with care arrangements, childcare, study and all those sorts of things—and included within that are people who have disabilities and who need that support. We have a proud record as well.

Dr Purton: When I had notice of this question, I racked my mind, went back over my records, and found that we had made a submission, as the TUC, in 2004, to the Joint Committee scrutinising the then Disability Discrimination Bill that became the revised DDA. We had made exactly this proposal, along with a number of others. It was one of those, unfortunately, that was not taken up. I checked again the thinking that had gone into that request, because I entirely take on board the total impossibility of anybody pre-emptively making adjustments for every conceivable need, because we know everybody's need is different and is unique.

We are talking about the employment situation here. If this exists already, in terms of making provision for customers and service users, there is no reason why it should not be used, in our minds, also from an employment prospect. That is not from the viewpoint of saying, “You must have 40 different facilities in your room just in case somebody applies to work for you who has a particular set of support needs”, but in terms—and I think you [Mr Lowman] are absolutely right—of the attitude.

This would require employers to adopt a change of attitude. Instead of reacting to someone coming to them, either declaring an impairment or applying for a job with an impairment, they have it in mind that, “We need to make our workplace as accessible as it possibly can be”. That is not just the physical access, which is crucial, of course, and which we hope most employers these days, and certainly large ones, are doing as a matter of course. It is an attitudinal issue, in making sure managers and staff are supported and trained to be able to relate to work colleagues who have particular impairments.

Mark McLane: I would agree with what both of my colleagues have said. It is attitudinal and it is the physical aspect of the workplace that needs to change. I absolutely agree with Peter about training. Again, it is not always formalised training. It is the approach of having open, honest dialogue in the workplace. What we are doing is about having colleague-to-colleague dialogue and being very visible. This is not about having a few pamphlets and not making it part of the actual organisational dialogue. It is a culture change that we are looking to effect, because then the anticipation of need becomes part of the employer/employee conversation. You always are anticipating need, regardless of what type of need we are talking about, and that is whether it is a physical disability, an unseen disability, childcare requirements, caregiver requirements, mental health and wellness or just wellbeing in the workplace.

I absolutely agree that it is about education, and I do think there is opportunity between the private sector and the Government to continue to push that education and awareness further, because it also sets an expectation. There is an opportunity across industry and sector—as employers become better, it puts pressure on an industry and competitors to also continue to maintain or catch up. That is the work that the BDF is doing in assessing the workplace, assessing employers and then making it public as to who is getting it right. Even with getting it right, there is still always more to be done.

Q77 Baroness Browning: I declare that I am a vice-president of the National Autistic Society and Alzheimer’s Society, and I hold several non-exec positions with other autism charities. You have an even bigger challenge than you think and I would like to see how you are going to handle it. Mr McLane, you have said it needs a culture change, and I think that culture change is more than just recognising people’s disabilities. That seems to be what you are indicating. Dr Purton, in your book, I am not quite sure what angle you are coming at it from, but there are quite a lot of people now on whose behalf we, as politicians, would argue, to get services and to get recognition for them because of their disability.

I know that, out there, there are a lot of people whom we in this room might regard as having a disability, who themselves want recognition of their need but do not actually want to be labelled as disabled. I am particularly thinking, for example, of the Asperger community, many of whom have argued with me that they do not have a disability, but at the same time they would need all of your help in getting into and maintaining a job. There are people with mental-health problems, and I am thinking particularly of the work done by BT in the culture change they have introduced to that company in positively going out to recruit people with mental-health problems.

How are you going to deal with this conundrum of the need to recognise disability, if only to get access to the right support for individual people, but at the same time change the culture of British industry and business to the extent that these people who want to work—who want to take their place in society—do not want to be recognised, as such, as disabled?

George Selvanera: If you do not mind me answering first, what you are describing comes up in so many different forms. A lot of the discussion that can happen around older employees or older customers is: “Do not call me disabled. Of course, I cannot hear properly. Of course, I cannot see properly. It is just that I happen to be older”. “Okay, but you could call that a disability”. “No, I am not disabled; I am just old”. Of course, lots of people will not recognise, even for themselves, that they have a disability, which is exactly the point that you are making.

In some senses, it does not matter. What matters is exactly what you are describing, which is whether or not organisations themselves not only are resilient and flexible enough to accommodate that kind of difference and diversity, but have the resources, are properly equipped and have the right knowhow to ensure that each of those people, if they are employees, are productive and happy or, if they are customers, are satisfied and can generate the kind of loyalty that comes from providing excellent service.

I am not taking away at all from the challenge. A large part, I guess, of what an organisation like the Business Disability Forum seeks to do is to bring those organisations together to help with exactly the stuff that Mark was describing at Barclays: to share good practice, to lead from the front, to promote excellent practice toolkits that can help smaller organisations, or organisations that perhaps do not have that same history or the same kind of resources to be able to make those sorts of changes.

One thing that, in a broad sense, gives me some level of optimism, at least for the future, is that rapidly changing demographic trends are at work here in the UK, and indeed across large parts of the world. We are rapidly ageing. The workforce is rapidly ageing; the customer base is rapidly ageing. Even if those older people do not necessarily want to be called disabled, that is certainly code for many more people with disabilities being in public life with exactly the same sense of wanting to have those opportunities to participate socially and economically. I am conscious that the good businesses are those that are thinking about that and are making those sorts of adjustments, both in their own thinking and in terms of the kind of resources, tools and knowledge that they need to have in place within their organisations to be able to make those sorts of changes.

In terms of whether or not there should be a duty to anticipate, in an employment context, those reasonable adjustments, there is a whole question about what is reasonable. One thing the UK does well is to talk at that level of principle. James is right. It would be unreasonable to expect a three-person dry cleaner, a two-person florist or whatever to have to anticipate every type of adjustment that they might need to make because they are going to be coming into contact with, potentially, a whole range of different people.

Good businesses are already anticipating, in their employment context, that they will have employees with a whole range of different kinds of requirements. We see that when people change their buildings, when they make their premises more accessible and when they allow their IT departments to enable personalisation of people’s IT systems so they can accommodate their dyslexia, their visual impairment or whatever it might be. There is a level at which the change is starting. I am not sure that it is happening necessarily as fast as we would all like, but I think that change is afoot.

Dr Purton: From a TUC perspective, on that question, there has been much agreement on this panel, on this question anyway, I am delighted to say, that the anticipatory duty would assist with dealing with the problem that you have highlighted, which is a very genuine problem. We have known from the very beginning about so many people who would be protected by the law but refuse to accept the label. It also gives me a very convenient hook on which to hang the centrepiece of our submission to you, which is, if the Equality Act were amended to take on board the United Nations Convention definition of disability, and the change to the social model approach to disability, this would go a long way towards driving the culture change and the attitude change that would make this kind of debate superfluous, because it would be about removing barriers, whether or not somebody officially qualified as disabled or recognised themselves as disabled. I would encourage the Committee to think seriously about that suggestion as a more global approach to dealing with so many of these other issues of culture and attitude.

The Chairman: We take note of that.

Q78 Baroness Jenkin of Kennington: I am pointing at the screen, because we may have to go. I have no relevant interests to declare. This is principally to Mr Lowman, but anybody else may pitch in. This is about your recently published guidance. You mentioned the main feature of it. What prompted you to produce it, and how has it been received by your members? Has it helped service providers to meet their duty to anticipate reasonable adjustments? You particularly talked about wheelchairs, and you have obviously talked about difficulties for small shops.

James Lowman: A number of things prompted this. One of them was that we were working with the department for business on a project called Everybody Shops, particularly about older customers. When we came to do that work, I came to recognise that it was something that our sector could possibly do more on. We saw some examples of very good practice. In terms of the last question, the best examples I see are when people are treated just as individuals, are accommodated into a team, work within the team as individuals and are not labelled as anything. I had seen many of those good examples in our sector but wanted to try to bring those together.

We were also very conscious that there was still some confusion. There is always this balance between certainty and flexibility in terms of the law. There was some confusion about what “reasonable” meant in this context, and the more help we felt we could give would be positive. Ultimately, we saw it as a commercial opportunity for our members to be better at welcoming disabled customers through training their staff but also opening themselves up to be able to employ a broader range of people who could bring their own skills to the business. That is what has prompted us to do it. We worked with the Disability Forum on the content, as they are the experts on that.

The response has been really positive from members. It is a long-term thing to try to change. Some people do not need have attitudes changed; they are already doing absolutely the right things, but to try to broaden those attitudes and that best practice will take time. The response has been very good, and we want to continue to publicise it and push it.

The Chairman: Are you really confident about this? Some of the saddest written evidence that we have received was from people who were trying to access small shops and found really very little support. They were almost told, “Go away”. We had a lot of stories about people who were unable to access small shops or were humiliated when trying to do so. Are

you really convinced there is a change of attitude? That is not what has come through in our written evidence.

James Lowman: In putting this together, we consulted lots of our members who I suppose told us the opposite stories. I would like to think that the stories that were related to you, which obviously sound terrible, were in a minority of small shops. I would need to look at that evidence in more detail and share it with members, so they can see the consequences when this is not right. No, I see lots of good examples of retailers really thinking about this. Partly, they are community businesses. They are physically based in communities. Most people walk to the store; 50% of the customers come from within quarter of a mile of the store. The reputation that business has for looking after its customers is fundamentally all it has to stave off competition and to continue to survive. That is where I wanted to try to position this as an economic and business opportunity, as well as being the right thing to do. It is disappointing to hear that evidence and we would like to address that.

Baroness Campbell of Surbiton: As a disabled customer, I would quite like to see more disabled people serving on the shop floor. I was horrified to hear about a policy—and not an unspoken policy—whereby certain fashion shops will not employ disabled people to serve customers. I can name a few of them; I am sure we all know. Basically, the company goes out to look for young, good-looking people, and they think the disabled people either do not look good or might even frighten customers away. Is this something that you have come across? Apart from Asda and the odd Marks & Spencer, I do not see disabled people on the shop floor.

James Lowman: I see disabled people, perhaps some with hidden disabilities as well, working in our members' businesses quite frequently. That particular fashion shop example I have read about myself, but I do not speak for them.

The Chairman: I have seen disabled people in supermarkets.

Baroness Campbell of Surbiton: I have seen them in supermarkets. I am thinking of fashion here.

The Chairman: That is a separate problem. I would like to thank you all very much for giving us insight into employment and being an employee. We take away from it that there could well be more proactive support from the Equality and Human Rights Commission, and that you still feel that it would be impossible, for practical reasons, to take anticipatory action in relation to every single disability, but you are working on getting a change of attitude in businesses, shops and so on. Of course, the feeling we got from the written evidence is there is a long way to go on that. Is that right? Anyway, I thank you very much and wish you all the best in continuing in your work. If there is anything else you want to tell us or send to us, do please feel free to do so. Thank you very much.

Now that we have come to the end, can I express my gratitude to our signers, who have done a most interesting and clear job for the last couple of hours? Thank you very much.