HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the Equality Act 2010 and Disability

Inquiry on

EQUALITY ACT 2010 AND DISABILITY

Evidence Session No. 11 *Heard in Public* *Questions 97 - 104*

TUESDAY 10 NOVEMBER 2015

3.25 pm

Witnesses: Doug Paulley and Jonathan Fogerty

Members present

Baroness Deech (Chairman)
Baroness Brinton
Baroness Browning
Baroness Campbell of Surbiton
Lord Foster of Bishop Auckland
Lord McColl of Dulwich
Lord Northbrook
Baroness Pitkeathley

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Examination of Witnesses

Doug Paulley, litigant on behalf of himself and other people, and **Jonathan Fogerty**, solicitor and litigant on behalf of himself and other people

Q97 The Chairman: Good afternoon, and welcome to everyone who has come to this afternoon's session. The first half is very much about the law. We are very pleased to have with us Mr Paulley, who I know has experience of going to court, and Mr Fogerty, who has also done that and is a lawyer. We will be looking at legal issues in the first half of this afternoon, and we are very pleased that you have been able to come here and tell us your experience, quite apart from having given us your written evidence Thank you very much indeed. The names of the Committee members are in front of you, and every Committee member will declare an interest, if they have one, relevant to this inquiry, before they ask their question.

As I expect you know, this session is open to the public, and a webcast of the session goes out live and is subsequently accessible on the parliamentary website. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after the session you will be sent a copy of the transcript to check it for accuracy. It would be very helpful if you could advise us of any corrections as quickly as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence, or if you have any additional points to make, you are welcome to submit supplementary evidence to us. I say that because you will appreciate that we have to move pretty fast through the questioning. We have another session after you. So if you have a feeling that there was something that you really wanted to tell us, or you did not have time to amplify something, by all means write in later and we will of course read it and add it to our store of knowledge.

Mr Paulley, we know that you are a disability rights activist. You sent us very useful written evidence. We know that you have wide experience of taking cases for discrimination under the Equality Act, we know that you are involved in a case right now and we all understand the sub judice rule: we cannot discuss the details of the case, but we can talk about it in generalities. If you think we are crossing the line, or if we think you are crossing the line, then of course we will stop short and not go into the actual details of the case before the court, although we anxiously await the Supreme Court's judgment.

Both of you have litigated successfully and frequently to enforce your rights under the Equality Act, but in this you are far from typical. Is it right that ultimately the only way disabled people can enforce their rights is through court proceedings initiated by them? Could local authorities do more? Would you support the creation of a disability ombudsman or other things such as mediation? Mr Fogerty, I know that you are a solicitor, and you have

great experience of that too, so we would like to hear from both of you about litigation and how to help people achieve their rights.

Doug Paulley: It is very difficult for disabled people to take cases, both with representation and without it, as I should imagine the Committee is largely aware. However, I have concerns about the potential of an ombudsman, because sometimes, to my mind, they do not have much oomph behind them. If we were to have an ombudsman, we would need one who recognises that this is not just a customer-service issue; it is a legal right. They would have to have the duty to assess any issues that came in. From my own experience, I can recommend the Information Commissioner, because they have to assess compliance or otherwise, or likely compliance, under the Disability Discrimination Act or the Freedom of Information Act. This assessment is mandatory. At the moment, I wonder if another ombudsman without that would basically be repeating what the Equality and Human Rights Commission is doing.

I am not happy with the idea of local authorities' taking on enforcement, partly because it produces something of a postcode lottery. That is my own experience. Certainly, taxi provision varies substantially around the country, as does enforcement. Some issues are never enforced, such as the Conduct Regulations.[1] To the best of our knowledge, nobody has ever enforced that law, and it would be good to have an ombudsman or similar who could do that and take away the impossible burden on disabled people in attempting to enforce their rights.

The Chairman: You say "impossible burden", and obviously I understand about the cuts in legal aid, but what is it about you two that has enabled you, almost uniquely, to pursue so many cases? What was the trick that enabled you to go forward when so many others have found it impossible?

Doug Paulley: So many people do not have the support they need to get even to their front door, let alone to experience discrimination in the community. When people are being forced to be incontinent at night because the local authorities do not have the resources or will not spend the resources to assist them even on to the commode chair, they have little chance of ever engaging with services, let alone challenging them. I am lucky in that I am articulate and I had a good education, very supportive family and friends, and some experience of life before moving into an institution. Many people do not recognise that they have been discriminated against; and if they are not literate, and a large proportion of disabled people are not literate, they have no chance of even beginning to interface with this sort of thing.

The Chairman: Mr Fogerty.

Jonathan Fogerty: First, I thank the Committee for inviting me to give oral evidence. You have extended a warm welcome, and I would like to reciprocate your thanks. Thank you very much for the opportunity to be able to give my input.

I will answer your question there before I make a couple of wider points. I think I am fortunate in that I am already a qualified solicitor, so my experience professionally on a day-to-day basis involves engaging with the courts. I have the experience of taking a case to the small-claims court, and fortunately I am not intimidated by the court process, so I feel confident, first, in knowing that I have been discriminated against, or at least in thinking that

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[1] The witness was referring to Part IV (The conduct of drivers and conductors of regulated public service vehicles with respect to wheelchair users and other disabled persons) of the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 (SI 1990 /1020) introduced by Regulation 6 of the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002 (SI 2002/1724)

I have been discriminated against; secondly, in going through the process of corresponding with the service provider in writing to try to sort the situation out before deciding that the complaint has not been resolved to my satisfaction, so the ultimate process is to start court proceedings, which I do not do lightly. Fortunately, I have the experience to be able to assess that the situation has not been resolved properly and to take that final sanction of going to court.

I ran a course on the Equality Act and on taking action under it through the Spinal Injuries Association. That proved very popular with our members, who wanted to know what to do. They were happy writing letters, writing a letter of complaint, but were very unsure what to do as the next step when their complaint was not resolved to their satisfaction. Either they did not receive a letter in response from the service provider concerned, or the letter did not address the basis of their complaint. The problem was how to take that next step and having the confidence to do that. There are a few reasons why people do not take it. Mr Paulley has touched on one or two of them. I will touch on a couple as well.

I will go back to one of the questions the Chairman asked at the beginning, which was about how, ultimately, the only way in which people with a disability can enforce rights is through court proceedings initiated by them. As a lawyer, with my lawyer head on, when somebody comes to me for advice, the first question I ask them is, "What do you want to achieve by going through the process of litigation?". Litigation is satisfactory as an end result but it also never really, in my experience, results in a win-win situation, because by the definition of going to court one party loses and one party wins, and one party is going to be aggrieved by losing. So if the situation for the person with the disability discrimination involves a service that that person wants to continue using—they just want equal access to it—I would be very reluctant to recommend that they engage in a process of litigation. Does that make sense? If they go through the litigation, either they or the service provider is going to feel very uncomfortable in using it. I will just give a very quick example of a lady I knew. She wanted to be able to access the swimming pool at the local leisure centre. The leisure centre had two swimming pools. One was ostensibly a learners' swimming pool, one for children, and one was what you might call more of an adult swimming pool, where people would swim lengths for exercise. Only one of those swimming pools had a lift installed, a shower-type chair, in order to enable a wheelchair user to gain access to that pool. That was installed in what one might call the learners' or the children's pool. One day she went down to the swimming pool to use the said pool, and the pool was closed. She got a couple of lifeguards to assist her manually by lifting her into the adult pool and she swam lengths. When she went back the next time to do exactly the same thing, the leisure centre owner had forbidden the lifeguards from lifting her manually because of the risk in manual handling, so she could not access the main pool and had to go back to using the learners' pool. She wrote and complained about the lack of an access lift into both pools, which should have been made as a reasonable adjustment under the Equality Act. By the time her complaint process had been handled, the funding had been found for a lift, it had been installed and she was able to use it. She went through a mediation process in order to be able to get to that situation. My point is that if she had resorted to court action she would have won, but would she have felt uncomfortable going back to that leisure centre and using the facility? Would the leisure centre have felt comfortable having her back in the pool? I suggest not. She wanted, by going through the complaint process and ultimately, if she had to, going to court, to enforce the access, but it would have resulted in a poor outcome at the end. So I still say to people with a disability, "Please make sure that you have exhausted all your attempts to

resolve your complaint in writing, and properly, with the service provider. Talk to local service providers about the facilities that they are offering and why they are not suitable for your particular disability". A lot can still be achieved by corresponding effectively with the service provider, so that the person feels that their complaint has been handled properly, that a reasonable adjustment has been made, and that all parties involved are satisfied with the outcome, the facilities are much better for everybody concerned and the person with the disability still feels comfortable using the system.

Q98 The Chairman: You are making a strong case for mediation. Is there a specialist disability mediation service?

Jonathan Fogerty: There is not now, Madam Chairman. There used to be under the Disability Rights Commission. Once we lost the Disability Rights Commission and we got the Equality and Human Rights Commission, we lost the face-to-face mediation service. The first case that I took was under the DDA legislation. I was assisted by the Disability Rights Commission in having a face-to-face mediation with the service provider involved. That, I have to say, Madam Chairman, was a very, very powerful experience. I did not settle at mediation, but that did not undermine the way the process was handled and the opportunity it gave to me, as a person with a disability, to talk directly to a representative from the service provider that had discriminated against me about what had happened and how it made me feel and potentially to talk about a remedy to the situation.

The Chairman: What I think I am hearing from both of you is that a mediation service face to face would be a good, and perhaps not too expensive, addition. On the phone it just will not do, will it?

Jonathan Fogerty: In my experience it was totally unsatisfactory. Once I took advantage of the small claims mediation service. I issued court proceedings, so I then had the opportunity of going to the small-claims mediation service, but it was over the phone. I had thought, when I engaged in it the first time, that it would be a three-way telephone conversation between me, the service provider and the mediator on the phone so that these issues could be aired. It was strictly limited to one hour, and it was me on the phone talking to the mediator. The phone got put down. The mediator picked up the phone to the service provider. They had a conversation. It was not fluid, there was no exchange of ideas, and it was totally unsatisfactory.

Doug Paulley: I have successfully sued the small-claims mediation service through the Ministry of Justice for disability discrimination, for failing to make reasonable adjustments. Yet the equality mediation service, as was, was so much better. It has provided very good service, and I am very sad that it is gone.

Baroness Brinton: You said something earlier, Mr Paulley, about an ombudsman for services that may be licensed by councils. This was in the context of local authorities. You were saying that in some contexts an ombudsman was not particularly useful, but you thought that it was in this case. Are you talking about an extra ombudsman, or are you talking about the Local Government Ombudsman being able to intervene?

Doug Paulley: I was thinking more of an ombudsman or some form of body to deal with equality issues, not just within councils—something like the Information Commissioner, who deals with freedom of information and data-protection legislation countrywide, although it is devolved for some aspects. I was thinking of a model more like that, to be honest.

Baroness Browning: I take the point you have made about mediation, but with cases where you do start to take action, specifically those to do with local authorities, do you have any feel for how many local authorities settle before a case gets to court?

Jonathan Fogerty: In taking action against a local authority? I would not know. As to ordinary service providers—a restaurant, bar or cinema, something like that—I would say an awful lot, because they want to avoid the adverse publicity that would come with going to court.

Baroness Browning: But failure to provide statutory services through social services—any idea?

Jonathan Fogerty: I honestly would not know.

Q99 Lord Northbrook: I have no relevant interests to declare. Tribunal fees and the reduction in legal aid are both cited as reasons that enforcement of rights through the courts has become more difficult. Should the Equality and Human Rights Commission do more to support litigants from the outset? Could you talk about premiums for after-the-event insurance and the possible extension of qualified one-way costs shifting under Part 44 of the Civil Procedure Rules? Perhaps we could start with Mr Fogerty.

Jonathan Fogerty: Thank you for the question. First, in my view—and Mr Paulley has touched on this already—disabled people as a whole need to improve their use of the Equality Act legislation, and I do not say that lightly. I think of other equality strands that protect people in this country. People with an ethnic minority background and people of different sexual orientations, for example, have used the equality legislation very effectively, but I think that people with a disability have done that less effectively. Mr Paulley has touched on some of the reasons for that: if you have a lot going on in your life with your disability, if it takes you two hours to get up in the morning and two hours to go to bed, if you face discrimination and you are not sure whether you have or not, if you have so much else going on, then taking litigation is something of a last resort, and you will feel intimidated by the process, so you are not going to do it.

I was touched recently—just last week, I think—by the case of the chap who faced homophobic gestures and who received a very substantial settlement, having gone through the court process. He took that litigation under the Equality Act. So if people from different minority groups in this country are using the equality legislation, then why are people with a disability not doing so? I think they feel intimidated by it. I think there should be more support from the Equality and Human Rights Commission to support people down the process—we have touched on that already—with greater emphasis on providing a mediation service, to guide people through the stages. It is not just about getting the outcome; it is about feeling that a person with a disability has had their case heard, even before it gets to court. So I think there should be more emphasis on support from the Equality and Human Rights Commission. My experience of using the EHRC has been largely negative, I have to say. As you have to do now, I have to write to the EHRC to give them notice that I have issued proceedings in the small-claims court under the practice direction. They write back to acknowledge that. But before that, in sending copies of my correspondence, it has been very ineffective. I send copies of any judgments and of the outcomes of any proceedings. If I do not litigate, I am always sending them copies of correspondence, but very little ever comes back from them in terms of any real support.

Speaking as a lawyer, I can understand why more lawyers do not take these types of cases on. It is because of the difficulty with funding. It is both a pro and a con that the discrimination cases end up in the small-claims court. There are costs consequences of that in that if you are in the small-claims track and your case remains in the small-claims track, if you employ a solicitor yourself you will not recover those legal fees. Likewise, if your opponent employs the services of a solicitor, they cannot claim their legal fees back from

you as long as your case is meritorious. I think that is a very important feature, I really do, because it enables people to go through the procedure confident that if they lose their case, the only exposure financially—and I say "only" lightly—is their issue fee and their court hearing fee. In the small-claims track—let us say that the bracket in which you put your discrimination claim is around £5,000, which is the usual kind of bracket—your issue fee is just over £200, and your hearing fee is just over £330. So your maximum exposure in a financial loss will be around £540. That is a significant sum—I am not demeaning that amount of money—but it is a fee that you know at the beginning, if you take the case and lose it, is what you are exposing yourself to. If a solicitor were to take the case on—and I assume they would do so on a contingency-fee basis, if ATE or no-win no-fee insurance were available—they would be doing it on the basis of, "Well, we will take 25% of any damages that you are awarded", for example, and limit themselves to a percentage. I assume that in those cases solicitors would end up in the difficult situation of saying, "You have been awarded £1,000 for your discrimination. We are going to take £250 of that in our legal fees". But £250 would not reflect the amount of time they probably put into it, so they would probably have to take more, and all of a sudden you get solicitors with bad headlines in the papers saying that £1,500 is awarded for discrimination in a case, and the solicitors take £1,500 of the £1,500. That is just going to generate bad headlines for lawyers. So these cases are the type that solicitors, if I can be so blunt, do not really want to take on because of the adverse publicity about their taking the costs. That would be my experience of being a lawyer. It would be my experience of advising other people that the purpose of the small-claims track process—if we go back to the Woolf reforms of the late 1990s, which simplified them—was to encourage more litigants in person. With the idea of the litigants in person, the small-claims costs consequences were designed to encourage more people to take these kinds of cases on themselves.

Doug Paulley: The Equality and Human Rights Commission has indicated that it is generally its method that it becomes involved only once a case has already got past the initial litigation stage, although in the case of disability it is looking at starting its support and intervention earlier. At the moment it is not really happening. There are around 15 applications for Section 28 assistance a year on disability discrimination in the provision of services, of which fewer than five are approved. Yet there are so many disabled people around the country experiencing discrimination that that is no reflection on the number of incidents; I think it is a reflection on the effectiveness of the system that should be there to support individuals.

The after-the-event insurance premium is a massive problem. It says something about how few cases get to court that it seems to have fallen underneath the radar at the time of the Jackson reforms. I probably do not need to explain the ins and outs too much, but it makes it uneconomical or very risky for disabled people or their representatives who wish to take a case. Even if they manage to get it allocated to the fast or multi-track, it makes it nigh on impossible. I think that it is a simple error that could very easily be corrected. There are so many reasons why people cannot take cases to establish their rights or to enforce their rights, and this would be a very simple change for the Government to make to remove at least one barrier. All that has to happen is to make clear that the qualified one-way costing gets extended to cases under the Equality Act.

The Chairman: I should have mentioned Baroness Campbell's interests at the outset, to save time. I will read them out now. She is a patron of Just Fair, an economic, social and cultural rights organisation; a patron of the National Disability Arts Collection and Archive; founder and member of Not Dead Yet UK; recipient of a social-care personal budget, disability living

allowance and Access to Work; Disability Rights Commissioner throughout the life of the Disability Rights Commission; and Commissioner of the Equality and Human Rights Commission for three years.

Q100 Baroness Campbell of Surbiton: I wanted to explore a little further the Equality and Human Rights Commission and disabled people's interface with that. Having been on that commission and others, I have quite a lot of experience of seeing the comparisons. It is very good to see you both here. Mr Paulley, as you know, the EHRC has intervened to support you in your case against FirstGroup. Do you think it should play a bigger part in litigation involving issues of public importance? I would be quite interested in exploring judicial review with you both. What is your experience?

Doug Paulley: Thank you. I am very grateful and lucky that the Equality and Human Rights Commission is supporting the case that I cannot talk too much about. The case would not have happened, however—they would not have had the opportunity—unless campaigning lawyers and I had gone out on a limb first to bring this case. Not many people would be in a position to do that. That is less the case now. So there is a problem with the initial threshold. The Equality and Human Rights Commission tends, so I understand, to intervene in existing cases rather than start judicial review proceedings on its own. I was quite surprised the other day to see the extent of the various powers that the Equality and Human Rights Commission could use; to be frank, I wish it used them a lot more. I think it is important that where it sees something significant affecting disabled people, it should jump in and start to do some work on that instead of waiting until disabled people, who struggle in so many ways and who are facing increasing adversity in this country, to bring up the issue.

Baroness Campbell of Surbiton: Is your view the same, Mr Fogerty?

Jonathan Fogerty: Yes, it is, Baroness Campbell. I am interested that Mr Paulley commented that the EHRC is quick to jump in on cases that are already going through the process. I was slightly amused to see a write-up of a case of mine that was settled last year. There was a write-up in the local paper, the *Manchester Evening News*, about it. Having described the damages and the settlement and what had happened in the end, there was a sentence from a spokesperson for the Equality and Human Rights Commission—the name was given, but I forget it—commenting on what a positive settlement it had been and that it reflected the seriousness of the discrimination. The Equality and Human Rights Commission had done nothing all the way through the process but felt the need clearly, once I had concluded the case successfully, to comment upon it and to get its name in it.

I would like to see more from the Equality and Human Rights Commission supporting people, if I am honest. If I can be openly honest, I think disability sits quite far down on the agenda of the EHRC. That has happened since we lost the DRC. All the commissions were combined into one. If we look at how long it took to get effective disability legislation in this country, it came in 20 years ago, in 1995, which followed a long time after other equality legislation in this country. I think that carried through to the EHRC once we lost the specific Disability Rights Commission. Disability is probably far down. If you add to that the cuts that the Equality and Human Rights Commission suffered five years ago, we are looking at an organisation that was very effective as separate organisations, but there is an enormous amount of work for that commission to do.

Baroness Campbell of Surbiton: I was very interested to hear you say that you felt that other minority groups, for instance lesbians and gay men, were more assertive in claiming their legal rights. Do you have evidential information for that, or is it just a feeling?

Jonathan Fogerty: I do not.

Baroness Campbell of Surbiton: Why do you think that is? I would say to you that there are many very assertive disabled people who are quite capable of taking cases, so we cannot really say that all disabled people are in the kind of situation that Mr Paulley describes, although many are. I want to get a bit more of a feel for why you think this. Is it because the other groups have had a commission for longer?

Jonathan Fogerty: If I gave the impression that it was all disabled people, I apologise. I did not mean that at all. From running the course that I did and from talking to other people with a disability, my overriding impression has been that people say, "I tried to get into that pub and it is not accessible. We go to this pub, and all the time I have problems getting in and out", I say, "What have you done about it?", they say, "Oh, nothing, there is no point in complaining", and I say, "If you do not complain, if you do not write, nothing is going to happen". We, as a group of people with a disability, are not going to effect change unless, as a group of people, we do something about it. Or people say, "I wrote a letter, but I did not get a reply". So what did you do about the fact that you did not get a reply? You write your letter, you outline the discrimination that you think you have faced, you put in their brief obligations under the Equality Act legislation, and you put in a reasonable timescale for them to reply. If they do not reply, follow it up. If they do not reply again, follow it up. Then involve the Equality and Human Rights Commission. It involves getting behind your word processor, I am afraid, and doing a bit of work.

Baroness Campbell of Surbiton: I understand that, but I am trying to get you to tell me why you feel that other equality groups with protected characteristics are doing better.

Jonathan Fogerty: It is an impression that I have. Perhaps it is also the way the media report cases that involve other equality strands. There is now the case involving the gay man from only the last couple of weeks. The media seized on that, and it was a huge publicity case. There was a case involving two gay men who went to a bed-and-breakfast and tried to sleep in the same room, if my memory serves me correctly. There was one recently about wedding cake makers. The couple wanted a specific message on a cake. That hit the media. I used to give this example on the course that I ran: being a wheelchair user, if I am trying to access a shop and there is a step in their wheelchair access, it is the same to me as a sign in the window saying, "No black people", "No lesbians", or "No pregnant women". You would not see a sign in a shop window saying, "No black people", or "No lesbians", on a Monday morning, but that is the same message they are giving to me as a wheelchair user. Yet one is totally unacceptable and almost laughable, and the other situation we face every day. As Mr Paulley and I journey back to Euston together, I am sure we could identify many cases of discrimination.

Q101 Lord McColl of Dulwich: I have taken only one case to the small claims court, and I was amazed at how much pressure was put on me by the chairman to take legal advice. Being a Scot and knowing that it would cost something, I refused, of course. My question is: what proportion of cases are taken by litigants, both disabled and non-disabled people, without legal advice?

Doug Paulley: I have been trying to research this. Back in 2009, the Government responded to the Work and Pensions Select Committee, stating that they would manually collate statistics on various aspects of disability discrimination cases under what was then the DDA. They would then institute a computer system that would automatically record this. When I tried to research the proportions using the Freedom of Information Act, nobody seemed to know, to be frank. I have asked quite a lot of different organisations, and from what I can gather the requirement to notify the Equality and Human Rights Commission of cases is not

universally complied with, to say the least. The Ministry of Justice has not recorded statistics on this. So I am afraid that all we can give you is anecdotal experience. I think I am unusual in taking a substantial proportion of the cases in the country on disability discrimination in the provision of services without representation. I know two or three other people who do.

Jonathan Fogerty: I have nothing to add. I honestly would not know from my own experience how many cases there have been.

Q102 Baroness Brinton: Damages for discrimination are often only a first step. Do you think that the power of courts to grant injunctions, as stressed in the code of practice, works to compel businesses and others to make reasonable adjustments?

Doug Paulley: Being frank, largely no, I am afraid. I do not think it works for people who take cases to court, perhaps especially for litigants in person. As my co-campaigner here commented, it certainly has not created a wider disincentive, because if you walk, or wheel, down the street, there are any number of cases where there are still major access problems for people with various different impairments. My experience is that the judges who have dealt with cases in which I have represented myself have had very limited experience in cases under the Equality Act. This is a problem, because often they are not aware of, or are not used to using, this power of injunction, which is traditionally only usable for other legislation, often in the High Court. They have been nervous of doing so. I understand it is quite difficult to produce a SMART injunction—on that is specific, measurable, achievable, realistic and time-bound—which it has to be to be useful. If judges are not even aware of the obligation to appoint an assessor, who is supposed to have expertise in the Act and inform the judge on disability equality issues, they are sunk at the first step. Even if the person bringing the action asks about injunctions, particularly if they are unrepresented, to be honest, I have found that it has not happened. Happily, I think that the monetary penalties, small as they are, and the publicity can have a beneficial effect to a certain extent—from the limited number of cases that make it to court.

Jonathan Fogerty: I agree on the damages point made by Mr Paulley at the end. Even without an injunction, discrimination remains ongoing. If a service provider fails to make a reasonable adjustment, I am not sure how the courts would view it, but it remains open to me to return to a service provider that has made no reasonable adjustment and attempt to gain access again and to start the process all over again. One would hope that a service provider would realise that it would be cheaper to purchase a portable ramp or to make some kind of reasonable adjustment than it would be to face repeated claims brought for discrimination under the Equality Act, or I could tell 10 of my wheelchair-using mates to pop round and have a meal at the said restaurant. One does not like to use the legislation perhaps flippantly like that, but realistically, if the discrimination were ongoing, one could do that.

I regretted not asking the court this summer to grant an injunction. The litigation with the restaurant concerned lasted two years and was settled this summer with a judgment in my favour. The restaurant remains as inaccessible today as it was two years ago. The service provider involved failed to recognise that they had any responsibility under the legislation to make the restaurant accessible or to make any form of reasonable adjustment. An independent expert was brought in on the case by the judge—which is unusual in a small-claims court, but the judge felt it necessary for the court to be properly informed, so an independent expert report was commissioned. The restaurant failed even to acknowledge the role of the independent expert and to recognise the recommendations made in the independent expert report to the court. A judgment was awarded in my favour,

I was awarded damages, and the restaurant has made no reasonable adjustment. It has been a very frustrating process. In hindsight, I wish I had asked for an injunction. I did not, but it was interesting that at no point did the court consider that an injunction might be appropriate. It was slightly complicated by the fact that the company that owned the restaurant and filed for liquidation just before the final hearing had intimated to the court in correspondence that they did not have any assets in order to meet a payment of damages, if damages were to be awarded. Whether that coloured the court's feeling that if it served an injunction, that was not going to be able to deliver anything effectively, I do not know, but as much as I wished afterwards that I had asked for an injunction, there was no consideration by the court that one might be appropriate, given the behaviour, if I can call it that, of the defendants through the litigation process. So it was frustrating. Would I do so again? Yes, I would. We have, of course, the case of Allen v Royal Bank of Scotland, which is a Court of Appeal case in which the Royal Bank of Scotland was served with an injunction by county court, which was appealed to the Court of Appeal and was upheld. In that case, by the time the appeal was heard, the RBS had rightly, because I think it realised that it should have had wheelchair access in the first place, installed it. That is a very clear case for an individual to rely on at county court level.

The Chairman: Thank you. So the restaurant is not insolvent. It is still going.

Jonathan Fogerty: The restaurant is still going. The restaurant is open every night for business. What I think has happened, Madam Chairman, is that the company has transferred the ownership of the restaurant to another company that they have set up, leaving the company that owned it when I suffered discrimination with no assets and put into liquidation. So my payment for damages has not been made.

The Chairman: So you have to start again.

Jonathan Fogerty: With your permission, Madam Chairman, I will revisit the restaurant for a meal and start again.

The Chairman: I am not sure I would call it permission. I was just interested.

Q103 Lord Foster of Bishop Auckland: I have no relevant interests to declare. A number of our witnesses, in both oral and written evidence, have criticised the Government's decision to transfer the EHRC's helpline to the Equality Advisory Support Service. How could the service provided by EASS be improved?

Doug Paulley: I would really like it if it could be brought back. There are all sorts of problems with its being separate. One of them is that the Equality and Human Rights Commission is not informed about cases at an early stage. Given that they are considering trying to become involved in disability discrimination cases at an earlier stage, this in itself would be very useful to bring back. I would also like it if it could have a direct input into the commission to ease applications under Section 28 of the Equality Act 2006 or the various other powers that can be used. The couple of times that I have phoned them I have found them useful in the information they have been able to provide, so I cannot give evidence about the problems that other people have experienced. In general I have concerns that it does not have a line into the Equality and Human Rights Commission. Ultimately that needs to happen in order for people to be able to have the support they need to bring issues to court. I would like also there to be an assessment procedure that the Equality and Human Rights Commission or the Equality Advisory Support Service has a mandatory obligation to assess each case that comes to it as to whether it wishes to offer support, instead of just people who persevere being able to submit a specific application for assistance.

Jonathan Fogerty: I echo Mr Paulley's comments about incorporating its work more closely with the Equality and Human Rights Commission and providing the support through the EHRC. My own contact with them has been limited. I have sent copies of correspondence first to the Equality and Human Rights Commission, which has then referred me to the EASS. I brought one of its letters with me today, and I familiarised myself with the content on the train down. It basically says, "You have been in contact with the Equality and Human Rights Commission. We do not offer a conciliation or mediation service any more. We offer general advice about the Equality Act. You seem to have done everything so far that we would recommend. If you are considering making a claim, that is something only you can decide upon. If you decide to go ahead, you should contact your local county court in order to do this". There you go. You are on your own, really. I think we should bring it back to how we could support people more closely. If you are intimidated by the court process and unsure where to go for advice, that kind of letter is unhelpful. I suggest that people would be supported better if they could have a letter that was more helpful and offered more support.

Doug Paulley: May I make a suggestion? By the nature of this, we two are aware of the system. The people who you could perhaps talk to are the people who are not able to bring their own cases; they may be people who would make more use of the Equality Advisory Support Service. I suggest talking to disabled people in the community and disabled people's organisations to understand people's experience of the support service. Further, I would recommend speaking to disabled people's organisations instead of charities, which often have their own vested interests or pretend to represent disabled people when they do not.

The Chairman: We have and will continue to speak to them. We have met people who have made it quite plain to us that they do not have the ability to bring cases, so we appreciate what you say. That is why you two are exceptional.

Doug Paulley: Thank you. Sorry, I did not mean to intimate that you would not.

Q104 Baroness Campbell of Surbiton: What kind of support do you think would be necessary for disability organisations to support disabled people so that they do not feel on their own? I have heard from both of you throughout the session that you feel that disabled people feel very isolated. What kind of support would you suggest?

Doug Paulley: I would like user-led organisations to be given the power to take class actions on behalf of their members, because certain key issues recur again and again in user-led organisations in discussions about their members' experiences. I am not saying it is easy, but taking action is much less isolating and difficult a task if it is done as a group, but as it is, they do not have the ability to take vicarious class actions.

Baroness Campbell of Surbiton: You would need a great deal of training to do that.

Doug Paulley: The individual litigants in person do not have training. It would be good if the whole system were made so things could be dealt with on an informal, less stressful level, through maybe an ombudsman or by mandating the Equality and Human Rights Commission to make assessments and to work with people. It would still be a difficult thing to do, but it is more likely to happen than expecting individual people to achieve societal change through bringing individual actions.

Jonathan Fogerty: Again I echo Mr Paulley's comments. In a couple of user-led disabled groups in Manchester of which I am a member, the feedback is that we want to take a group action and support one another. I am afraid that discrimination happens to individuals, but it does not happen to the Manchester Disabled People's Access Group, so the emphasis always has to be on somebody taking the lead and doing it, whether or not the group supports them, even in providing moral support and dealing with correspondence.

I have to say, though, that there is an enormous amount of information available on the small-claims track and on taking a small claim to court, probably more than ever with access to the internet and leaflets that are available from the HMCTS website and through the courts. There is an enormous amount of information out there for somebody who is new to the process and wants to go through it. I appreciate that it is sometimes difficult for me not to understand but to appreciate how other people feel intimidated by the court process because I have training and I am accustomed to dealing in that kind of circle, if you like. But I do say to people, "Talk to your court". There is a court accessible service that advises on disability issues—not the Equality Act but access issues in terms of the court—and encourages people to go down to the court, to sit in it, to experience it and to see what it is like. In my experience, hearings are very informal, particularly when you may have a service provider who is also not legally represented, so you have two litigants in person. My experience has generally been that the judges who deal in that process will give time and will be patient. They deal with them very differently, in my experience, from when they have a couple of lawyers in front of them. They expect compliance with directions and things like that, but there is an element of, "This is how we expect things to be done in the court process". So I would say that the courts are certainly making themselves as accessible as they can. It is about improving the training and awareness among people with a disability of how to bring these cases, I think, rather than saying the courts are not doing their best to raise awareness of how to do the process and how to take a claim through court.

Doug Paulley: I think things have improved a lot, but there are still major access problems with the court system. I would also say that I have experienced a heck of a lot of victimisation over the years both from lawyers and the organisations if they are litigating themselves, and some very nasty allegations. They often threaten people with costs or they can ask the very disparaging by questioning whether you are disabled/ That is happening with increasing frequency. If the heat could be taken out of the situation by allowing group class action or requiring some body to assess whether they may assist or not, that would remove that not inconsiderable experience.

The Chairman: Thank you. You have both given us some very interesting, useful and constructive ideas, which we take due note of and I hope will be included—or some of them—in our report. I thank you both very much for giving us that legal insight and for taking the time to come here. I am sure we all wish you the best in the future cases that you will no doubt be bringing, and I am glad you are able to use the law. Thank you very much indeed. We do appreciate it.