



# 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. 15*

*Heard in Public*

*Questions 131 - 140*

TUESDAY 24 NOVEMBER 2015

3.30 pm

Witnesses: Bob Ledsome, Justin Bates, Rachel Smalley and Councillor Jonathan McShane

### Members present

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

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### Examination of Witnesses

**Bob Ledsome**, Deputy Director, Building Regulations and Energy Performance, Department for Communities and Local Government, **Justin Bates**, Vice-Chair, Housing Law Practitioners Association, **Rachel Smalley**, expert in inclusive design and access for disabled people, and **Councillor Jonathan McShane**, Cabinet Member for Health, Social Care and Culture, Local Government Association.

**Q131 The Chairman:** Good afternoon to our witnesses. We are very pleased you are here to share your expertise with us. Thank you for coming. I should tell you, as you probably know, that this session is open to the public and that a webcast will go out live and is subsequently accessible via the parliamentary website. A verbatim transcript of today's evidence will also go on the 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 check it and let us know about any corrections as soon as you can. If, after this evidence session, you want to clarify or amplify any points made or have something extra you wish to tell us, do please send in any supplementary evidence because, as you are aware, we are rather pressed for time here and have to be concise. If, after you have left, you realise there was something else you wanted to add, please feel free to send it in as extra written evidence. We are going to put some questions to you, but may I ask each of you to introduce yourselves very briefly before we get going? Mr Ledsome.

**Bob Ledsome:** Good afternoon. My name is Bob Ledsome. I head the building regulations and standards division at the Department for Communities and Local Government.

**Councillor Jonathan McShane:** I am a councillor in the London Borough of Hackney, where I am responsible for health and social care and I am on the Local Government Association's community well-being board.

**Justin Bates:** I am here on behalf of the Housing Law Practitioners Association, of which I am the vice-chair, and I am the deputy editor of the Encyclopaedia of Housing Law and Practice.

**Rachel Smalley:** I am Rachel Smalley. I am the president of the Access Association, which is a national-membership organisation for people working in, or with an interest in, inclusive design and access.

**Q132 The Chairman:** Thank you very much. I will put the first question to you. Why have the provisions of the Equality Act on common parts not been brought into force? Has this created significant problems in practice? That question is to whichever one of you feels most

expert. You do not all have to answer every question, just if you have something to add. Who would like to take this one?

**Justin Bates:** I will dive in. As a result of a statement in May 2012 from Theresa May and Baroness Verma on the Red Tape Challenge, it never came into force. I think it is in force in Scotland, though. There was a consultation in Scotland in 2011 about bringing it into force, and I have seen some draft regulations but confess I cannot find the final ones. It may be that it is only in England that it is not in force. The problem it causes is very easily identified by a case in which I have been involved. An elderly leaseholder has a flat on the second and third floor. There is absolutely no reason why she cannot live independently, save that she has mobility issues. She wants to install a stair lift to get up to her second or third floor flat. She asks the freeholder for permission. The freeholder says no. She offers to pay the installation costs and all the running costs herself so there is no drain on the service charge. The freeholder says no. On the face of it, that is a lawful refusal. Unless you bring the common parts duty into force, on the face of it that is perfectly lawful. Being a lawyer, I can think of ways to cause trouble and to try and advance her position, but, on the face of it, the freeholder has done nothing wrong in those circumstances. Without bringing the common parts duty into force, that case does not have an obvious answer. I would not say that I or other members come across that factual scenario every day, but it is not an uncommon factual scenario. If you do not bring it into force, there is no obvious answer.

**The Chairman:** So it really is urgent to bring it into force. There has been mention of Scotland, but, as I understand it, the Scottish regulations are still in draft, so the Government do not really seem to me to have an excuse to be waiting for evidence from Scotland. Does anyone know why the Government are refraining from bringing this into force?

**Bob Ledsome:** My understanding of the position—I think this was put out on the Red Tape Challenge website earlier this year—is that the Government wanted to wait, see and learn from the Scottish experience of bringing into force the regulations that have been referred to. That was the position which the Government took at the time. I do not know the detail of the Scottish regulations, but I understand there were some complex issues that the Scottish Government are having to work through, which is why those regulations are not yet published.

**The Chairman:** Is that not rather a circular argument? If the Scottish regulations have not come into force, one can hardly wait for them and I do not see how it is red tape.

**Bob Ledsome:** The Government took the view in the Red Tape Challenge that there were issues of potential burdens on landlords, and so on, and therefore took the view that they did not at that point want to commence the relevant parts of Section 36. Since then, the Government have taken the view they want to learn from the Scottish experience.

**Justin Bates:** Interposing for a minute, Scotland is not that helpful to look at: one, they do not have leasehold land in the way that England and Wales do, so the underlying legal structure will not be the same; two, the draft regulations—I think they are probably the same ones that I have seen—come at it from a slightly different perspective as to whose consent you would need and how it would work, primarily because they do not have leasehold land. You will not be able to transpose the Scottish experience to the English one anyway, so it does not work as a reason not to do this.

**The Chairman:** Yes, so it is not a good excuse. As far as red tape and burden goes, is it not for the tenant, as is planned, to pay for these changes rather than the landlord? I do not understand why the red-tape argument comes in. Can you enlighten us?

**Bob Ledsome:** I was not around at the time of the Red Tape Challenge and that was obviously being run by colleagues from the Government Equalities Office, so I do not have the details of the thinking that went into the Minister's decision at the time. All I am aware of is that there were concerns about the costs of implementing those provisions and that is why the decision was taken in 2012 not to proceed with the commencement.

**The Chairman:** I think we must conclude that there is some obfuscation here, because my understanding is that the tenant would have to pay. The burden is, if anything, on the tenant. Does anyone else have anything to add on this one?

**Baroness Campbell of Surbiton:** Do you have figures to give evidence to the fact that it would be burdensome? The Government should have run through the figures as to whether this was creating a burden or not. Where would these figures be?

**Bob Ledsome:** I do not have access to the information. I would have to take that away and see what information can be provided.

**Baroness Campbell of Surbiton:** If you can do that, please, and bring it back to the Committee, that would be good. Thank you.

**Q133 Lord Northbrook:** I have no relevant interests to declare. Has the requirement to request reasonable adjustment in relation to housing created any problems? Could an anticipatory duty, such as exists for services, work in relation to housing?

**Justin Bates:** At the risk of giving too lawyerly an answer, it depends on the meaning of the word "problem" in your question. In the cases that have come before the higher courts it has all come about in the context of possession proceedings. The landlord has gone for possession, generally on the basis of a tenant's anti-social behaviour. The tenant then says, "The reason I am behaving anti-socially is related to my disability", at which stage, in the defence that is put forward, he requests a reasonable adjustment. The request is being made, albeit at quite a late stage in the litigation. Is that a problem? Yes, it is, because it comes too late in the process to make much of an improvement. There are not, as far as I am aware, statistics or any kind of evidence on people asking for it and it being accepted or refused outside the litigation context. My members would not come across that. We only come across it once it has reached litigation.

Would anticipatory duty help? Yes, it would help landlords—particularly social landlords—in formulating policies to ensure they get the relevant information about their tenants before the possession proceedings are issued. You may think they should have that information already, but, in particular with some of the big housing associations and the size of their stock, they do not know their tenants on that basis. A relevant disability only tends to be found out about—and it is primarily disability that is relevant—when a claim has been issued. Certainly in the cases that have made it up to the higher courts, that has been the factual scenario: the landlord does not know about it until during the claim. If you had some way of forcing them to redraft their possession proceedings policies, redraft their vulnerable adult support policies so as to have a more expressed, focused requirement to think about the implications for their disabled tenants, that would go a long way towards making sure they would have the relevant information before it ever gets near a court and before anyone like me.

**Rachel Smalley:** Can I add to that one? In terms of an anticipatory duty, if we are talking about buildings and physical barriers, rather than an anticipatory duty in that field, if the Equality Act could require local planning departments to plan for their populations and the housing that is needed in the local authority, via the recent housing standards review and the optional building regulations, that could be a solution. If there was more of a stick to get

local planning authorities to do that, it would help and possibly serve the same purpose as an anticipatory duty. At the moment, we have had a housing standards review and we have optional building regulations. But to switch those optional building regulations on, a local planning authority needs to pass policy that requires developers to provide accessible housing to M4(2), which is Lifetime Homes, or M4(3), which is wheelchair housing, standards. Could a duty be written in that is a bit more of a stick to get local authority planning departments to do that rather than wait for their next core strategy review, which could be five or seven years off from now? There is a need there.

**Baroness Browning:** You have just had this housing standards review. Could you confirm for us, please, that the standards are the same for social housing as well as for commercial housing? Is there any obvious difference between the two types of build?

**Rachel Smalley:** No.

**Bob Ledsome:** The building regulations would apply across all tenures, so they are tenure-neutral. The building regulation requirements that Rachel has referred to would apply to social housing as much as to private housing.

**Rachel Smalley:** The only slight difference—and it is not a social housing split—is that M4(3), which is wheelchair accessible housing, is split into two: there is wheelchair adaptable housing, housing that is designed to be large enough for a wheelchair user to use but can be kitted out later to suit the individual wheelchair user; then there is wheelchair accessible housing which is kitted out as wheelchair-accessible from the outset. It is written into the building regulations that wheelchair accessible housing can only be required by a local planning authority if an end user is identified. That is the only slight difference.

**Baroness Browning:** But not at the time of building.

**Rachel Smalley:** If the end user is identified at the time of planning consent being granted, yes, otherwise it could be wheelchair-adaptable rather than wheelchair-accessible.

**The Chairman:** I should have pointed out to you that if any of our Committee members has relevant interests they will declare them to you before they put a question. In order to save time, I will read out the long list of interests of Baroness Campbell. She is a patron of Just Fair, a patron of the National Disability Arts Collection and Archive, 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 a disability rights commissioner throughout the life of the Disability Rights Commission and was a commissioner at the Equality and Human Rights Commission for three years. Thank you. The next question is from Lord McColl.

**Q134 Lord McColl of Dulwich:** The only interest I should declare is that I am the author of the McColl report. How effective are current building regulations in ensuring that new-build properties and those undergoing significant refurbishment or renovations are accessible? What mechanisms are in place to ensure accessibility in public spaces during and after major regeneration programming?

**Bob Ledsome:** Shall I start by briefly explaining the requirements of the building regulations as they apply in relation to access? The building regulations set out what we call functional requirements. They set out performance standards or goals to be achieved. They do not prescribe specifically how legal requirements should be met. In the building regulations, there is a schedule that sets out a series of requirements related to particular topics or items. The one that relates to access is Part M. No doubt the Committee is aware of Part M. The building regulations themselves are supported by detailed guidance, which the Government publish in what is called an approved document, and there are two approved

documents relevant to Part M, one which relates to dwellings and one to non-domestic buildings.

The important thing about the approved documents is that if a developer follows the guidance in that document then that is taken as proof of compliance with the relevant building regulations. It provides a safe haven, as it were. If a builder follows the approved document, then the building control body is likely to accept that is compliant with whatever the regulation requires. It does not mean that the developer has to follow the approved document guidance. They could do something different if they so wished, but in doing so they are likely to be quizzed more rigorously by the building control body as to how the particular approach that they take meets the relevant Part M requirements.

As Rachel said in the answers to the previous questions, there have been changes to building regulations Part M that were introduced in spring 2015 and came into force on 1 October. These were to introduce two new standards within the suite of the building regulations, the Part M requirements. We call them in our jargon “optional requirements”, because these are requirements that a local authority can call upon where it has identified a particular need in its housing needs in its area and it does not compromise the viability of development. The first of these, as Rachel said, is what we call requirement M4(2). That is for accessible and adaptable buildings. In very broad terms—not absolutely—that is equivalent to the standards that were in the Lifetime Homes standard, which the Committee has no doubt heard of. Then requirement M4(3), as Rachel says, is for adaptable and accessible wheelchair dwellings. This is the first time these higher standards have been enshrined in building regulations. Therefore, the Government think it is a very significant step in strengthening the corpus of legislation that allows for accessibility into buildings.

As to impacts and effectiveness of Part M, there are some data in the English housing survey around accessibility features for dwellings. There are four features in the EHS—level access, flush threshold, sufficiently wide doors and circulation space, and a WC on the entrance floor—which are taken as demonstrating that the dwelling is accessible. The numbers of dwellings that demonstrated those features rose from 3% of the total housing stock in 2007 to 6% in 2015. In very broad terms, as you would expect, that equates to the build rate during that period of time. It demonstrates that Part M has been having some impact. However, I can also report that the department has commissioned some further research into Part M in looking at the benefits of accessible housing and to evaluate the effectiveness of the approved document guidance in relation to non-domestic dwellings. That is some research that is under way at the moment, and we expect to report by next spring.

**Lord McColl of Dulwich:** Thank you very much. Presumably they inspect the buildings during the building as well as after, do they?

**Bob Ledsome:** There are a number of routes of demonstrating compliance and it will depend, to an extent, on whether the building control body is a local authority building control body or a private sector building control body—what we call an approved inspector. If it is a local authority-controlled building control body, the developer would either need to give notice of the build work that is being undertaken or submit the plans of the building. The local authority could then look at the plans and there would be dialogue to try and get things sorted out if they had a problem or issues with the plans. That is the first stage of the compliance-checking process. Then the local authority or the approved inspector would undertake inspections during the course of the build. A lot of those inspections are not prescribed: there is no set number of inspections or set points at which inspections should occur during the build process. That is something that the building control body would work

out, perhaps on the basis of an assessment of risk, an assessment of the complexity of the development, the topography or any issues they may have had with the builder in previous experience or their track record. So there is a process of ongoing compliance-checking that starts with looking at what the plans are and then goes on through.

**The Chairman:** I think Ms Smalley wants to add something, and then we will turn to Lady Campbell.

**Rachel Smalley:** As to building regulations and the question that you asked, it is also worth bearing in mind what we call the limits of application of the building regulations and with, say, new housing, Part M would only apply to new-build housing. Your question mentioned significant refurbishment or renovation works. In general, Part M of the building regulations would not apply to housing that was created via refurbishment or change of use processes.

On the non-commercial side of things, the building regulations are a very effective tool in creating an accessible environment, but one thing that Bob touched on then was the competitive environment that the building regulations operate in. That is quite unusual, in a way, because you would not have another regulatory body—for example, the Border Agency, the HSE or a police force—with a private sector version and a local authority version. That affects or influences the effectiveness of the building regulations and how they are applied, because you have a competitive environment. Often, access for disabled people is seen as a soft or negotiable option in the building regulations. It is not seen as life or death, as Part B (Fire Safety) would be. A lot of Access Association members have cited cases where access for disabled people has been negotiated out of a scheme with a building control body in order to gain a contract and a job. Personally, I do not think the competitive environment of a building control system helps the enforcement, I am afraid. I am sorry to jump in, Bob.

**Q135 Baroness Campbell of Surbiton:** My question is for Mr McShane. Over several years, local authorities came to see that access officers within the departments where they were planning new environments and within building regulations departments were a very good and helpful thing. However, I have noticed that the job of access officers is specifically to make sure that the local authority environment is as accessible as possible in complying with the Equality Act. Could you tell me a little bit about what the strategy is of the Local Government Association and local governments themselves for retaining access officers and, indeed, ensuring that the local authorities that do not have them think again? Obviously you need that expertise within the council. In addition to that, many of these access officers were disabled people themselves with very high-quality planning experience, but it seems to me that this is on the wane. Perhaps you could fill us in.

**Councillor Jonathan McShane:** Yes. Rachel probably has much more up-to-date figures on the numbers of access officers.

**Baroness Campbell of Surbiton:** I am sure, but I am more interested in local government strategy.

**Councillor Jonathan McShane:** Clearly, we take our duties under the Equality Act very seriously, and accessibility is very important, particularly in a borough like my own where there is a lot of regeneration activity going on and we are creating new spaces. I know one of the things you want to touch upon, for example, is shared space and the implications of that. The really important thing, in a context of very constrained resources for local government, which I am sure you all appreciate, is that we do not lose sight of the fact that we need that sort of expertise at a very early stage in the planning of any regeneration schemes to ensure that we arrive at a scheme that suits the needs of everyone in the relevant community. But,

being honest, the nature of the financial constraints that we are under will often mean that—not just in relation to access officers—a whole series of functions are now sometimes being wrapped up into broader roles. It would be dishonest not to recognise that that can mean that you lose some of the really valuable expertise that you had before. But as to the numbers of access officers working in local government, Rachel probably has a better handle on that.

**Baroness Campbell of Surbiton:** But it would be far more cost-effective, surely, to have these access officers in place. There are occasions where I know that some buildings perhaps come down again because they do not meet the various requirements under the building regulations, so they tear them down and start again. If you had an access officer there in the beginning, that cost-saving would be enormous. I do not wholeheartedly accept the “We are all strapped for cash and this is something that needs to go” argument, because it seems to me a very cost-effective way of ensuring compliance.

**Councillor Jonathan McShane:** I would agree. It is not only fairly extreme examples where an entire development has to be rebuilt. Particularly in relation to the street scene or the public realm around a major redevelopment, it is not only about cost; with a bit of really insightful advice at the beginning of the process, you can end up with what is going to be a public realm for decades, if not perhaps a century, that really does serve the needs of everyone in that community. It is hard to put too high a price on that. But again, in a context of really deep cuts, inevitably some decisions will have to be made in the short term that may not make financial sense in the long term. Everyone would accept that the central government public health cuts will save money this year but will cost in the future. Yet people make these decisions because they have to balance the books in-year. Recognising that that is not necessarily wise is acknowledging the problem.

**Baroness Campbell of Surbiton:** If you have any access officer strategy within the LGA, perhaps you could send it to the Committee.

**Councillor Jonathan McShane:** Yes. I will look into that.

**Baroness Campbell of Surbiton:** That would be very helpful.

**Rachel Smalley:** Many members of the Access Association are access officers who work in local government and this point relates back to the question and the mechanisms that are in place to ensure accessibility in public spaces this being just one example of where access officers sitting in local government can influence the development process to ensure that an accessible and inclusive environment is created for everyone. Yes, all the roles within the development process should have some background knowledge and training in inclusive design, and DCLG are part-funding Design Council CABE [Commission for Architecture and the Built Environment] in producing a freely available CPD training module, at the moment on inclusive design, which hopefully all built environment professionals will be able to access and get a basic knowledge of. It is really important to appreciate the value of access officers and access professionals who specialise in access and inclusion for disabled people, who have the specialist technical knowledge to make sure a development is accessible.

Going back to the building regulations—and this is only a really quick point—Part M of the building regulations, the commercial part, does cover access for disabled people, and it is absolutely brilliant that it does. It is still possible to create a building that complies with Part M of the building regulations, but it is not as inclusive as it could be. One example of this is that Part M of the building regulations allows revolving doors at a principal entrance and you have to have a side pass door. That is dividing people out, segregating people who can use a revolving door and people who cannot. I cannot think of any other equality group or strand

whom it would be acceptable to separate out in such a way. So there are parts of the approved documents within the building regulations that could be improved to create a more inclusive environment for everyone, including disabled people.

**Baroness Brinton:** It may not be strictly described as a commercial building, but Portcullis House, the new building here, has exactly that problem of revolving doors, and those of us in wheelchairs have to exit a different way. But there are other problems with the building: for example, the architect has specified extremely heavy doors, which I cannot open, so I always require a carer to take me round. What bit of Part M needs to be changed to make architects think about the whole environment, not just about width of doors and other things?

**Bob Ledsome:** There are a number of points there. The first point is that when it comes down to the planning of the location the architect should be thinking about the building, its location and the whole environment, and looking at what that means for access. Clearly, I would not know the background as to why the architect particularly chose the heavy doors, or whether—

**Baroness Brinton:** It was because they looked nice, I suspect.

**Bob Ledsome:** Okay. The thought strikes me as to whether there were any security issues with that.

**Baroness Brinton:** Yes, I am guessing security.

**Bob Ledsome:** I do not know. That raises an interesting point, of course, about getting the balance between where you have one imperative that might suggest this design solution, but there might be unintended consequence, absolutely what you have just described there. As I mentioned, we are undertaking some research into Part M for non-domestic/commercial buildings, so these are all good points that can be fed into that process.

**The Chairman:** I am left with the anxiety that austerity and cuts are being used as an excuse not to hold on to access officers and that they are not getting the priority that they should, and it is, as Lady Campbell said, a false economy. Did you want to intervene, Lady Browning? No. Lady Brinton, it is your question now.

**Q136 Baroness Brinton:** During the course of this Select Committee, we have heard examples of where local authorities have used their existing powers, such as in taxi licensing, to ensure that services are accessible for disabled people. Could more use be made of these powers? Are there other local authority powers, such as planning, that should be used to compel service providers to meet their reasonable adjustment duties? Could local authorities do more for disabled people with additional powers? Councillor McShane?

**Councillor Jonathan McShane:** Yes, particularly in relation to taxis, the Equality Act sets out obligations for public bodies to advance equality of opportunity among people to eliminate discrimination, and that includes some specific clauses relating to taxis, including carrying passengers in wheelchairs and the carrying of assistance dogs. The remaining taxi-related clauses—I think Section 165 is one—have not been commenced despite commitments from successive Governments. We believe there is real potential in those clauses to make a substantial difference to the accessibility of taxis, but the argument that has been given for not bringing these into force up until now is that there could be unintended consequences due to the substantial additional cost of accessible vehicles. While in London, for example, the taxi market is incredibly buoyant and that is not felt to be a problem, in some rural areas there is felt to be a risk that having to invest in accessible vehicles could mean some people dropping out of providing taxi services altogether. That is the concern that has been raised

as one of the reasons for not implementing those clauses, but we feel those clauses could be really helpful.

**Baroness Brinton:** Could I come back specifically on the taxi issues? It is not just a rural issue. Where local authorities have said that vehicles have to be less than a certain number of years old, the local authority is piling the pressure on the taxi drivers. There are plenty of older vehicles that are easy to adapt for wheelchairs. I do not know if that is a constraint only on emissions, but there are other ways of dealing with it. For anyone in a wheelchair, travelling anywhere outside London, Manchester and Glasgow is virtually impossible.

**Councillor Jonathan McShane:** Is that because of the use of black cabs?

**Baroness Brinton:** It is the percentage of taxis that are truly accessible.

**Councillor Jonathan McShane:** I do have some figures of the percentage of taxis: 61% of councils require wheelchair-accessible vehicles in all or part of their fleet. This is the key. It is good that 61% are requiring this, but it is the level within the fleet that is important. That obviously varies from council to council and we would want to see that increase, but there are other issues as well as accessibility, around training, for example, for drivers, and again there is a mixed picture across the country of councils using their licensing powers to force up standards in that way. The Law Commission has obviously tried to pool together the various rules and regulations on taxis, which I think stem from the 1850s, and in its tidying-up exercise a lot of the things it has looked at relate to how you make complaints about taxi services. My sense would be that technology may be superseding some of those efforts. If you look at Uber, for example, the fact that you can give instant feedback on drivers is a motivation to drivers—

**Baroness Brinton:** I am sorry, but Uber is no use for anyone in a wheelchair because you cannot guarantee that you are going to get—

**Councillor Jonathan McShane:** I was referring to the technology. By mentioning Uber, I just meant that by the time the Law Commission gets to putting this into regulation, the only way anyone books a private hire vehicle may be through some sort of application, so feedback would be easier to achieve. My understanding is that Uber has a new service called uberASSIST, but I do not know what that relates to as to accessibility.

**Baroness Brinton:** Let us perhaps not go there.

**Rachel Smalley:** This is not particularly about taxi licensing, but the last part of your question was whether local authorities could do more for disabled people if they had additional powers. For me, the answer is absolutely yes, they should be given those additional powers. One of the foundations of the Equality Act is disabled people taking action against service providers. For me, that is the wrong approach. Society should be providing a barrier-free environment for disabled people. Saying, “Disabled people should be taking action and enforcing the legislation”, is saying, “You are a disabled person. It is your fault you are disabled. Therefore, you should do something about it”. It is a very medical-model approach—a very dated approach—and this Government and society should be providing the legislation to allow an inclusive environment to be created for the population as a whole including disabled people.

A lot of Access Association members, as I said, work in local authorities and they get phone calls on a weekly and sometimes daily basis from disabled people saying they cannot access this café or use the toilet in that restaurant and they expect local authorities to be able to do something about it under the Equality Act. Those local authority access professionals have to say, “It is up to you. You are going to have to take action. You need to do it yourself”. That is the wrong way round. Legislation should be providing additional powers to local authorities:

it could be via existing functions, for example, licensing—alcohol, entertainment and marriage licensing—and trading standards, for officers who are out visiting services anyway as part of their daily job. If they were given responsibility to ensure those buildings were accessible, it would be a massive leap forwards.

**Baroness Campbell of Surbiton:** Is there any way in which local authorities can refuse to give a licence unless they make their facilities accessible?

**Rachel Smalley:** Currently under the Licensing Act, no, there is not.

**Baroness Campbell of Surbiton:** Has it been done, though, with local authorities saying, “We need you to do this. It is not lawful, but we would like you to do it because this provider says they will, so we are likely to deal with this provider and not you”. Has that ever happened?

**Rachel Smalley:** As far as I am aware, it has not. Under the current Licensing Act, some local authorities have tried it, and legally they have not managed it, which is why I am saying the Licensing Act needs amending to allow this to happen.

**Baroness Campbell of Surbiton:** That is interesting.

**The Chairman:** Are you saying that we need that amendment—or there is a case for an amendment? Are you also saying that existing powers are not being used?

**Rachel Smalley:** As to creating an accessible environment, I do not think the existing powers are there at the moment. Local authorities should be given those powers to enforce the Equality Act or to ensure that an inclusive and accessible environment is created. So, no, I do not think they are there at the moment. The Act would need amending to allow this to happen. Again, that comes back to the point that we made previously about the presence of the local authority access officers; your licensing officers and trading standards officers can go out and do this they would need training, but it would be good if there was a local specialist within that authority to oversee it, to be called in for specialist advice where required.

The question also touched on planning. I could go on about it for a while—I am not going to—but planning policy in this country is quite variable. In London, they have had supplementary planning guidance. The Greater London Authority has had supplementary planning guidance on access for disabled people for the last 10 years in the form of Accessible London—its supplementary planning document (supplementary to the London Plan). Other local authorities have some and other local authorities do not have any. Because it is quite patchy in provision, nationally it creates a bit of a postcode lottery, although I do not like using the phrase. Some local authorities have planning guidance and require access to be part of a planning permission; others do not. The planning guidance, in the form of a National Planning Policy Framework and planning practice guidance, does exist; it is written. It is a case of raising awareness of that within local planning authorities and maybe having a bit more of a stick to get local planning authorities on board with access for disabled people.

**The Chairman:** I sense that behind what you have time to say this afternoon is a wealth of information about the powers that do not exist but need to exist. You might find time perhaps in the next week or so to drop us a note covering the various areas where we might be able to strengthen those powers in our recommendations—the various areas where powers might be used.

**Rachel Smalley:** Yes.

**The Chairman:** That would be immensely helpful.

**Q137 Baroness Brinton:** Could I go back to your earlier remarks about the approach to disability provision and that it should not be the responsibility of the disabled person to

challenge but society's? This question is both for you and for Councillor McShane and it is about the spare-room subsidy, where we regularly see reports that specially adapted accommodation has a bedroom too many and the people for whom it was designed are having to move out. Should there be specific powers for local authorities to be allowed not to charge the spare-room subsidy, and are there any figures for how many people have had to move out of adapted accommodation?

**Rachel Smalley:** I am looking down the table on that one.

**Councillor Jonathan McShane:** I do not know if you have any figures. We can provide you with figures.

**Baroness Brinton:** That would be good. Would you also welcome the extra powers to waive it?

**Councillor Jonathan McShane:** Absolutely. I read last week about a big housing association in Liverpool that is knocking down walls to try and get round some of the excesses of the policy, so some additional discretion would be valued by local authorities.

**Justin Bates:** The problem you will have, being perfectly frank, is that the Government will tell you that discretionary housing payments solve everything, and, regrettably, the courts agree with them. That is the problem.

**Baroness Brinton:** We understand that.

**The Chairman:** Thank you.

**Q138 Baroness Pitkeathley:** I have an interest to declare, which is that I am vice-president of Carers UK. My question is principally for Councillor McShane. On 3 November, when the Department for Transport representatives were here with us, they told us that it was for local authorities to decide on the suitability of shared space schemes in their local areas. That was in relation to other people with needs in the shared space, such as those carrying heavy loads or those with pushchairs and so on. How are such decisions made, and are the effects on disabled people of those decisions then monitored?

**Councillor Jonathan McShane:** First, shared space is relatively new in this country. There is greater experience of it in some northern European countries, and there are very positive aspects to shared space in bringing back to life town centre areas. The LGA does not systematically collect information on shared space schemes, but, like any major improvement or change to a road layout, there is a need for a road safety audit that has been in legislation since 1974, and a statutory duty was reinforced by the 1988 Road Traffic Act. So there is a mandatory requirement to carry out that audit. Part of that—this goes back to the discussion about access officers—is how you make sure you are thinking as broadly as possible about the impact of a shared space scheme on the whole range of people who live within your community. If the thinking behind a shared space scheme is bringing back to life a shopping area that has fallen on hard times, does that mean you are looking at it from one perspective more than another, perhaps from a commercial perspective?

**Baroness Pitkeathley:** Or the shoppers' point of view, rather than—

**Councillor Jonathan McShane:** Yes, from the point of view of a certain group of shoppers. I know from my own experience in Hackney, an area that is undergoing an awful lot of redevelopment, that where we have had the feedback from people, whether access officers or motivated individual residents, at an early stage, it has made a huge difference to the overall outcome. Often, it is about trying out a shared space scheme and identifying, and so trying to avoid, any issues in the first place, but being open to making sensible changes afterwards once you have seen how it operates in practice. As I say, a shared space is new to all of us so it is hard to predict—

**Baroness Pitkeathley:** How is that feedback from, for example, people with disabilities collected?

**Councillor Jonathan McShane:** It will vary from local authority to local authority. I am sure some are better than others. As the Local Government Association, we are working with the Chartered Institution of Highways & Transportation and the Department for Transport to produce further practical guidance, including good and bad practice. That is due out in summer 2016 for local authorities.

**Baroness Pitkeathley:** Is there any way you would be able to give this Committee any heads-up about good and bad examples?

**Councillor Jonathan McShane:** It would probably be easier to find you good examples, but I will do my best to find some less successful ones.

**Q139 Baroness Campbell of Surbiton:** Are you familiar with the 2015 report *Accidents by Design*, when there was an overwhelming feedback from the public, who said that they did not enjoy shared spaces and in fact go out of their way to avoid them? Did the LGA respond to that, or what does the LGA think of that?

**Councillor Jonathan McShane:** It is seen as an issue for individual councils. Obviously, we are a membership body, we are led by members and we are cross-party. We offer best practice guidance and share experience, but we do not instruct councils on how to behave.

**Baroness Campbell of Surbiton:** This was a national survey. I would be interested to know whether local authorities responded to that or what they think about it.

**Councillor Jonathan McShane:** I can find out whether there was an LGA response. I would imagine there may have been responses from individual authorities. Again, my own authority of Hackney has one particular shared space scheme that I know has divided opinion quite dramatically and there have been changes to it as a result of feedback. In Hackney, we have removed a lot of barriers on the sides of streets because the view was that, if you have barriers, people feel entirely safe as drivers and therefore pay less attention to the things that are going on around them. Shared space is at a very early stage in this country and people will adopt it in different ways and at different paces in different areas.

**Rachel Smalley:** I find the Department for Transport's approach on this quite worrying, because for a lot of disabled people, including blind and partially-sighted people, national consistency is very important. The layout of tactile paving that you see at crossing points is nationally consistent so that a blind or partially-sighted person can go anywhere in the country and read and use the environment safely. The Department for Transport saying it is up to individual local government authorities or bodies to make decisions on this could create a patchwork effect of one solution being put in this city and another in that city. As Baroness Thomas has pointed out, research has been done—TNS BMRB did some research quite a few years ago—into the use of shared space schemes, and it came out that 70% of blind and partially-sighted people would go out of their way to avoid a shared space scheme. That avoidance does not show in the statistics because they are not users of that environment. If you keep creating these environments, one and then a few streets along another, you are creating no-go zones for a lot of disabled people. Yes, you can monitor it and go back and look at it, but once it is created you have created an environment that is not inclusive and accessible for everyone.

Also, I think national guidance is required on this subject. Flicking across to the UN Convention on the Rights of Persons with Disabilities, there is a provision in there for states parties to “take appropriate measures to: ... Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and

services open or provided to the public". This is one area where I really think that national guidance is required to ensure disabled people's needs and requirements are taken into account on shared space schemes.

**The Chairman:** Was sufficient research done before this was entered into? I can see that if there is research now and it turns out that it is not good for disabled people, it is going to take years and millions of pounds to undo what has already been built.

**Rachel Smalley:** Yes, that is the worry with the Department for Transport's approach, as in, "Put a scheme in and then monitor it". That is a scheme that has been put in which, at the moment, a lot of disabled people are saying is not inclusive.

**The Chairman:** Thank you. The next question is from Lady Browning.

**Q140 Baroness Browning:** Thank you. I need to declare that I am a vice-president of the National Autistic Society, the Alzheimer's Society and a patron of Research Autism. Is physical accessibility the only concern in relation to the built environment, or are there other factors that could impact on those with, for example, mental health problems, learning disabilities or dementia? What is the role of local government in provision that is not part of the physical infrastructure, such as Shopmobility schemes or those who are sensitive to sound, and obviously those with sight problems?

**Bob Ledsome:** I will start by commenting on the first part of the question. Clearly, there are issues that could impact on people with mental health problems or dementia and so on—lighting, glare, echoes, the combinations of shapes and colours, the colour schemes and so on. So there are clearly issues there that are potential considerations and relevant. Rachel may want to comment on this, but we are at the very early stages of understanding what that might mean for the built environment. One of my colleagues, interestingly, was at a workshop that was organised by the British Standards Institution quite recently, which was called Design for the Mind, which is starting to explore some of these issues. There was quite a lot of appetite for more work needing to be done for a better understanding of the issues and whether that in due time might be translated into good practice guidance—design guidance. Clearly, there are issues there. It is still very early days to work through and understand what that would mean for design solutions in the built environment, but clearly it is something that needs to be factored into our future thinking about how we might develop design guidance, and indeed ultimately whether we would need to say anything in relation to that in our statutory guidance supporting the building regulations.

**Rachel Smalley:** I agree with Bob's views. The British Standards Institution is looking into neuro diverse conditions and how that subject fits in with existing or future standards. For me, it is quite important that design standards need to take into account a range of impairments and disabilities, and that needs to include dementia, learning disabilities and mental health issues, because potentially there are some contradictions there. For example, some of the dementia design guidance would contradict more traditional built environment access design guidance. That is not helpful for designers who are trying to make sense of the guidance in front of them. It is brilliant that the British Standards Institution is taking this on board and incorporating it. Personally, I think some money is required to enable research in this field because it is a relatively new field, and subject area. We do need some research on this and to know how it fits in with physical accessibility. For me, standards, including British standards, should be freely available, and currently they are not. The British Standards Institution charges for standards because of the way it is set up, but it would be great if the Government could put some money into standards. The main accessibility standard, BS 8300, is due to be reviewed next year. It is a brilliant standard and it covers an awful lot, but

it is also quite an expensive standard to purchase. On the other hand, the Department for Transport standards—for example, “inclusive mobility”—have always been freely available. Awareness is probably higher with those because they are freely available among disabled people and professionals. It would be great if the Government could put some money into research and making other standards freely available as well.

**Baroness Browning:** Thank you. Perhaps Mr McShane will come in on this. The LGA recently put out guidance on developing dementia-friendly communities. What are your thoughts on the whole concept of communities, because clearly there is quite a challenge to take account of the vast range of disabilities and environments that are needed to be adaptable or accommodate all of them? Looking into your crystal ball, could you see whether the future is going to be more towards the development of communities for specific people with specific needs? Is that the way we are going forward? Is that the only practical way to go forward?

**Councillor Jonathan McShane:** I was going to mention dementia-friendly communities as a general response to this, if you are not just looking at the physical environment. My own area has set up a dementia action alliance. We are in early discussions and have just launched with the ASA a dementia-friendly swimming programme. I am hopeful that at the end of that not only will we have made some small but important changes as a council, local retailers, transport providers and housing providers, but it will make us think more broadly about the impact of physical design, the way services are delivered and a community's attitude towards a much wider range of people. Dementia-friendly communities, and the Dementia Action Alliance behind them, feel like the most developed structures for thinking about the issues that exist at the moment. Once you have made some progress on dementia, you will have identified some other areas where people can make sensible changes and you will have generated a bit of enthusiasm where people begin to think a lot more is possible than you thought before.

Related to that, there was a question earlier about licensing and whether you could refuse a licence on the basis of a premises not being accessible. One of the reasons why local government is so keen on powers being devolved on things like licensing and planning is that we want the powers to be able to shape our community in a way that ties in and aligns with the values of our residents. Sometimes people think that is all about stopping 24-hour drinking and problem gambling, but it could be about a whole range of things, and the values of a particular community could be to do with community and the facilities and services within it being accessible to all and how we could use powers to do that. Not being able to do that because, particularly in relation to licensing, things are very nationally driven is hugely frustrating. The dementia-friendly communities process flags up lots of areas where we think there is something sensible we can do and then when we look into it we realise that nationally there are some restrictions.

**Baroness Browning:** But your approach to that is integrationist rather than communities that are isolated but designed specifically for people with certain conditions.

**Councillor Jonathan McShane:** On a personal level, that is not something I would aspire to at all.

**Justin Bates:** May I pick up a small point spinning off from what you were saying? On the housing side, mental health is the single biggest issue in homelessness cases, not just in identifying and meeting the needs of the homeless person but from the local authority side: how do you find somewhere to accommodate them, whether on the interim duties or on the permanent housing duties, given the massive shortages in the availability of stock? It is not just the built environment; it is access to void units in the built environment. I appreciate

that you cannot do anything about the scale of the housing crisis in the UK, but any metropolitan authority talking to you about their homeless provision will tell you that, for them, the biggest disability issue they come across is mental health and its associated homelessness. Something needs to be done, whether money-wise or improving hostel accommodation, whatever it is going to be, to recognise much more the various diverse needs of the mental health homeless community in both temporary accommodation and longer-term accommodation.

**Baroness Browning:** Thank you.

**The Chairman:** Thank you. I feel we have only scraped at the surface of a very complex and interesting situation, but I would like to thank all of you for making things clear for us in this very difficult area and for guiding us through it and giving us some helpful suggestions. Mr McShane, I know it was rather short notice, so thank you for doing it so quickly. We are very grateful to all of you. If you have any postscript thoughts, as I said, do please write in and let us know. Thank you very much indeed.