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Inquiry on

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TUESDAY 15 DECEMBER 2015

3.30 pm

Witnesses: Rt Hon Nicky Morgan MP, Justin Tomlinson MP and Andrew Jones MP

Members present

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

Examination of Witnesses

Rt Hon Nicky Morgan MP, Secretary of State for Education and Minister for Women and Equalities, Department for Education, **Justin Tomlinson MP**, Parliamentary Under Secretary of State for Disabled People, Department for Work and Pensions, and **Andrew Jones MP**, Parliamentary Under Secretary of State, Department for Transport

Q174 The Chairman: Good afternoon, Minister. Good afternoon, Mr Tomlinson and Mr Jones. Thank you very much for coming; we appreciate it. We have a large audience this afternoon. You will be interested to know that this session is open to the public and a webcast of this session goes out live and is subsequently accessible via the parliamentary website. It is also being televised but not broadcast live. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. We would appreciate it if you could advise us of any corrections as soon as you can.

If, after this evidence session, you wish to clarify or amplify any points made during your evidence or have any additional points to make, you are welcome to submit supplementary evidence to us. As you know, we do not have that much time and you have to be pretty concise, so, if you think of something afterwards or something comes up to which you do not have the answer, please feel free to write in afterwards and give us that information.

The members here will declare any relevant interests that they have before they put a question to you. In order to save time, I will now read out the rather long list of interests of Baroness Campbell. She is a patron of Just Fair, a patron of the National Disability Archive, founder and member of Not Dead Yet UK, 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 a commissioner of the Equality and Human Rights Commission for three years.

The first question comes from me. It is to all of you, although, if one person has answered fully, there is no need for everyone to chip in every time. At a time when cuts are being made to the budgets of various government departments, what role does the Minister for Disabled People take in preventing any disproportionate impact of cuts on disabled people? Are you consulted when the Chancellor is seeking to understand the impact on disabled people of decisions in the Budget or Spending Review? I should say that a theme throughout

our months of taking evidence has indeed been impact on disabled people, so I would be interested to hear your views.

Justin Tomlinson: I will take the lead on this one. It comes into two parts. First of all specifically with regards to the Chancellor, I can assure the Committee that the Chancellor and HMT officials meet regularly with colleagues in all departments and, in line with the equality duty, take due consideration of the total impact of policies on disabled people at fiscal events, including the Spending Review. This is highlighted in the annexe to the Spending Review document published by HMT. The assessment of these impacts often incorporates departmental analysis.

Then, on the broader perspective of my role as the Minister for Disabled People, in our department, disability spending will be higher every year up to 2020 from the 2010 figure. We are currently spending about £22 billion on disability benefits. Disability benefits and carer's allowance are protected from the freeze and are being uprated by CPI. On disability employment support, we have seen a real-terms funding increase to help disabled people find and remain in work, and that was announced in the Spending Review. We continue to get exemptions so households that include a member who is in receipt of DLA, PIP, the support component of ESA or universal credit equivalents are exempt from the benefits cap. Treasury has been very receptive to commissioning a series of pilots and new approaches to test and learn what really works for people with health conditions and disabilities as we look to build a case to get further funding.

On a broader perspective, DWP, in developing our policies, has embedded the equality analysis as laid out in the Equality Act 2010 into the process we use to develop and evaluate our policies, practices and services. We use this to assess the likely and actual effects of what we do on people with protected characteristics to inform our decision-making processes. In conclusion, as required by the public sector equality duty, the department publishes information annually relating to people who are affected by our policies and practices who share protected characteristics, for example our customers and our employees.

The Chairman: Can you think of any issue where the needs of disabled people have trumped, in effect, the cuts that your department has been required to make?

Justin Tomlinson: One of my main roles is championing the Prime Minister's commitment to halving the disability employment gap. As we have looked at the wider reforms to the Work Programme, there has been a real emphasis on looking at those with long-term health conditions, those with disabilities. We will be setting out the future changes in the White Paper consultation next year, but we have seen just over a 14% increase in real terms funding for this sort of thing, because it is connected to the Prime Minister's personal commitment to halve the disability employment gap. It is recognised that we will need to do new initiatives to help further engagement with businesses, creating the right support to remove barriers and help people get into work. This is one of many examples.

The Chairman: I know that theme will come up later. When it comes to negotiating for disabled people, do the three of you meet regularly? Do you have cross-departmental ministerial meetings?

Justin Tomlinson: Yes, we do, but it is not just the Secretary of State and the Minister here; it is right across government. I have been pleasantly surprised how receptive departments are. One thing I have done is a little bit different. All departments get a number of Ministers lobbying for their particular area to try to get that to be a priority. What I found particularly helpful is, when I get the invitations to have meetings, to engage and put across a number of areas and issues that we wish to raise, where there are either Members of Parliament or

Members of the House of Lords who have particular expertise, I will bring them along to those meetings to have technical support.

A good example is that, when I first met with Andrew, the Minister here, I brought Lord Holmes, because we were looking at a number of issues relating to transport where Lord Holmes had commissioned extensive research. I was not just going into the meeting saying, "I understand there are some issues in this particular area". We were able to back that up. We had constructive suggestions. It was a really positive meeting. Further meetings have followed and, as we go through some of those later questions, we will be able to bring across how that has made a real, tangible difference.

That is cross party. In a lot of my stakeholder engagement meetings, we will try to find a relevant all-party parliamentary group with a connection. I met with the Spinal Injuries Association at a stakeholder meeting. We have an APPG on spinal injuries, chaired by Ian Lucas, Labour MP for Wrexham. We called him up and asked him to come along to that meeting and further work was then agreed. Right across my diary, we are trying to increase that engagement so I have that opportunity, and I try to make sure I make the most of that opportunity with the collective expertise that we have in both Houses.

Q175 The Chairman: Are the three of you made aware of the full cumulative impact of cuts in recent months and years on disabled people? We as a Committee have not been able to lay our hands on anything that amounts to a statement of the full cumulative impact.

Justin Tomlinson: There are huge efforts to consider any policy change and look at the effect on disabled people in line with legal obligations included in the Equality Act. The cumulative distribution analysis published by HMT is the most comprehensive that is available, covering not only the effects of direct cash transfers between households and government, but also the effects on frontline public service provision. Welfare spending, though, is not the only way to help disabled people. Further support includes health spending, employment support, investment in infrastructure. Her Majesty's Treasury analysis included these wider public spending impacts.

But it is not possible to produce a cumulative impact assessment of policies on disabled people using this model. It uses the Living Costs and Food Survey, which does not have information on disability status but is crucial to HMT's modelling. HMT's Ministers would be better placed in answering specific questions on how they do that modelling.

The big challenge is how you compare static analysis to the dynamic effects going across. This is a debate that has been going on probably since the beginning of time, but you would need to speak to Treasury Ministers and officials.

The Chairman: The EHRC has made us aware of a Landman Economics report, which they commissioned, which said it was perfectly feasible and practical to produce a cumulative impact assessment on disabled people in particular. We feel that that would be very valuable and would show us and you exactly what that cumulative impact is, because, as I said, we have not been able to come across it specifically so far. On that note, I will hand over to Lady Brinton.

Baroness Brinton: I will stay on this question, if I may. It is good to see that, in the Autumn Statement this year, the Treasury published an analysis of impact, because when a civil servant from the GEO gave evidence to us earlier on and we asked a specific question we were told that there was none and never had been any impact. My concern is that the six items that relate to disability seem to be very focused on particular areas. My question, based on those six, is whether the focus of this Government is moving away from accepting

that disabled people have additional costs for living that are separate from the benefits system that anybody can face.

It seems that much of the emphasis is on getting people back into work. For instance, those of us who require the use of taxis because we cannot get around otherwise still have extra costs of living, but the Government focus entirely on employment. I am not asking for an answer on that specific question, but it is all about how that impact assessment is looking at these issues. That is why the report the Chair referred to is vitally important. Is there going to be progress on specifically looking at these issues, rather than trying to hold it to the other traditional Treasury techniques?

Nicky Morgan: Good afternoon, members of the Committee. I do not know whether Justin wants to take that specific issue. I would push back and say that the Government are not moving away from that. I am glad you mentioned the impact assessment that was published at the time of the Spending Review. That was something we very much wanted to see. I am not aware of the EHRC report mentioned. They have not raised it specifically with me as the Minister, but I am very happy to follow it up.

Justin Tomlinson: I will give a broad response to that about the wider costs. You are right to highlight them, because a lot of focus is on halving the disability employment gap, but we have had the introduction of the personal independence payment system replacing DLA. The principle behind that was recognising we needed to get money to the most vulnerable. Two and a half years into this new system, we have seen that, while under DLA about 16% of those who claimed got the highest rate of benefit, under PIP 22% to 22.5% are now getting that.

Specifically on additional travel costs, a significant part of the Access to Work funding is going into travel. In the recent Spending Review, the Chancellor confirmed additional funding. We currently help about 37,000 people a year, and additional funding is being provided for an extra 25,000 a year by 2020. Again, it is recognising those extra costs.

Scope did a brilliant report looking at the wider extra costs. They calculated that the combined spending power of people with disabilities is about £212 billion. That is the “purple pound”. It is not Nigel Farage’s utopian country; it is a term they have come up with. A lot of my work has been with commercial organisations in the private and public sector to highlight that it makes sense to recognise that combined spending power and to help bring down those costs as a collective.

Q176 Baroness Campbell of Surbiton: I believe that same report also said that the extra costs met by the majority of disabled people who are using DLA or PIP are £550 a month; that is not met by any benefit. That is disproportionate to the extra costs that non-disabled people face in work. There is a burden of extra cost of significant value, so it depends what piece of report you look at. They are very keen that the Government look again at the PIP assessment, in order to reflect those extra costs within the benefit.

In answer to your other question, the London School of Economics have again and again been ready to do a cumulative impact of the costs that disabled people meet in their day-to-day lives. They say that it is a potentially easy exercise but obviously it would cost money, and they have never been able to get the Government to commission them to do that work. Julian Le Grand, one of our greatest researchers in this area, was turned down. It is not like it is not out there, and, of course, that analysis would have been independent of government.

Justin Tomlinson: It is right that there are a lot of different reports looking at those extra costs people with disabilities face. They produce different figures, but I think we would all

accept the principle that there are extra costs. The point of DLA and PIP was not necessarily to exactly match those. It is a contribution from society towards those additional costs that you will face in your everyday life. I am pleased that the level of PIP has been increased by CPI; it is not part of benefit freezing. We recognise that we need to continue to do so that.

The important work going on at the moment is the rollout of transferring existing claimants from DLA to PIP. That is something I am looking particularly carefully at on a daily basis, because it is an incredibly important change for those who have been on DLA particularly for a long period of time. PIP had a very difficult launch and a lot of lessons have been learned, in part responding to the recommendations from the Paul Gray review. I personally take responsibility for analysing those on a daily basis. For about nine months, we have had a very settled response.

It was never meant to be an exact replacement, but it helps focus the mind. I do a lot of work with organisations like Scope. After they have done those reports, they come and talk to me to identify where we can make a difference, whether that is in the Government, the private sector, the public sector, by challenging organisations and doing that. All that information is useful. Going back to the point about whether more could be done on the cumulative analysis, it is for Treasury to look at and work out how to do that. I feel genuinely, as I go and raise issues with all departments, they are receptive to be challenged and to respond to things we push forward.

Q177 Baroness Brinton: We have heard that the public sector equality duty is ineffective because policymakers do not have to consider the impact of proposed policies any more. What are the Government doing to counter this? Why did the Government decide not to lay before Parliament the codes of practice on the public sector equality duty for schools and for further and higher education?

Nicky Morgan: First, I should point out that the fundamental purpose of the public sector equality duty is precisely to ensure that people consider the impact of proposed policies. It is what is called a due regard duty. The evidence we have had, and I think the evidence you have heard from government equalities officials in earlier sessions, was that there was a review of the public sector equality duty, which concluded in September 2013. It was quite critical of the way that duty had been implemented by public bodies, often citing cases of too much information being collected or published, and too little information in others.

I am focused on the fact that the way to meet the duty is not to collect endless reams of paper; it is really to consider the duty or the decision being made. It was recommended as part of that review that we should look again at the public sector equality duty in 2016. We are currently working through that at the moment and deciding what any review might be.

In relation to the codes, they were just laid before Parliament by the last coalition Government simply because they were just too long and were going to increase burdens. I speak with my education hat on as well. Schools are not going to plough through pages and pages of guidance. I do not think the way to get people to really think about equality duties is to give them so much paper that they lose sight of the wood for the trees. However, the EHRC produced the original text of these codes as technical guidance, which is available to educational institutions and which can still be taken into account by the courts. It is not the case that there is no guidance available.

Baroness Brinton: In oral evidence, we were told that the other thing that has diminished the duty to a large extent is a lack of requirement to engage disabled people particularly, which was there under the disability duty in the past. Would the Government consider the reinstatement of that obligation to engage with disabled people with regard to the PSED?

Nicky Morgan: As I say, it was recommended that we would have a review in 2016. We are currently looking at that and I am waiting for some advice on the shape of that review. That is not an issue and I am happy to take your particular request away. We will carefully look at the report from this Committee when it is published. Perhaps we will get on to it later, but, in some of the earlier sessions that you have had, the questions this Committee asked were about what has happened to the duty regarding those with disabilities as a result of the coming in to force of the 2010 Act, which brought so much together. It has been an improvement, but I am sure that will be part of the review.

The Chairman: Minister, you seem to think that having due regard was adequate. But, as in the case where the Master of the Rolls was involved, about the Secretary of State of Work and Pensions, having due regard—and you are a lawyer—just means having due regard. It is not the same as requiring a public authority to take positive or even proportionate steps towards achieving an end. It is a very passive duty. Is that sufficient, in your view?

Nicky Morgan: The two particular legal cases you mentioned brought under the duty were brought by or on behalf of those with disabilities, so this is not about people not having grounds on which to bring cases. In all these things, we have to balance between people having due regard and thinking about the impact of what they are doing on those with protected characteristics; and making decisions and implementing rules and changes which are going to take forward the programme of government.

The Chairman: But having due regard just means you can have due regard and still go ahead with a decision that is unfavourable to the disabled. It is simply a process.

Nicky Morgan: But that decision, as we have heard, can then be challenged in the courts, as it was in those cases.

The Chairman: It was challenged, and the court said, as long as you go through the process, you do not have to reach a different view. You just have to go through the motions. In oral evidence, over and over again we have been told that this simply is not sufficient.

Nicky Morgan: I think it is. We want Ministers to have regard to the protected characteristics under the 2010 Act when they are making decisions on legislation and regulations to be implemented as part of the programme of government. The more we move to something that is prescriptive, the more red tape and tick boxes we end up encouraging, rather than Ministers standing back, having due regard and thinking about the impact of what they are doing on people with protected characteristics.

Q178 Baroness Brinton: From the evidence we have seen, part of the problem with the Red Tape Challenge, particularly for some of the disability issues, is the move from a statutory responsibility to a much softer one. While I absolutely endorse the idea of schools and further and higher education not having to wade through tomes of paper to understand things, having due regard, either for the Minister or even for institutions, completely disappears the moment there is something too complex. Will the Government ensure, through the consultation, that what comes out the other side of it will be easily understandable and, therefore, institutions that have to hold to it will be accountable for it, rather than the weasel words of “having due regard”, which enable the Minister or institutions to say, “We have thought about it a bit”?

Nicky Morgan: I would not agree with you that they are weasel words. They are clearly accepted legal terms and they encourage Ministers and institutions to think and be very mindful of the impact of the decisions they are taking on those with protected characteristics. We do, for example, in the Department for Education publish guidance on how schools should think about the Equality Act 2010 in everything that they are doing. You

highlighted in your question that it is that balance between wanting people to think about these important issues and allowing them to get on with what they are doing, so, in the case of schools, providing education to all pupils to the highest possible standard.

Baroness Campbell of Surbiton: I was involved with the codes of practice when I was at the Disability Rights Commission. In our experience, we felt that the codes enabled schools, local authorities and institutions to have the wherewithal to know what to do. I agree that large tomes do not get read, but large tomes can be disaggregated; they can be used as a bible from which you can then produce summaries, training courses, et cetera. That is exactly what the Disability Rights Commission did, so the codes became a live code, not a dead code that, as you are trying to say, does not get read and it sits on a shelf. Of course that is wrong, but we have an Equality and Human Rights Commission that can promote codes and use them as a resource and a place of knowledge.

Would you not accept that? Local authorities say, "Actually, we need these codes; we need something tangible because we do not know what to do. Then we can go on and do things in the way we think is right for the community", but you need that knowledge. You need that tangible, written-down knowledge of what you can and cannot do in order to empower institutions to do the right thing. It seems to me we now have just a process-driven way of looking at disability.

Nicky Morgan: I would not agree that it is process-driven. My worry is that it is all very well to have a code or a bible, as you refer to it, but nobody in my job ever says to me, "Please send me more paper". We want to drive a cultural change across our public institutions to have a proper regard to those with protected characteristics and genuinely think about the equalities impact of everything we do. I want them to think about that, not to read endless pieces of paper, find the particular situation is not covered in the endless pieces of paper and then not have the wherewithal to be able to think their way through the problem and how they are going to make their service available for those, in this case, with disabilities.

Lord Harrison: Why does the code of conduct need to be long?

Nicky Morgan: I agree with you, Lord Harrison, but unfortunately these were long.

Lord Harrison: Yes, but why does it now? Why should we not aspire to have short, sharp codes of conduct, which clearly impart to those who have need of them exactly that?

Nicky Morgan: I agree. I think codes of conduct can be—

Lord Harrison: Would you like to make the effort?

Nicky Morgan: I think the question being asked was about these particular codes of practice.

Lord Harrison: I am talking about codes that might be formulated by you and your department that are effective because they clarify what is required and needed and can be implemented.

Nicky Morgan: We try very hard now, I can tell you, with both my ministerial hats on, to make everything we send out as short, snappy and user-friendly as possible. The question asked was about these particular codes from several years ago, which were too long and too burdensome.

The Chairman: So they could be re-written.

Nicky Morgan: Anything can be rewritten.

Q179 Lord Foster of Bishop Auckland: I have no relevant interests to declare. May I read out to you what William Hague, then the Minister for Disabled People, said in 1995 when launching the White Paper? "The door-to-door service which taxis provide makes them ideally suited for use by disabled people. It is not acceptable for disabled people to be restricted to arranging hirings in advance, which many have to do at the moment because

they cannot be sure that a taxi they hail on the street or at a rank will be able to accommodate a wheelchair". As you know, the White Paper became an Act, and yet, 20 years after that Act, the main taxi provisions of the Equality Act are still not in force. You have said that you fear they would create a burden on drivers. What evidence do you have for this? How have you balanced it against the existing burden on disabled people as a result of inaccessible taxi services?

Andrew Jones: I think that is heading my way. First, can I say good afternoon to all the Committee? There are several sections in the Equality Act 2010 that have not yet been commenced. It might be worth taking them separately. There is one group, which covers the practical requirement, Sections 160 to 164. This was basically saying that we need to have all taxis in England and Wales be wheelchair accessible. Section 165 is a slightly different one. That is dealing with culture and behaviour and I will come to that separately.

We know that about 56% of taxis are wheelchair accessible. We know that from a biannual survey undertaken by the department across all the licensing authorities in England and Wales. You asked what evidence there would be if we implemented it. I do not think we need to have every single taxi be wheelchair accessible. We need to have a significant number that are wheelchair accessible so that people who require them can access them, but, if we had every single one, there would be a cost of replacing the 35,500 non-wheelchair accessible taxis in this country. The lead-in price for a London taxi is £39,995. We can all do the maths. It would be very expensive. You ask: what is the burden? That is the burden. On the other side of it, we know progress is being made and that 56% of all taxis in England and Wales are wheelchair accessible, so I am not sure the problem necessarily exists.

If we go to Section 165, that is a different question altogether and one that I feel requires a different approach. It tackles the point of assistance. It basically would provide the obligation to carry a passenger in a wheelchair and would make a prohibition on charging extra for doing so. Then there would be a reasonable assistance requirement to help a passenger in entering and leaving the vehicle. This has not been implemented. I am personally very supportive of all the motives that we have here and want to make sure that all our public transport is much more accessible for people with disabilities, whichever their disability is. I am quite supportive of the basic principle. We are at the moment considering what to do with this. We have considered it and I am hoping to make a decision very shortly.

Lord Foster of Bishop Auckland: Minister, I am very surprised to hear you say that you do not think the problem exists, because all the evidence we have had in front of our Committee suggests—stronger than that—that this is one of the biggest problems that disabled people have: not just in managing to get a taxi, but very often being charged supplementary fares, which ought not to be the case either.

Andrew Jones: I was not talking about fares; I was talking about wheelchair accessibility. Some 56% of taxis in England and Wales are wheelchair accessible. That was the question you asked and that was the question I therefore answered.

Lord Foster of Bishop Auckland: I think it was wider than just wheelchair accessibility. The group of disabled people, as you well know, is very much wider than that.

Andrew Jones: Absolutely, and I am extremely keen to see good progress made in making all our public transport modes, with taxis at their heart, much more accessible. I fully recognise that taxis, private hire vehicles and buses are of fundamental importance for disabled people. There is no question about that. We possibly are agreeing.

The Chairman: It has been the will of Parliament for 20 years that taxis be accessible. How many more decades is this going to take?

Andrew Jones: It is going to take 10 minutes, because I have to go and vote. I will come straight back very shortly.

The Chairman: It is the will of Parliament and we are all here to get that will carried out.

Andrew Jones: We will come back to that directly after we have voted, if you will excuse us, Baroness Deech.

The Committee suspended for a Division in the House.

Q180 Lord Foster of Bishop Auckland: In view of the fact that 100% of London taxis have to be wheelchair accessible, what do you think is the percentage in your beautiful but highly rural constituency?

Andrew Jones: My own constituency is not that rural, actually. We know it does vary outside London. It varies between metropolitan, urban and rural areas. In rural areas, it is a low number; it is only 13%. The majority of the taxi market there is private vehicle, because there is no hailing of a street-side vehicle. It goes up to 84% in England in the metropolitan areas outside London. In other areas, it is 36%, so it reflects that mix of business in the area.

Baroness Brinton: One of my great concerns is the definition of an accessible taxi. My town of Watford has recently done a survey, which included going back. Under 20% of taxis are accessible; a very small percentage of those are wheelchair accessible; and an even smaller percentage are electric wheelchair accessible because of the issue of one ramp or two ramps. Please will the Government consider making one ramp compulsory for anyone who purports to be a wheelchair taxi? Personally, I am fed up in my town of having a taxi driver give me two fingers, which is meant to indicate he has two ramps and cannot take electric wheelchairs. Many taxi drivers hide behind the accessibility label and cannot deliver. It is very easy to sort out, given the price of ramps these days.

Andrew Jones: That is a very fair and very good point. Regulations have not always kept pace with the changing technology of wheelchairs and I am very happy to take that forward. It is an extremely fair point.

Baroness Thomas of Winchester: I am recovering from a broken kneecap. My knee has to be set like this. In London, I found one taxi who could take me when I tried to come here a week or two ago. It was very expensive. For the other taxis, it was the same sort of problem. If your leg has to stick out in front of you, it is very, very difficult. All the common taxi firms say they cannot take you if you are a bit longer than they expect. That is another thing. It might be that somebody has a problem and they have to keep their leg out straight. I am having problems.

Andrew Jones: Was this a private hire vehicle or a traditional black cab?

Baroness Thomas of Winchester: It was not a traditional black cab because I really do not know that I would get in one. I know that you go in sideways, but this was a private hire one.

The Chairman: I do not imagine that any taxis are 20 years old. People must have bought new taxis. Unless you bring those regulations into force on a rolling basis, taxi drivers will never get cars that are big enough to take wheelchair riders. They cannot all be driving taxis that are still 20 years old. We have a real chicken and egg situation there. We feel that those regulations, as the will of Parliament, should be carried out.

Q181 Baroness Browning: I should declare that I am a vice-president of the National Autistic Society, patron of Research Autism and a vice-president of the Alzheimer's Society. The

Government's evidence states that you are waiting to bring into force Section 36 of the Equality Act in the common parts. You are waiting until you know about the experience in Scotland, but, as we have heard and as I am sure you know, Scotland's legislation and requirements are different. Both leasehold and commonhold law are different in Scotland. They have not been put in to effect yet in Scotland. I wonder why the English provisions are not brought into force now. It is not often we hear the Government pray in aid Scotland in this way.

Nicky Morgan: We are all better off together. Thank you for that question. My understanding is that the decision to wait for the Scottish experience of implementation was taken in light of concerns about how the provision would work in practice and what it would cost. We wanted to see how that worked, regardless of the different legal position, in terms of the cost. As you say, our understanding is that the Scottish Government have not been able to develop workable relations on this.

We are considering the uncommenced provisions of the Equality Act 2010, of which Section 36 is one. I have asked the Government Equalities Office to review this now as a separate exercise, to see where we go from here, given the non-experiences of the Scottish Government. I would of course be happy to keep the Committee up to date on that, should we come to a conclusion about it before the Committee's report is published.

Q182 Baroness Browning: That sounds very encouraging, thank you. Does that mean that the Government have changed their mind about this issue in relation to the Red Tape Challenge? We took oral evidence from Bob Ledsome of DCLG, who told us, "The Government took the view in the Red Tape Challenge that there were issues of potential burdens on landlords"—for example, common parts in blocks of flats and community housing—"and so on, and therefore took the view that they did not at that point want to commence the relevant parts of Section 36". Can I ask you why the Government thought that these provisions belonged to the Red Tape Challenge?

Nicky Morgan: The Red Tape Challenge is cross-government. It is all about burdens on businesses, public institutions—really, anyone—in terms of implementing legislation and looking at the balance of requirements to build the equal society we all want to see and other things, but also the burdens on those having to implement those regulations. Disabled tenants can already ask the permission of landlords to make adjustments to the common parts of the properties that they rent.

I have to say my concerns about red tape and burdens have not gone away. I was not the Minister who made the decision in the last Government but I think, in spite of that, it is definitely worth looking at again as part of the uncommenced provisions of the Act. We now know that Scotland has not been able to make this work, so I think we should take a decision of our own.

Baroness Browning: That is very encouraging. I think the Committee is concerned about the Red Tape Challenge. Are you able to confirm whether the Government still have the view that, across government departments, when a department comes forward with legislation that is deemed to impose a burden, they should also offer up something in return: the one-in, one-out policy? It seems to us that there is a pattern developing where the one out applies to legislation affecting people with disabilities.

Nicky Morgan: Let me push back on that. I do not think that is the case. It has become more challenging. It is now one in, two out.

Baroness Browning: That is even worse.

Nicky Morgan: We do not want to be a Government that, by 2020, has more regulations, more red tape, more burdens on people. But there is a balance to be struck in relation to equalities, particularly regarding those with disabilities, as we are discussing today, which is why I want to take another look at this provision.

Q183 Lord Northbrook: This is another Red Tape Challenge question. I have no relevant interests to declare. The Red Tape Challenge has been given as a justification for repealing the provisions on statutory questionnaires in tribunals and, secondly, on tribunals making recommendations. What evidence do you have that these were or would be a burden on businesses?

Nicky Morgan: The evidence we have had is that employers needed, or were taking, legal assistance before responding to the questionnaires because tribunals had the legal power to draw inferences from “an evasive or equivocal answer”. Therefore, employers were getting legal advice and that added hugely to the burden on the employers’ time. When the Government Equalities Office wrote to employers who had received a wider recommendation from tribunals, those that replied indicated an average compliance cost of about £2,000. In relation to the questionnaires, the process had become legally burdensome. By 2009, it was estimated that nearly 10,000 businesses a year were having to respond to these questions at a cost of about £1.4 million per annum.

I should just say that what was repealed was the time limit for employers’ responses and the tribunal’s power to draw an inference from the lack of a response, just to make that clear for the benefit of the Committee.

Lord Northbrook: You felt there was no advantage to these statutory questionnaires.

Nicky Morgan: They can still be used. In fact, they can still be used in the format that they were before, but what has been repealed is this time limit and this power to draw an inference from a non-response. It was costing employers quite significant sums of money to comply and then perhaps to deal with the recommendations.

The Chairman: At this moment, may I please welcome our visitors? We have a group of parliamentarians here from south and south-east Asia who have come over for a Commonwealth Parliamentary Association workshop entitled Building a Community for Change, on promoting gender equality. Welcome. I hope that your visit here today is enjoyable and profitable. Thank you for being with us.

Q184 Lord Faulkner of Worcester: I have three relevant interests to declare. I am president of the Heritage Railway Association, which the Secretary of State knows well, chairman of the Great Western Railway advisory board and I am vice-president of Level Playing Field. I have a Private Member’s Bill, which is about to leave the House of Lords and head your way, on disabled access at sports stadia. I shall ask a supplementary question of Mr Tomlinson relating to that in a moment, but my question is for each of you. Are you satisfied with the remaining legal provisions concerning disabled people and are there any changes that you would recommend?

Nicky Morgan: First, Lord Faulkner, I am very sorry not to be seeing you on a steam railway this afternoon, but I look forward to your next visit to the Great Central Railway in Loughborough. The Equality Act introduced important new protections for those with disabilities and the bulk of disability-related provisions and the age-related ones have now been implemented. We believe that the Act is working as it should do and our post-legislative scrutiny memorandum on the Act shows that the two key objectives that were originally set, harmonising the equalities legal framework and strengthening the law to support progress on equalities, have substantively been achieved. In light of that, there are

not any specific changes that I, as the Equalities Minister, would wish to put to the Committee, but of course we will look at the conclusions of the Committee and we will no doubt be reviewing the Act again. I have already mentioned some of the uncommenced provisions that we will be looking at again.

Justin Tomlinson: I would echo those comments.

Andrew Jones: I would echo but add something, which I am not necessarily sure is a legal issue. We have been talking about access to public transport and I think we need to keep a watching brief. We often define access in physical terms. We need to be aware that dementia is a growing feature in our communities and that one in three people over the age of 85 will suffer some form of cognitive impairment. We need to make sure our communities are very dementia-friendly. That needs to be borne in mind as well in transport planning. I am not sure that is necessarily a legal issue, but it is something I feel personally strongly about, so I thought I would mention it.

Lord Faulkner of Worcester: This is my supplementary to Mr Tomlinson. I have armed myself with some splendid quotes of his, most of them from Wiltshire newspapers or his website. I will start with this one: "Most football clubs in this country are behind when it comes to disability access to their grounds. It is my belief that football should be a game enjoyed by everyone, and someone with a disability should have as much of an opportunity to watch the game as someone without a disability". A second one is: "Frankly, some of it is disgraceful"—that is, provision for disabled people. "There is not provision in some grounds. Supporters are split up or are put in with the away fans. I find that totally unacceptable. We are in the last chance saloon with those football bodies, saying, 'You need to get your house in order'".

Since you made those comments, Mr Tomlinson, the Premier League came up with its encouraging commitment to make its grounds accessible to disabled people by 2017. Can I ask what the Government are doing to make sure they stick to that commitment and how they are monitoring progress between now and that date?

Justin Tomlinson: I think you can tell that I was very passionate about that subject and keen to take that forward. For probably 20 years, the Premier League had been encouraged to take action. It is a collective body that has an income of about £6 billion a year, so money is no excuse in this area. A combination of the fantastic work you did with your Private Member's Bill, which highlighted the issue, and some extensive research into this subject highlighted what a major problem this was.

We immediately challenged the Premier League. They came in. To their credit, their chief executive, Richard Scudamore, was very proactive on this. He had personal experience and acknowledged that something needed to be done. We made it very clear that something would be done and it would be preferential if they could do that quickly. They came back and confirmed that all stadia would be fully accessible by 2017. We invited them in to explain why 2017, not 2016 or 2018, and how we could be sure, which is the thrust of your question.

The principle is that the majority of the physical changes to the stadia need to be done in the off-season, in the summer. Therefore, they have two windows to do that in. They are setting out a very clear timetable of which grounds will happen when, on which we will have regular meetings with them to hold them to account. If this is not done, it is something that we would be keen to take further action on. In the spirit of what I was talking about earlier, where either MPs or Members of the Lords have expertise in a particular area, I would very much welcome them joining me in those meetings.

I am encouraged that they recognise that, as a principle, this should be done and that £212 billion spending power is something that, as an entertainment business, they simply cannot afford to ignore. It is an absolute right that this be sorted out.

Lord Faulkner of Worcester: Bearing in mind that my Private Member's Bill has almost passed all stages in the Lords and it will probably be with you in January or February, would it not make sense for you to take that over and give yourself the legal powers to make sure these timetables are adhered to?

Justin Tomlinson: Those are discussions I have with my colleague, Tracey Crouch, the Minister for Sport. It certainly helped to focus minds, but I genuinely believe that the Premier League, through Richard Scudamore, are determined to see this happen. I think what they are proposing is realistic, but we will keep a very close eye on that.

The Chairman: Are there any other changes in the law you would like to see? Given the dissatisfaction we have heard from you, and indeed in our evidence, about transport and about the PSED, do you think there are any changes in the law that should be made?

Nicky Morgan: Andrew might want to answer on transport. He has already been quite clear about some areas that he thinks need to be looked at again. I have not expressed dissatisfaction with the public sector equality duty, but I have said that there will be a review as recommended in the 2013 report.

The Chairman: Clarity and brevity of writing, I suppose, is not a matter for changing the law, but I think we are agreed that that is what is necessary.

Q185 Baroness Campbell of Surbiton: My question is to the Secretary of State and the Minister for Disabled People, Justin Tomlinson. You will smile when I start asking the question. Ms Morgan, what role did you take when the decision was made to close the independent living fund? Could more proactive involvement by the GEO have prevented the policy-making failures that led to the loss of the first judicial review of the closure?

Nicky Morgan: Justin will answer in detail. At the Government Equalities Office, we give advice to departments about the application of the duty and the Equality Act. We run training exercises for staff in other departments. We circulate guidance on the duty. But we do not, as the Government Equalities Office, take decisions for other departments. That is very much a matter for them and I am sure Justin will explain the DWP's decision-making process in this area.

Baroness Campbell of Surbiton: Considering the significance of this particular fund, were you personally involved in giving any guidance to the DWP on the first judicial review?

Nicky Morgan: I personally, as the Minister, was not. I can certainly find out whether Government Equalities Office officials were involved in any decisions or legal advice on the judicial review.

Baroness Campbell of Surbiton: That would be really helpful, thank you.

Justin Tomlinson: Just to be clear, the decision to close to the ILF was taken by the then Minister. I am relatively new to the post. One of my first meetings, actually, was with Baroness Campbell—a very enjoyable meeting. In making this decision, he considered the rationale for closure, the impact on those affected and the wider impact, as well as the responses received from the consultation and the equality analysis conducted by the department. We do not believe that greater involvement by the GEO would have had an impact on the decision to close the ILF or the court's decision. The court criticised the original analysis on technical legal grounds and made no findings on the merits of the decision to close the independent living fund. Crucially, the final decision was based on the new evidence and a new equality analysis.

Baroness Campbell of Surbiton: Yes, I am very aware of that legal decision. Tell me, who and which department has responsibility for the independent living fund now?

Justin Tomlinson: It is many of us.

Baroness Campbell of Surbiton: Yes, but one department has to have ultimate responsibility. Who is that?

Justin Tomlinson: The Department of Health makes sure that the Care Act 2014 is being looked after. The DCLG is responsible for the local authorities that are delivering. We are responsible for looking at those who transferred over, particularly as we go forward with the consultation, and Treasury are the people who will confirm ongoing funding.

Baroness Campbell of Surbiton: Of course, but who has the overarching decision-making power on the independent living fund? Who do disabled people go to when they want to collaborate and help with reforms in this area? It is a very interesting answer that you have just given me, because the natural assumption was, until very recently, that the Department of Health would have primary responsibility for this, as it very much sits within the Care Act. When asked, the Minister at the Department of Health replied, “No, this is not my responsibility. It is the responsibility of the local government department”, at which there was a shriek of “What?” across the room. Do you not think this leaves disabled people confused and very much torn between departments?

Justin Tomlinson: To be absolutely clear, DCLG administer the funding for adult social care and former ILF users, via the local government finance settlement. The Department of Health have ownership of the adult social care policy and oversee the implementation of the Care Act 2014.

Baroness Campbell of Surbiton: To whom do disabled people go to negotiate for a wider understanding of what this fund is for and what its intention is? We all know that the UN committee has come over here because it was brought to its attention that the decision on the independent living fund itself was possibly in contravention of Article 19 of the Human Rights Act. It is an incredibly important issue, so who is the Minister responsible who makes the final decision on this, in collaboration with all these departments?

Justin Tomlinson: First of all, on the UN convention, we strongly contest the allegations that were made to the UN. The Government undertook a thorough equality analysis and extensive consultation prior to closure and the Court of Appeal confirmed that this consultation was fair, proper and unbiased. It is an ongoing review. We will take part, but the ongoing work is confidential.

The point it comes back to is that it depends on which angle you come from. Is the Care Act 2014 being implemented and enforced? That is the Department of Health. Is it the day-to-day activities of the individual local authorities? That would be DCLG. We keep a watching brief and my role is predominantly to meet with stakeholders, who may raise concerns, and then I will take it to either of those two, depending on which angles it goes through.

I am encouraged. Some 94% of those who were existing ILF users already used local authority adult social care. Remember, under ILF, that was a discretionary service and significant changes were made in 2010, whereas local authorities are mandated through the Care Act 2014 for minimum standards. Therefore, there are stronger protections for those who utilise that service, and rightly, through the better care fund, through the opportunity for local authorities to have a social precept. There is access to potentially an extra £3.5 billion for adult social services each year by 2020. It is recognised that local provision is far better to match those local needs. This is something that we very much support.

Baroness Campbell of Surbiton: Absolutely. It is the same question: to which Minister would you advise the disability lobby to go when they want to negotiate on the independent living fund? It is jolly well not fair to ask them to go to all four.

Justin Tomlinson: They can come to me as somebody who can go and work across government. If the question is “How is the Care Act being implemented?”, that is the Department of Health. “How are local authorities sharing best practice? Are there inconsistencies?” would be DCLG. On the broader principle of funding for adult social care, it would be the Treasury.

Baroness Campbell of Surbiton: You are monitoring the situation, are you?

Justin Tomlinson: Very much.

Q186 Baroness Pitkeathley: I have one interest to declare. I am vice-president of Carers UK. We are back to taxis here. We heard from Sheffield Council that they impose disability training on taxi drivers before they can get a licence to work in Sheffield, but the Deregulation Act 2015 now means that drivers with no disability training and with a licence from elsewhere can come from other areas and work in Sheffield. Those in Sheffield who think the licence will be too difficult to get go and get it elsewhere; they do not do the specific disability training.

First of all, did you know that the Deregulation Act would have this effect or was that an unintended consequence? Could you ensure that all licensing authorities imposed similar conditions so as to be sure that taxi drivers knew all the issues with which this Committee is so concerned?

Andrew Jones: It is not the Deregulation Act, but the legislation states that taxi and private hire vehicle drivers must be fit and proper. It is a statutory test, although it is not defined in statute. Licensing authorities have broad discretion to set their own licensing standards that ensure public safety and best meet the needs of their own local area. My department has issued a best practice guidance to assist licensing authorities determine their policies. The guidance states that all local licensing authorities should encourage their drivers to undertake disability awareness training. We know that a third of all licensing authorities in England and Wales now require their drivers to undergo mandatory disability awareness training.

Drivers are not restricted to work only in the area of the authority that issued their licence. The Deregulation Act did not change that. I am afraid the evidence you have heard from Sheffield Council is not correct. I am grateful to the Committee for highlighting this because I have now been able to write to the leader of Sheffield Council to correct the situation. This is with reference to Section 11 of the Deregulation Act. That allowed private hire vehicle operators to subcontract bookings to operators licensed by other authorities. It is that subcontracting that is the point here. In some ways, it is about enabling operators to provide a better service to their customers and to better meet customers’ needs. It has not changed the underlying principle of where people can work.

Baroness Pitkeathley: Do you support the idea of imposing disability training requirements?

Andrew Jones: It goes back to the conversation we had earlier. The leadership we provide from the department is all about encouragement rather than mandate. We are seeking to encourage local authorities to take more responsibility for themselves through a huge devolution package. The devolution agenda is at the heart of the Government’s work. We are not planning to enforce by mandate, though it is clearly good practice. We recognise that, according to the latest information we have, 34% of authorities have a requirement for all their taxi drivers to complete disability awareness training. The last data I have is from

2013, and it has gone up from 28% in 2011 and 30% in 2012 to 34% in 2013. I hope that provides a bit more clarity.

The Chairman: What I hear from you is a theme, which is understandable, of wanting to deregulate and get rid of red tape. What concerns me is whether there is a body that sits down and says, “Well, on the one hand this will alleviate the burden on a certain group, such as tribunals or landlords. On the other hand, look at the extra burden that is thereby pushed over on to the disabled. How do we balance it?”. Is that exercise undertaken? Is there a group that does that?

Nicky Morgan: I am sure there is great scrutiny. It is done through equality impact assessment work. When Government make decisions about repealing things or changing things, the equality impact assessment is done by the relevant department and the relevant Minister, looking at relieving somebody of one burden, what that does and the wider equalities impact.

The Chairman: If something is not brought in to force, like the taxi regulations, there is therefore no equality impact assessment, is there? They just languish.

Nicky Morgan: I am happy to take advice, but I think an equality impact assessment would have been done when the original Act was published and passed through the House. I think you are right to say there would not be a separate one done for uncommenced provisions.

Q187 Baroness Thomas of Winchester: I must say, in my experience of equality impact assessments, some of them are very good, but, to be honest, some of them are tick-box exercises. For example, you might see something that is supposed to have been rural-proofed and yet it clearly has not been, in my view, or there is no evidence that it has been. I am not sure that I think they are the answer to everything.

I must give you some interests. I receive DLA. I am a trustee and vice-president of Muscular Dystrophy UK. I am a member of the disabled access committee for Lord’s Cricket Ground and I am a patron of Thrive. Now, this is about local authorities and the licensing powers again. They could use their licensing powers to force licensed premises to comply with the Equality Act, if this was made a specific objective under the Licensing Act. It would mean a change to primary legislation. Witnesses certainly support this. Do you, Ministers?

Nicky Morgan: It is a very interesting idea and we will read with interest the conclusions of this Committee. Licensing and the Licensing Act is a matter for the Home Office, so I am going to respond on their behalf. Clearly, your report will be read across all relevant government departments and we will respond accordingly. We have to be careful not to duplicate requirements in the Equality Act 2010 that licensed premises, in terms of those providing public services, are also subject to.

My understanding is that some local authorities already include awareness and compliance with equality law as a consideration when inspecting licensed premises. One example of that is Camden Council, which has specific wording in its policy that talks about enforcement decisions and actions being made with due regard to equal rights and anti-discrimination legislation. Again subject to the report from this Committee, officials in the Government Equalities Office could liaise with the Home Office officials to consider the scope for spreading good practice.

I have to say I am instinctively against adding more and more into legislation because I do not think it always changes practices. Exactly as you have said, it can end up with some sort of tick-box exercise without people really thinking about making their premises or the offering of their services as accessible to everybody as possible.

Justin Tomlinson: I am particularly interested in this one, because I made a guest experience on “Watchdog”. I was very excited; I am a big fan of the TV programme. I suspected that they were not inviting a government Minister on to do a film of something that was wonderful and to thank me for the hard work we had done in that area. It was on accessible venues ahead of the festive period, particularly restaurants. I presumed that the big chains would have been pretty good and the small and medium-sized independents would have been pretty terrible, and that would have been the nature of it.

That was not the case. There were two particular restaurants that deemed it acceptable that the disabled toilets became also an office for the managers and storerooms. This was all filmed. It was clearly unacceptable. There were also lots of examples of where the intentions were right, ie with hearing loops, but they had not used them so they did not know how and the batteries had gone. They had ramps; they used the ramps wrong.

This is, in effect, a bit like where we were with the Premier League. We have had a meeting already with officials to work out whom we need to talk with. We are organising a round table in the new year, with representatives of the industry and people with direct experience in this area, to look at how we do this. My hunch is that there are a lot of laws already in place. I think the point of the question was: are these being enforced? We need to go and have a look at that. We need to raise this. It is a good example of where I will be doing cross-government work in the private sector.

What is happening is clearly unacceptable, as I said on “Watchdog”, partly because it is £212 billion-worth of spending power and these venues are the first to complain that they are not making enough money and they are turning business away. Secondly, I do not genuinely believe that industry wakes up in the morning and says, “Do you know what? Deliberately, we are going to make our facilities inaccessible”, but poor training and poor awareness is the key problem.

To conclude on this, the comparison here is that I am also responsible for health and safety. I am the Minister for health and safety. If we go back in time, businesses really did not like health and safety and, in fact, they switched off and did not engage. A decision was taken to simplify communication. I know we talked earlier about whether we have the tombstone or whether we make it clearer. We went down that way. They were a lot more proactive on the visits and, rather than the surprise enforcement visits, they would come, give advice and recognise. If they did not respond, we would be very tough in the enforcement, but, unsurprisingly, satisfaction and engagement went up. Our standards of health and safety in this country are now so good that we export our expertise in this particular area.

I am conscious that there are individuals, such as the licensing officers who tour these venues, who could say “Do you have your hearing loops? Are the batteries live? Can I check your disabled toilets?”. We may not have to go to court. At the moment, we are relying on angry customers going through the court process, when, more often than not, a prod in the right direction will solve this. I was very unhappy with what I saw in that film and I am keen to take action in that area.

Baroness Thomas of Winchester: That is very encouraging. I am thinking of a lot of pubs and pub restaurants that are totally inaccessible. Sometimes they are in listed buildings and the whole time I get told, “We cannot do anything about access or about disabled toilets, because we are a listed building”. That is not true, as you know, but it needs to be got out to these places that they can do something. I just wonder if local authorities all round the country could not be told about some of these myths, like health and safety myths.

Justin Tomlinson: That is a really important point. I have to say, in my very first graduate job, I was a nightclub manager, much to my mother's disappointment, and we were fully accessible. It did not cost a huge amount to make ourselves fully accessible. Groups go out and, if one member of a group cannot access a venue, none of that group goes anywhere. Commercially, we benefited hugely from that.

To the point on listed buildings, you are right. Often, it is too easy to say, "We cannot do that". Actually, there are lots of examples of listed buildings that have been able to make reasonable adjustments. I am very excited that we have the Built Environment Professional Education Project, which is looking at the future architects, chartered surveyors, build professionals and all these very clever people. It is now being embedded. Every one of the building professional organisations has signed up. It is embedded into training courses and universities will have modules on access, so it becomes a given when that next generation is doing things. We now have prizes for this.

It seems a small thing, but that has really focused minds, building on the legacy of the Paralympics 2012, where we showed that you can make huge accessible facilities commercially make sense, so that becomes the given, the norm. That is something we have helped implement just by looking at this and saying that, while we can always do things as a Government, the long-term solution is that it is embedded into their knowledge and it becomes a given.

Q188 Baroness Thomas of Winchester: Could I just go off-piste about this Disability Confident campaign, which I know you are keen on? This is about workplaces being accessible. I know that disability covers many different disabilities and there are a lot of people who are disabled and want a job who are mobile, but this is particularly about people who may be wheelchair users. An awful lot of buildings that businesses are in around the country are still not yet accessible. Even if you make employers aware of how very, very useful a lot of disabled people would be to their businesses and how they would enhance them, if they cannot get in and if there are no disabled toilets, for example, that is not going to be possible. An awful lot of employers will not have these facilities. What can you do about that particular problem, as well as making employers aware in their heads of the landscape that they are operating in?

Justin Tomlinson: This is a big part of my work: the commitment to halve the disability employment gap. I want to recruit you as part of my team to advocate this to officials.

Baroness Thomas of Winchester: I will do that any time.

Justin Tomlinson: It is very important. The whole point of the Disability Confident campaign is that it recognises a lot of businesses simply lack the confidence to employ somebody with a disability. The truth is that there is a huge wealth of talent out there. There are a lot of myths— for example that, if I employ somebody with a disability, they will have higher level of sickness. It is actually the reverse. They are often the keenest people to come to work. They have a huge amount of expertise. The lion's share of disabilities are acquired, so these could be people who have been in professions at high levels in their career, have a disability and suddenly are forgotten by the workplace. For the sake of the economy, for the sake of businesses who are telling us there is a skills shortage out there, they just need to make some small changes. I can say this with authority: I have employed people with disabilities, to my benefit.

The Disability Confident campaign is about signposting businesses, particularly small and medium-sized businesses. As a rule, big businesses are pretty good. They have HR teams, personnel teams with great expertise. They do good training and employee engagement. It is

those small and medium-sized businesses that provide 45% of the jobs in the economy. It is signposting them to help. It is things like Access to Work, which will pay for the physical changes—ie, getting disabled toilets, getting ramps into an office—but too many small and medium-sized businesses are unaware of this.

In the new year, we will be upgrading our communication on Disability Confident and we are changing everything on the website. We have just tested something for the Disability Confident events we do. We used to invite the great and the good in a town, have three and a half or four hours of presentations—it was pretty dedicated—and everybody would agree, but they were already the converted. We did a reverse jobs fair about a month ago. We had 25 different organisations that support people with disabilities to go into work. They had a stall. We had no formal speeches, so busy businesspeople did not feel they would be trapped for four hours, so they could come by. We offered tea and cake as a good incentive. We had 70 different businesses come along, 250 businesspeople, who could come and say, “I am looking to recruit. These are the types of skills I want”, and these organisations would say, “We have people. You will be concerned, but we will sort it. We will provide the training. Access to Work is a scheme. We will fill the forms in for you”.

Already, within a month, a number of individuals desperate to find work are now in work and helping us towards our commitment to halve the disability employment gap. In my stakeholder agreement, engagement is one of the key things I am repeatedly asked about, particularly by younger people. Disability Confident is crucial.

Baroness Campbell of Surbiton: Minister, I really do not want to burst your bubble, but, as you were talking there, I was transported back to my days at the Disability Rights Commission, where we were doing exactly the same thing. We held job fairs. It was like you were there beside me. What makes you think that your Disability Confident programme, this time around, will work? You have dedicated organisations doing this. I trained 120 trainers to go round the country to talk to employers about being disability confident, when I was working in local government 25 years ago.

What makes you think that you will change people’s minds now? Is it not also time to ramp up the stick? The carrot is all very well, but the disabled people who have been coming to see us over the course of the weeks say, “Awareness helps, but it will not change things substantially. We must enforce the law”. That is where they feel the Government are letting them down. Actually, my question is to all of you. It is carrot and stick. I feel there are too many carrots being handed around at the moment. Where are the sticks?

Justin Tomlinson: That is an important challenge, because, in all Governments of all political stripes, there are initiatives. We are not the first Government that suddenly said, “This would be a good thing to do”. It is a really important challenge you have made, but there are differences.

First of all, there is the significant increase in funding to extend Access to Work to up to a further 25,000 places. We are already making good progress: 339,000 more people with disabilities are in work in the last two years. That is a trend we want to continue. We are reforming the Work Choice programme with the Work and Health Unit, and we will have the White Paper in the new year. I am already lobbying on that front. I am not the ultimate decision-making here, but the clear direction of travel, from talking to stakeholders and the current programme providers, is that there will be greater local flexibility so they can match individual needs. The potential jobs in my constituency will be very different to the two other Ministers here. It needs to recognise that. Too much of what we do at the moment is a “one size fits all”.

On greater engagement, I accept the point that there has always been business engagement. There has not been enough with those small to medium-size employers. There is a lot of business engagement with big business, which is receptive and everybody feels great: “Yes, we will carry on doing what we were already doing, but we will put a new badge on it because it is a new Government”. It is about getting to those busy businesspeople, that 45% of jobs.

In terms of the questions, we are going to the big businesses and saying, “Right, it is good that you are already doing this, but we will now challenge you further. You have supply chains that you can go and question. You can extend this. When you do your training days for your staff, why not open that up to your supply chain? If you are training 100 of your staff, your supply chain could come along”. Another 20 people in a room is not going to add an expense to it.

There is a lot more we have to do, but I genuinely believe in the White Paper that is coming forward. It recognises that we should not work in isolation as DWP and the Department of Health, because this addresses health challenges that individuals will face at the same time. It is about getting support right at the beginning: ie, if you have a mental health condition, do not wait nine months to do that.

Baroness Campbell of Surbiton: Will enforcement be part of that White Paper? Will enforcement of the Equality Act in all areas be part of the White Paper?

Justin Tomlinson: Yes.¹

The Chairman: We are coming to that.

Q189 Lord Harrison: Secretary of State, at £1,200 a throw for tribunal fees, is it not the case that disabled people find it too expensive to enforce their rights through the courts? Is that right, and what are you going to do about it? To show you the parlous effect it had when you bumped the fees up in March of this year, Sir Brian Langstaff, the president of the Employment Appeal Tribunal, has said in evidence to the Commons Justice Committee that there has been a cliff-face drop-off in the number of applicants. This is a parlous situation.

Nicky Morgan: I want to pick up where Baroness Campbell left off, on enforcement. We were talking about carrots and sticks. The first thing we want to do is change cultures and behaviours, and I am not always convinced that sticks and enforcement are the right way to do that. They are a necessary backstop. I say this as a former solicitor. At the end of the day, we would much rather have less discrimination and, therefore, less reason for people to have recourse to tribunals or to the courts. That is what we are working on from one end of Government.

Lord Harrison: I will stop you there. Are you saying that 50%, which is the measure of the drop, are from bogus claimants? That was the implication of what you were saying.

Nicky Morgan: I do not understand how you could possibly get that implication whatsoever from my remarks.

Lord Harrison: You are using “sticks” and “carrots”.

Nicky Morgan: I did not use any statistics at all.

Lord Harrison: You had the stick of increased fees in March and then you had the drop-off.

Nicky Morgan: No, the stick that Baroness Campbell was talking about—

Lord Harrison: No, I am talking about the stick of the increased fees in order to make an appeal.

¹ See however the subsequent correspondence from Justin Tomlinson MP (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/26706.html>)

Nicky Morgan: Forgive me, Lord Harrison. I was not talking about the stick of increased fees.

Lord Harrison: No, but I am.

Nicky Morgan: Let me answer the question and then we can have a debate. This is beginning to sound like an EU Select Committee. I have happy memories of that from my days in the Treasury. What Baroness Campbell was talking about was the stick of things like the Equality Act and other previous legislation such as the Disability Discrimination Act—passed, I should say, by the Conservative Government in 1995. We would like to see that people do not have to go to court because they are not suffering discrimination in the first place. Until we get to that happy stage, of course there will be times when people will need to enforce their rights. Tribunal fees are a matter for the Ministry of Justice. I would reiterate what I said about the Home Office. All government departments will look at the report prepared by this Committee, but let me give you the view we have from them. On 11 June, we announced the start of the post-implementation review of the introduction of fees in the employment tribunal. The review will, as far as possible, consider the impact fees have had on those with protected characteristics and the type of cases they bring. Lord Harrison, we are going to come on and talk about other forms of people getting redress and one of those, clearly, is mediation and the use of services such as ACAS, which must be preferable to people going to court.

Lord Harrison: Given the serious position that has been outlined in evidence from Sir Brian, would you consider abolishing tribunal fees for discrimination claims that the disabled feel, despite the off-putting £1,200 outlay, they still would need to pursue?

Nicky Morgan: The Government should not consider abolishing anything before we have had the review and seen its conclusions, which we will do.

Lord Harrison: You have to implement and introduce things before actually seeing the effects of them. Did you expect that 50% fall-off?

Nicky Morgan: I was not a Minister at the time. I will have to go back and look at the documentation produced to see what the anticipated effect was, but part of this that we are going to come on to talk about is the other forms of redress that people are using instead. It must be preferable for people to use mediation or ACAS than to go to a stressful tribunal. I say that as a former solicitor.

The other point I would like to pick up from your question is that legal aid continues to be available to provide access, subject to means and merits. It is available particularly for those with disputes about local authorities and community care services for disabled people, and, of course, for discrimination claims relating to contravention of the 2010 Act.

The Chairman: What about qualified one-way costs?

Nicky Morgan: I am sorry. Did you ask that question, Lord Harrison?

Lord Harrison: I did not, but would you like to go on to it?

Nicky Morgan: Absolutely, yes. The Government will consider the possible extension of qualified one-way cost-shifting to other categories of law, including claims made under the Equality Act, in due course. We want to see how that works, first of all, in personal injury claims, but it is something the Government will consider.

The Chairman: You mentioned a review. When will it be complete?

Nicky Morgan: I do not have an exact timeline, but it was launched on 11 June. One would hope it would be complete pretty early on in 2016, but I cannot give you a date. We can certainly ask the Ministry of Justice to update the Committee.

The Chairman: Is there something specific in it about disability?

Nicky Morgan: Again, I would have to take advice. We are looking at the impact of all fees on claims. It would include disability as well as things like maternity discrimination, which is another part of my portfolio.

The Chairman: It would be important for us to be able to pick out from that the picture concerning disability.

Nicky Morgan: Yes, absolutely.

Q190 Baroness Jenkin of Kennington: I have no relevant interests to declare. My question is about the alternatives. Do you have any ideas about how you might extend the mediation? Although we have had mixed views about the creation and funding of a disability ombudsman, I wonder whether you have any thoughts on that.

Nicky Morgan: We welcome mediation as an alternative to legal action. The system of mandatory referral of any discrimination claims to ACAS was introduced by the previous Government. It is enabling many disputes at work to be mediated without recourse to the law. Interestingly, over 83,000 cases were notified to ACAS in 2014-15, including about 6,900 cases involving possible disability discrimination. In 75% of cases, both parties agreed to participate in early conciliation, and then only 18% of cases led to a tribunal claim. Things are being resolved before they get to the tribunal.

On the issue of the ombudsman, I note that a number of expert witnesses—including Mr Martin, the deputy Parliamentary and Health Service Ombudsman—did not think that creating a new ombudsman was a good idea. We have, as a Government, been consulting on proposals to create a single public sector ombudsman, of which I personally am supportive. I called for it as a Back-Bench Member of Parliament and I am delighted to see that is something we are seriously considering.

The issue is not a lack of provision of ombudsman services at the moment. There is a debate about how proactive ombudsmen should be. The more proactive they are, the more claims they attract and, therefore, they are not dealing with the most serious claims in a responsive way all the time. I would like to see how the single ombudsman idea develops and make sure that people are aware of the ombudsman. That is part of it: that people are not aware of the new ombudsman services. That is when they come to local Members of Parliament and we get involved in helping people access ombudsman services.

The Chairman: Do you agree that there is a need to help the disabled get their rights in a way that is out of court and cheap?

Nicky Morgan: Of course, yes. It is better to keep people out of the court system, which is stressful, time-consuming and can be expensive for all parties. There must be better ways, and mediation is certainly one of those ways, of helping people to achieve their rights.

The Chairman: What about a specific disability mediation service?

Nicky Morgan: It is a very interesting idea. I would like to see the evidence that ACAS is not doing the job properly. The more different services you set up, the more bureaucracies you create and the more you are taking away proper help from the front line.

The Chairman: ACAS is of course only about employment, is it not?

Nicky Morgan: It is, yes. That is right. Of course, that is what we are talking about a lot of the time in terms of discrimination claims.

The Chairman: Yes, but I was thinking about people who are turned away by taxis and restaurants and so on, who need a champion. There is a gap there.

Nicky Morgan: I very much look forward to reading your report's conclusions.

Q191 Baroness Thomas of Winchester: This question follows on from that very much. It is about the Equality Advisory and Support Service helpline. There was a decision by the EHRC

to outsource advice on equality and human rights. We wonder why it was thought that removing this function from the Equality and Human Rights Commission would provide a better service. The existing Equality Advisory and Support Service helpline has quite clearly been a failure. Would you ask the EHRC to bring the service back in-house, as it was when the DRC were running it? That was a very good and helpful service, and it really made them understand which cases to focus on and champion. The helpline was an intrinsic part of knowing what was going on. There seems to be a terrible disconnect between EHRC and the Equality Advisory and Support Service. I wonder what your views are.

Nicky Morgan: First, in all my dealings with the EHRC, I would not say they are in any way unaware of what people are concerned about or in which cases to intervene. They seem to be very on top of things to me. I know you have heard evidence about the EASS. I would dispute the contention of people who have called it a failure. I would not agree.

Baroness Thomas of Winchester: That is the evidence. We are going on the evidence.

Nicky Morgan: Of course, yes. The EHRC's helpline was criticised. The Disability Alliance described its performance in 2010 as "hugely disappointing". When we reviewed it in 2011, under the coalition Government, it was costing £281 a call,² which was more than double the cost of any benchmarked comparator. Again, if we are going to spend lots of money on that, we are not spending money on front-line support for people. It also was not integrated into some of the EHRC's key regulatory functions and it had no systematic data on customer satisfaction.

One of the issues was about the sharing of information. The EASS is now providing the EHRC with a substantial volume of information every month. There were 351 referrals between October 2014 and September this year, up from 79 in the previous 12 months. It is inevitable that a new service is going to take time to build those links and get up and running, but it is now doing that. It is doing it well and efficiently, and sharing that information. I would be reluctant to change things immediately, but, of course, we will look at the evidence. It is not something that fills my inbox or my postbag, I have to say.

The Chairman: Do you know how much it is per call under the new service, if it was £281 under the old one?

Nicky Morgan: I do not think I have figures. Unless someone sitting behind me has a number, I am very happy to update the Committee with that information.

The Chairman: If it was cheaper, that would be important, but, if it was not, that would also be important.

Nicky Morgan: Let me ask for that information so the Committee has it for the final report.

The Chairman: I should say that the evidence we have had has been overwhelmingly against the efficiency of that new service.

Nicky Morgan: We have a lot of positive comments, and we can all trade those, but let me find that information about the cost of the call.

Q192 The Chairman: One of our disabled witnesses said to us recently that, over the last 50 years, it has become unacceptable in society to discriminate against women, ethnic minorities and so on, but discrimination against the disabled has remained, perhaps weaker than before, but it has remained as the last area where discrimination is common. Is that true? If so, what more can you do about it?

² See the subsequent correspondence from the Rt Hon Nicky Morgan MP (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/27020.html>)

Nicky Morgan: The Minister may have views. Sadly, discrimination still remains in many different forms. While I agree that discrimination on the grounds of race has absolutely changed in society and phrases we might have heard even 20 or 30 years ago are now deemed absolutely unacceptable, there is still discrimination against women; there is, sadly, discrimination against those with disabilities—both physical and mental disabilities. Mental health is an area that I have particularly worked on. People are still very nervous about admitting to employers or anyone else that they have mental health issues, which is something we need to confront.

Of course, as Equalities Minister, I am also responsible for our policy on the lesbian, gay, bisexual and trans community. I am sad to say that discrimination against them still exists, too. While I absolutely respect the views of those who have given evidence to this Committee to say they are still suffering discrimination, sadly, we see discrimination, so there is very much still a need for Equalities Ministers. As Justin said at the beginning, we want equalities to be mainstream throughout all government departments. I am very proud of the fact that, when we answer women and equalities questions in the House of Commons—it is this Government that set up a Women and Equalities Select Committee—it is Ministers from across government departments who answer the questions. It is not something that is left to only me and my fellow Minister for Women and Equalities.

Baroness Thomas of Winchester: Why do you think disability hate crime has gone up?

Justin Tomlinson: I have had representations on that. Partly, the good side of that is that there is greater confidence from individuals to report it. A number of stakeholders have raised this with me and—again, through my cross-government work—I took this to the Solicitor General, who was determined that this was an issue we should investigate. A number of round tables have taken place. We have had representatives from the Ministry of Justice and all the areas connected to this, along with individuals such as Stephen Brookes from Blackpool, who has done a huge amount of work in that area, with additional training of the police forces and the court system, going out to the stakeholder representative groups on behalf of their members to say, “Look, we can have the confidence to report things and these will be taken seriously”. It is an incredibly important issue and it is one I feel we are making progress on.

Going back to the broader point, a huge amount of progress has been made, but there is still a long way to go. Part of that is about making sure there are stigmas removed. The point was raised about mental health in work. We lost 300,000 people last year with mental health conditions from work. A lot of those will have never mentioned anything, because they will have felt it would have impacted on their work. In the work of halving the disability employment gap, people are relatively confident to declare a disability in the benefits system, but once they go into work those figures fall away as they often feel it will impact on their ability to progress career-wise. We have to remove that stigma. We have to give people confidence. It is good for businesses to recognise the individual challenges that people have. If they make small changes, they could utilise their strengths, and there is a huge amount of support there.

A lot of this is making sure more and more people see this. The word “mainstream” is really crucial. I will give one example of this. This week, I met with representatives from the National Citizen Service. This is a scheme that was brought in by the last Government for young adults. As they are in their final throes of school, before becoming adults, they go on an intensive summer programme doing community engagement, team-building and confidence work, making them eminently more employable. It is making sure that those with

disabilities have the same opportunities, that they are part of that community engagement, so that the next generation of people, who can either do good or do bad, have an opportunity to see the real talent that is out there. That is one very small example of how, as a society, we are changing attitudes. We continue to do this. It will get better, but there is still a long way to go.

Andrew Jones: I entirely agree with that point. Our society has changed fundamentally over the past few decades, and it is much, much the better for it. I went to school in Bradford in the 1970s, when the population of Bradford was changing widely. The sorts of comments you might hear on race in those days would be inconceivable to hear now. But to think that discrimination exists only in the world of disability, I am afraid, is simply not true. There is far too much discrimination and prejudice within our community. You only have to look at the correspondence every Member of Parliament will have received regarding the Marriage (Same Sex Couples) Bill. Much of that was nothing to do with marriage; it was all to do with prejudice. It exists all over the place.

We see events that capture people's imaginations and change attitudes, such as the magnificent Paralympics in 2012. The way the population of the country responded in supporting our athletes and athletes from across the world was absolutely magnificent; it was almost more exciting than the Games themselves. I am very positive about this. Where we do see prejudice, we should challenge it, and we should not be in any way bashful about getting out there and saying so. We should be positive about the progress we have made, but not complacent, and we should not think it does not exist, really quite widely.

The Chairman: Thank you all very much for giving us such full and detailed evidence. We are pleased to see your commitment. Even if we do not always see eye to eye about how we are going to go forward, we have faith and confidence in your commitment to improving life for the disabled. We hope you will fight on and achieve that for them. Thank you very much indeed.