

Women and Equalities Committee

Oral evidence: [Disability and the Built Environment](#), HC 631

Wednesday 26 October 2016

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[Watch the meeting](#)

Members present: Mrs Maria Miller (Chair); Maria Caulfield; Angela Crawley; Mrs Flick Drummond; Ben Howlett; Mr Gavin Shuker.

Questions 1 - 52

Witnesses

[I](#): Sue Bott, Deputy Chief Executive, Disability Rights UK; Zara Todd, Chair, Inclusion London; and Jolie Goodman, Manager and Lead Facilitator, Mental Health Foundation

[II](#): Martin McConaghy, The Access Association; David Petherick, Chairman, B/559 Committee, British Standards Institution; Chris Fry, Solicitor and Managing Partner, Unity Law

Written evidence from witnesses:

- [Inclusion London](#)
- [Mental Health Foundation](#)
- [The Access Association](#)
- [B/559 Committee, British Standards Institution](#)
- [Unity Law](#)

Examination of witnesses

Witnesses: Sue Bott, Zara Todd and Jolie Goodman

Q1 Chair: Good morning. I am Maria Miller, Chair of the Women and Equalities Select Committee. It is a great pleasure to welcome you to Westminster and thank you for agreeing to be witnesses and to take part in our inquiry into the built environment, which is very much building on the work of the House of Lords Select Committee on the Equality Act. Before I ask you to say your name and the organisation you represent, I will ask each Committee member to say their name and the constituency they represent.

Ben Howlett: I am Ben Howlett, the Member of Parliament for Bath.

Maria Caulfield: I am Maria Caulfield, the Member of Parliament for Lewes.

Chair: I am Maria Miller—the other Maria—the Member of Parliament for Basingstoke.

Mrs Drummond: I am Flick Drummond, the Member of Parliament for Portsmouth South.

Mr Shuker: I am Gavin Shuker, the Member of Parliament for Luton South.

Chair: At some point during our proceedings we will be joined by one or two other Members of Parliament, and I will ask them to introduce themselves when they arrive so you know who they are. Again, thank you very much for coming in today. Could I ask you now to introduce yourselves, starting with Sue?

Sue Bott: Hello. I am Sue Bott. I am from Disability Rights UK.

Jolie Goodman: Hello. I am Jolie Goodman. I work for the Mental Health Foundation.

Zara Todd: Hello. I am Zara Todd. I am the chair of Inclusion London and I work for Equal Lives.

Chair: Brilliant. The format of our Committee is that each Committee member will ask a set of questions. We may have other Committee members who wish to intervene on them, but I am in charge so they can only intervene if I let them. Let's kick off with Maria Caulfield's questions.

Q2 Maria Caulfield: Thank you. My question is about setting the scene at the start of this inquiry. I wanted to ask you about the built environment in general and how accessible it is for people with a disability. Are there different parts of the built environment that are more accessible than others? Is housing less of a problem, say, than public spaces? Are there particular areas of the built environment that you think are better or



worse than others? Sue, do you want to start?

Sue Bott: As it happens, at the moment my organisation is involved in drawing up a civil society report for the United Nations Convention on the Rights of Persons with Disabilities, because it is the UK's turn to be examined next year. We have sent out a survey to gather disabled people's opinions about what the issues are for them. 31% of them are saying that the built environment is their top issue in terms of quality of life. That is quite significant given all the other things that are happening in the world of disabled people.

Analysing the results further, we find that the top two issues, as far as access to the built environment is concerned, are getting into public buildings—shops, office blocks and those sorts of buildings—and housing. Those are the top two. There is much concern about transport, and I have been around for a long time, so transport is what I expect. That is the one that I have always found disabled people are most concerned about, but that is being trumped by housing and getting into buildings.

Chair: I know why you raised transport there, Sue. We are trying not to talk about transport within our inquiry, only because that is an entire inquiry in its own right, but I understand why you mentioned it. Sorry to interrupt you.

Sue Bott: That's fine. The top two concerns are housing and public retail and office buildings.

Jolie Goodman: Broadly, from mental health, the issues are probably more than the built environment; they are different from bricks and mortar. I see mental health as being in effect about inequalities. People's socioeconomic circumstances shape their mental health issues. In particular areas such as dementia—and I manage a project working with tenants in extra care housing settings—housing and access are very important issues. Things in terms of dementia have changed quite a lot.

Since the dementia strategy, there is much more information in the public domain. It is about getting services and environments right, whether people are cared for at home or in community settings. It is all about accessibility of signage, appropriate types of décor on the walls and things like colour coding for the toilet seats as people's visual perception is impacted by their diagnosis.

Zara Todd: From our evidence, accommodation has come out as one of the biggest issues, both in London and in Norfolk. Disabled people are having to wait a very long time for accessible social housing. While the building regulations are making things better, unfortunately they do not take account of the socioeconomic disadvantage that disabled people are at. While there might be an increase in accessible housing terms of it physically existing, that does not mean that disabled people could afford to live there.



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There are also issues around access to rental property, in particular for disabled people who cannot get on to the housing ladder because of the expense, but who also do not qualify for social housing because they are working. That is a major issue. There is also an issue with access to the built environment in a holistic sense, not just in the physical sense, for a wide range of impairment groups. Our offices are increasingly becoming open-plan, which if you are someone who experiences neurodiversity is not necessarily accessible to you. Equally, you cannot necessarily physically get into all office spaces, so that affects your ability to apply for jobs. Then you have issues around accessing public spaces such as high streets.

I did a bit of googling before I came here, and I discovered that we have five changing places/toilets in the entirety of Norfolk, and not all of them are open 24/7. That means that for the size of the county you have a toilet every 415 miles. That quite significantly affects how disabled people, particularly with high levels of access need, can access their local environment.

Q3 Maria Caulfield: Is there evidence to help the Committee understand the scale of the problem around the country and who it is affecting? Is there an evidence base? If not, would an evidence base be helpful for identifying areas that are good, areas that are bad and priorities for improving the built environment?

Sue Bott: Yes, an evidence base would be extremely useful. Unfortunately, all of the infrastructure that used to exist to support access, such as access groups and access officers in local authorities, barely exists these days. There isn't really anybody who is consistently gathering the evidence that is needed. That would be extremely helpful because, as it is, we are reliant on a lot of anecdotal information. I have to say that we get a lot of anecdotes coming into my organisation. Yes, it would be good to have a picture of access to the built environment as a whole. It may be something that the EHRC could take on and probably would have done in the past.

Jolie Goodman: An evidence base would be of use. From a mental health perspective, that is a very broad piece of work. If I can scale things right down—and I am not sure that now is the appropriate point to say this—I visited eight groups in extra care settings, quite a few of which are new builds. To get a little understanding about the perspective of people in later life using mental health services, I have some tenants saying, "For me, it is like I'm on holiday. I am astonished at how lucky I've been to live here. I feel fortunate and not isolated." Our project aims to address issues of isolation and loneliness.

Another tenant who came in with quite severe mental health issues said, "I did not feel it was a nice environment. I felt so alone. Where I lived before, although I could not leave my flat, my neighbours would pop in and see me and wave at me through the window. I felt dumped here. I



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had tried to commit suicide. My children could not leave me. I used to sit in my flat alone. I could not get out of my flat at all."

Then she moved somewhere, but she also spoke of staying and being very frightened to leave her new flat. It was not until she made connections with new people that she was able to say, "I have been going downstairs to see other tenants. I feel I have settled in now and it is lovely." You may provide a very good environment for people, but it is really about the connections that people have in their community. It is the broader environment that really can impact on good mental health.

Q4 Maria Caulfield: Zara, to take you up on your point about the changing places, I was talking to wheelchair users in my constituency only last week and they were asking for a register that they can could access so that when they are going out they can see where the changing places/toilets are. They said that sometimes they are there, but no one knows about them. Is that your experience?

Zara Todd: One of the biggest findings that came from our consultation before this Select Committee evidence session was that people do not have access to information about what accessible provision there is in their local community. That is certainly the case in Norfolk. People were saying that they did not know what was available, and they also did not know how they could implement the laws that exist around accessibility.

One of the key things that you raise in your question is that, when it comes to challenging accessibility in the built environment, at the moment the Equality Act requires an individual to take a case against a proprietor. That means that the true scale of inaccessibility is not being seen, because not all disabled people have the time or capacity to go through a legal process to have access adjustments made. Having a register of what is happening is one possibility.

Another key thing that would be useful, in terms of what it means to have an accessible built environment, is to look at the cost of accessible accommodation that is being created and put on the market. If it is not financially accessible, it is not accessible in reality. I can say from personal experience that I am lucky enough to have been able to buy my own flat in London. I bought it privately. For the developers, who are a very big development company, mine was the first flat that they have had to make accessible, even though they are currently making hundreds and hundreds of developments.

I am the first person who has been able to afford to buy one of their flats. Although they have had accessible flats in their buildings and on their plans for years, I am the first one where they have had to see that through in the actual development. Even then, I cannot access any of the low-cost social housing in my development, because it is all upstairs; I can only access the flats on my floor. When I got my keys—and I was really excited—I found that all the thresholds in the building were too high for my wheelchair to get over. When I said I was getting stuck on



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the thresholds, they said, "We will fix that." They fixed it for my floor but not any others. When I said, "They are quite high", they said, "They are within the regulations", which is also a problem.

Q5 Maria Caulfield: Sue, with the changes that have been made in planning and trying to promote accessible living, do you think the built environment is getting any better for people with a disability?

Sue Bott: Unfortunately, I don't think it is. I know you are going to talk about shared space separately so I will mention that in passing. People are telling us that even new developments are not accessible, or perhaps not in the way that they would have been a few years ago. For example, one of our members phoned us from Shrewsbury in Shropshire and said that a new hotel had been built, which did not have an accessible front entrance. They had to campaign to get it to be altered after the hotel was built, which seems extraordinary in this day and age.

Q6 Maria Caulfield: Sue, do you think that is because, as you pointed out earlier, access officers are no longer in place and that there is not enough consultation with people in disability during the planning process?

Sue Bott: Yes, that is absolutely right. I can contrast that with a new building I went to in Cambridge, Robinson College at Cambridge University, which is a superb, accessible building. It was an absolute joy to go there. The difference there is that Cambridge City Council is one of the few local authorities that still has an access officer and still funds an active local access group of disabled people. There are plenty of disabled people on hand to advise, and I have to say that the result is a beautiful building.

Maria Caulfield: That makes a difference.

Sue Bott: Yes, indeed.

Jolie Goodman: Can I feed back that I was in an extra care scheme, which has been open for only about three months, and the tenants have moved in over that period of time? There have been a number of quite significant teething issues. Somebody was saying, "I cannot clean my windows. I am not sure whether that is included in the maintenance charge. They have produced a welcome pack, but it is difficult to understand, and the instructions for the heating system are too complicated. The terminology is difficult to understand. I would rather be shown how to use things. There are problems with the plumbing and water pressure."

This is the one that I think is very significant, because in terms of mental health in later life I talk a lot about the front door being a psychological barrier. However, in this scheme the front doors are fire doors, so they are extremely heavy. Unsurprisingly, tenants in later life who have significant care needs and are buying in care cannot manage to open their front doors. This seems to me to be completely appalling. The



tenant says, "It would be helpful for the architect and builder to try to live here for a week and see what they learn."

There is a sense of frustration. I think that is an opportunity for people to get involved and perhaps co-produce another scheme within the housing association. However, there are problems, and although in new builds there will be some teething problems, some of these seem to me, in terms of mental health and quality of life, to be quite significant.

Zara Todd: I am feeding back evidence from two localities: London and Norfolk. In London, over the last 15 years we have seen a decimation of access groups and access officers in councils. In Norfolk, we still have access groups. What is interesting from our consultations is that, when we asked whether people were involved in planning, adaptations and enforcing building regulations, everyone who said "yes" in Norfolk was part of an access group. In London, people were saying that they were not involved in those processes as much.

The loss of access groups is having a negative impact, because if you involve disabled people through the process it means a lot of these issues can be caught much earlier on. It means that the accessibility of the built environment reflects the needs of those who are using it, rather than rules on a bit of paper.

Q7 **Maria Caulfield:** Do you think that, while an architect or a planner can have lots on training on accessibility issues, nothing beats someone who has the experience of living there?

Zara Todd: Knowing how you might want to use a space is as important as knowing what you legally need to do; I do not think it is an either/or. There needs to be more support for disabled people, developers, planners and builders to work together and come together to find something that works legally but also works in practice. Disability and people's access needs are so broad and varied. It is always best to at least involve the people who are going to be using the space in that process.

Q8 **Maria Caulfield:** One final question from me: why has the number of access groups dropped? Is it funding? Is it just that, when someone has left, they have not been replaced?

Sue Bott: I think that, by and large, it is the funding issue. It is well known that funding for community groups in the current climate is a bit of a challenge, shall we say. It has been a particular challenge for access groups, which need, as well as the funding, good co-operation with the local council in their area. Where the best access groups are is where there is that co-operation and they work together, so that access groups see planning applications and are able to go through them with the council planning department.

We know it has become rather a challenge, not only for the funding of the access group, but of course there are not as many people in council planning departments these days as there were. They are rather



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stretched, so unfortunately that system has been undermined somewhat in recent years.

Zara Todd: I would argue that it is a combination of the pressures that are on local councils anyway in terms of austerity measures that need to be put in place, which cause challenges, and the fact that disabled people's organisations as a whole are struggling in terms of funding. The best access groups work in relatively small localities, and they need infrastructure support from organisations and funding to exist. For example, the access groups in Norfolk are supported by Equal Lives, which I work for, in that we give them organisational support, support them with publicity and support them with making connections.

Not all local areas have strong disabled people's organisations any more, because of the challenging funding environment. That means there are fewer access groups. It is a combination of there being fewer access officers in local government, so less opportunity for engagement, and fewer third sector organisations to support the development of access groups to work at a local level.

Q9 **Ben Howlett:** I am going to be quite techie on this, because I have the great pleasure of having a disabled mum, but also the great displeasure of having been chair of a planning committee before the National Planning Policy Framework, although things have changed slightly. It is clear from the evidence that you have just given and your written evidence that it is quite difficult to find accessible housing. The National Planning Policy Framework already requires local authorities to "plan for a mix of housing based on current and future demographic trends". What more needs to be done to increase the supply of accessible housing to keep up with demand?

Sue Bott: You cannot ignore the overall shortage of housing; the problem starts there. When there is an overall shortage of housing, different priorities are set and they can impact adversely on disabled people. For example, one of the people who filled in our questionnaire was a man who lives in a privately rented home that is not accessible to him. He has to crawl into his house and crawl up the stairs to his bedroom and bathroom.

He has been on the waiting list of his housing trust for a number of years. He just managed to get to the top of the waiting list last year, but then his local housing trust said, "We're really sorry, but we have had to restrict, again, the number of people we can have on the housing waiting list for accessible property. We have had to restrict it to our existing tenants only, and because you are not one of our existing tenants you are no longer eligible to be on our list."

The reason behind that is that the housing trust is facing a huge problem, where disabled people occupy accessible homes but they have two bedrooms rather than one, so they need to move because of the bedroom subsidy. There is then a squeeze on the accessible homes that have only



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one bedroom, which this man was after. The housing trust, because it is running up debts and people are not able to pay their rent, is giving priority to existing tenants and people who are in financial difficulties. As is always the case, when thinking through policies you need to do a bit of joined-up thinking about the consequences.

In summary, there is an overall problem with housing—we do not have enough housing in this country—and that has an adverse impact on disabled people because the rules for getting an accessible home become even more difficult to fulfil.

Q10 Ben Howlett: Zara, you want to come in. The GLA was one of the first to adopt the optional standards on housing accessibility. Has that made a big impact?

Zara Todd: Unfortunately, that has not had as big an impact as it could have, mainly because of the cost of housing in London. Although they have been adopted, which is great and we certainly welcome that, the cost of housing means that many disabled people cannot access the new build housing that is being built.

For me, there are two big issues with the structure around housing and accommodation. One is that the disabled facilities grant has not increased the amount of money it gives to disabled people to make adaptations to houses since 2008. Obviously, the cost of making those adaptations has increased. That means that where you can find accommodation that you can afford, you then cannot adapt it to your needs because the grant does not stretch far enough.

There is also a major issue around adaptations within housing. We have examples in our submission of where people have made adaptations to housing; when they have moved out they have tried to sell the housing back to the council, because it is now adapted, and the council has not responded to that request. In some cases we hear that adaptations are made for someone and then, when they move out, those adaptations are taken out with them, so you are losing accessible housing stock that you have created. That becomes even more problematic in the context where you have to rent, because it is difficult to make adaptations in the first place. Those things combined become really problematic.

Q11 Ben Howlett: Are you finding this is consistent across the country?

Zara Todd: It is certainly consistent in London and in Norfolk, which are the areas I can speak about with authority. I work in Norfolk and I looked for somewhere to rent in Norfolk, because I do not spend much of my time there. I had to go to 22 letting agents to get two viewings, just to find a flat that did not have stairs to get into it. I now rent somewhere that is not accessible, but it was the best that I could do from 22 letting agents. There are definitely issues around what is available, what is affordable and how people—and by that I mean people who are offering



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rental properties and building buildings—fund adaptations and how they think about them.

To follow on from Jolie's point, if you have a really heavy door, someone might need an automatic door opener put on that door. That is not something that a private landlord is going to be able to fund. It is potentially something that becomes very difficult. Those kinds of challenges mean that, even when there is flat access accommodation, it cannot necessarily be made accessible.

Ben Howlett: Jolie, do you want to come in on that?

Jolie Goodman: Yes, it is slightly broader, but I think it is quite relevant. There are 150,000 people living with dementia in the UK. Two thirds live in the community and one third in the care homes, which obviously have to provide accessible accommodation. We have 1.5 million people with learning disabilities, and half of them live at home.

A colleague told me a story about a young man who is 12 called Felix. The family were waiting four years for a disabled facilities grant to come out. The way they managed to get that grant was, in the end, to keep him off school for six months. Therefore, his absence from school raised contact with the local authority, and it was at that point that they got the grant. That is far too long to wait. That was not for a new build but for adaptations to an existing property.

Q12 **Ben Howlett:** There have been an awful lot of conversations so far in relation to the private rented sector. How strongly do you think that private landlords know their obligations under the Equality Act? There is a shaking of heads.

Sue Bott: They probably do not know an awful lot. I think that is because, although disabled people's organisations do their best to tell them, they need to be informed by the people who have some hold on them. It is an important function of local authorities to do that, but the housing crisis is such that you are more likely to get the attitude of, "We are grateful that there are some houses around for people to rent. We do not want to upset too many landlords because they might pull up and go away, and then there isn't that house to rent."

Q13 **Ben Howlett:** Particularly for people with mental health issues, is this a significant problem?

Jolie Goodman: From my perspective, having worked in adult mental health and Mind organisations and facilitated peer groups in the past, the levels of anxiety generated by the bedroom tax—the implications for people to lose a spare room where they may have been able to house a family member if they became unwell—and the whole austerity agenda around welfare reform have caused immense stress in people's lives. That is well documented.

Q14 **Ben Howlett:** My last question before moving on is about the



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effectiveness of how councils assess or regulate accessible housing. Do you feel that that is strong enough? Could they go further? Where could they improve?

Zara Todd: There is definitely scope for improvement, in terms of taking accessibility as being broader than just wheelchair access. Getting in the front door is only half of the battle when you start talking about accessibility. Can a person actually use a bathroom? Can they use the kitchen? Is it an environment that is safe for them to use? There are many issues around that, and there is definitely stuff that could be done by local authorities.

In the context of the general housing crisis that Sue mentioned, what incentive is there for anyone to have accessible, rentable accommodation? When you have 150 people who all need accommodation, and one of them needs accessible accommodation, where is the incentive to do work around accessible accommodation when you already have a massive problem? For me, that is one of the biggest challenges. The assumption is that disabled people's needs are met through council housing, and the reality is that disabled people's needs are not met through council housing in their entirety. We access all types of housing.

The advice that I was repeatedly given when looking for somewhere to live was that I should get myself put on the council list. I railed against that, because financially I knew that I could afford to enter the private sector. If all disabled people who are trying to access accessible housing are told that their only option is to go down the council route, that adds unnecessary pressure on the system. There definitely needs to be more work to ensure that the wide range of housing options that there are are viable options for disabled people, regardless of their impairment.

Sue Bott: It is really important that there is more joined-up thinking. Health and social care needs to take housing more seriously, because poor or inaccessible housing costs health and social care more than it would cost just to put those access concerns right.

Jolie Goodman: I was going to give a figure about the ageing population, and this is very pertinent. We have 23.3 million people who are over 50, which at the moment is 37% of the population. Everybody here is aware of the social care crisis that exists already. Unless some really careful planning is done at this point, in 30 years' time accessible housing for people in later life will be a huge issue.

Q15 **Ben Howlett:** Can I ask a quick yes/no question here? I think I know what you are going to say, but do you think local authorities are breaching the public sector equality duty in this area?

Sue Bott: Yes.

Q16 **Mrs Drummond:** Moving on to employment and work, what are the physical barriers in the built environment that have had an impact on



people with disabilities getting back to work?

Zara Todd: As I mentioned at the outset, there is a massive issue around the expansion of open-plan offices. If you are neuro-diverse—and there are other impairment groups—and you need an access adjustment that creates noise, for example, being in an open-plan office becomes very problematic.

On top of that, at the moment many office spaces are just not accessible. For example, on any job application form I have ever sent, the first thing I say—I have learnt that this is a necessity—is that I am a wheelchair user. When they contact me for an interview, I say that I am a wheelchair user. I have turned up to a job interview where I could not get into the interview because it was not accessible, despite having done that. I was interviewed for a job, which I got because I was the best candidate for the job, and the organisation then realised that their offices were not accessible, and they ended up having to rent a desk for me in a shared office space a good walk from the main building because that was the only way they could employ me. They were a disability organisation, so it was in their interests to employ me. If they were not a disability organisation, would they have gone to the effort of finding somewhere they could rent me a desk? Probably not.

At the moment, the onus is on disabled people to express their access needs. One of the biggest challenges is that access to work is only applicable once you have a job. If you are going to an interview with an employer that has not employed a disabled person with your access needs before, they will not necessarily know how they can cover the costs. You will not necessarily be able to get in there to have an interview in the first place.

It is a case of talking to one another and thinking it through. Access to Work probably could help in that process, but at the moment it is not allowed to be used for the interview process.

Sue Bott: Like this attitude that if you are a disabled person you get housed by the council, there is still an attitude among employers that if you are a disabled person you do not work. There is a mind-set that needs changing there—not among disabled people, but among employers. It is amazing how many modern office blocks are not accessible. I went to a new one, Camden Council, just by the back of St Pancras Station, and it is not fully accessible. It is absolutely extraordinary. That is because planners and employers tend not to think, “Actually, we might have disabled people working for us.”

The other thing I will mention is technology, because sometimes that can prove to be an access barrier. I and my guide dog live in fear of these gates where you have to swipe a card through to gain admittance, in case she ends up being crushed in the process. There are all sorts of other security measures. You have to have security fobs to get into places. Sometimes they are set too high, so if you are a wheelchair user



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you cannot reach them; or they are swipe cards and they do not allow enough time for someone with a wheelchair or with an assistance dog to access.

We really need to keep our buildings standards up to date with modern developments, so that we are pointing out to people, "The security feature that you want to put into your offices needs to be accessible, and this is how you could make it accessible." We need to think about things like that, too.

Q17 Mrs Drummond: On that point, have you come across employers who are very good with hearing loops and deaf people? I know they find it particularly difficult to get employment.

Sue Bott: I have never come across an employer who is good on that.

Zara Todd: One of the biggest challenges around hearing loops is that a lot of buildings have them put in as standard now, but no one actually tests them. When you suddenly need a hearing loop, people say, "We don't know how to use it. It is part of the building. We don't know what we are doing." There are lots of things that people do not necessarily think about in terms of building accessibility.

It is lovely having lots of windows, because it gives lots of light, but if you are using a sign-language interpreter it can become really problematic: where does the interpreter stand so you can actually see them and they are not blinded by light? There are a whole load more implicit access issues around the built environment that are not covered by legislation and do not necessarily need to be, but which are not necessary thought about because the consultation with disabled people—and with the breadth of disabled people—is not happening.

It is all well and good—and I can say this—to go and talk to a wheelchair user, but wheelchair users are a very small percentage of those who require access to the built environment and workplaces. You need to be talking to a breadth of people, particularly people with hidden impairments.

There are things that you can do or not do that make a massive difference to the built environment. For example, in a building such as this one, which has automatic light systems, because I am so stationary, if I am in this room on my own and it has an automatic light, I will end up in darkness in five minutes because it cannot tell I am moving. I am not high enough, so it decides there is no one in the room. I have had that happen to me in a toilet, which was particularly disturbing.

Mrs Drummond: I have had that as well, by the way; it is really scary.

Zara Todd: I would like to talk about mental health. Broadly, we all have a mental health that we need to look after at work. This is about us all taking breaks, not eating lunch at the computer and so on. In terms of the visibility of disability, it is important to remember that people may



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choose not to disclose their mental health issues when they apply for employment. That is very much a personal choice.

If somebody has a mental health crisis and they are coming back to work, there are a number of things that may assist that process. It is perhaps possible to have a phased re-entry into the work environment. Our organisation and a few others in the mental health sector offer access to a counselling service. Some colleagues work flexitime at the Mental Health Foundation, so if somebody really hates rush hour, they may come in at lunchtime but leave a lot later in the evening. You can also promote befriending and mentoring schemes.

For the Mental Health Foundation, mental health issues are very much about prevention, and we also help to aid understanding and protect and sustain people's mental health. We run publicity and fundraising events like something called Tea & Talk, which actively encourages people to discuss their wellbeing with colleagues. Again, mental health awareness training is very important for staff teams, so there is more depth of understanding between colleagues about the reality of a mental health condition and how that is equivalent to a physical barrier.

Q18 Mrs Drummond: Bringing you back to the physical barriers, under the Equality Act the law is very reactive, rather than anticipating what people need. How well do employers meet their obligations under the Equality Act? Should we tighten it up? Should it be part of the planning that it anticipates the barriers, rather than being reactive and having to deal with individual ones?

Zara Todd: It definitely should be anticipatory, mainly because there are some employers who are doing very well in terms of their Equality Act duties, but it should not be the case that one employer has 100 disabled staff and the other employer has no disabled staff, because one employer is really good at meeting their duties and the other has never had to think about it.

A lot of what exists around the built environment across the spectrum requires and expects a disabled person to be the initiator of their access to society, to employment and to their community. If we are working from a social model, it needs to be more collective. It shouldn't be that you make it accessible because I have come to your door and said that I want a job with you or that you have decided that you want to employ me; it should be that there are some basic principles that all employers, whether they are currently employing a disabled member of staff or not, should at least have to consider when moving into new premises. Otherwise, the onus will always be on the disabled person.

You are lucky that the three of us on this panel are able to speak our minds and we can demand our access requirements are met. The vast majority of disabled people, because of the stigma and attitudinal barriers that we face, probably would not want to put themselves out there to



make what could be deemed unreasonable requests, because they might fear that they are not going to be given the job in the first place.

Sue Bott: I agree with all of that. To go back to an earlier point, as technology changes and we change the way we do things, it is important for planners to stay ahead of the game and inform employers how they can make their premises fully accessible.

Q19 **Mr Shuker:** I want to ask a couple of questions about public spaces and the public realm. How well do local authorities plan for accessible public spaces?

Sue Bott: Looking through the survey we did, there is the issue of shared space, which I will leave to one side because I know you are going to consider that in detail. Other than the issue of shared space, this was not at the top of people's lists—buildings and housing were. Nevertheless, people did raise concerns about the lack of dropped curbs, potholes, pavements not being fixed and confusion over tactile markings. It was all these sorts of things.

Unfortunately, access is something you need to keep an eye on all the time. You cannot get to a point and breathe a sigh of relief and say, "Ah, fantastic, we have made the built environment accessible." You have to keep reminding all the time and, importantly, getting feedback and listening to the voices of disabled people.

Zara Todd: One of the biggest things that came through from the Equal Lives consultation was commercial properties putting things like sandwich boards on the pavement and the fact that local authorities do nothing to limit the obstruction of the pavements by commercial properties. For Equal Lives, that is one of the major things we would say about planning and public spaces. It is not necessarily about the long-term things; it is about the things that pop up out of nowhere. That needs to be better regulated.

One of the other things that came out very strongly was that massive improvements around the pavement area and the street environment have been put in place by local authorities, but there is not enough information about those improvements. How do they work? How can they be understood? For example, is there a logic to how you are using your tactile pavement in your local area? If there is, do the people who need to use that tactile pavement know what that logic is so that they do not get run over? It is that kind of thing: providing information about what you have done and where those features are.

Crucially, it is also about how to report when something is inaccessible, for example a curb that is too high. How can you, as a disabled person, say to your local authority, "This is causing me an access issue; can you fix it?" I have had to involve several health professionals and social care professionals to get a dropped curb. If there was a mechanism whereby I



could just send an email or fill in a form online, it would save a lot of money.

Q20 **Mr Shuker:** That is helpful. Are there any trends, architecturally or in terms of design language, over recent years that are making it more problematic?

Jolie Goodman: Can I raise a point before we go on to that? Access to green space has a really therapeutic benefit for the community as a whole, and the opportunity to participate in physical exercise has very well established benefits for mental health. It is not quite green space, but we know that the amount of playing fields for schools has very much diminished lately and, particularly in urban areas like London, there is far less playground space, particularly when people hit secondary school. That can have a very negative impact on wellbeing.

Mr Shuker: Does anyone want to answer the question I just posed?

Zara Todd: Could you repeat it, please?

Mr Shuker: Are there any trends in architecture or design language that are making things more problematic?

Sue Bott: Don't you just love the designers? But sometimes I want to say, "Hold on a minute. Do not get carried away with your designs. Always think about the access." Yesterday I received an email from somebody who had visited the Royal London neonatal ward at the weekend. I won't go into the detail, but basically she said that the use of panels that reflect light causes all sorts of problems, and apparently there is a particular problem with that building. Inside the building there is lots of art on the walls. She mentions that, because it is a neonatal area, there is stuff like parrots on the wall, which can look as though they are jumping out at you, particularly if you are visually impaired or have a disability like Alzheimer's disease, for example, because you cannot get a sense of the depth and space or where things are.

Zara Todd: I love this, but I know it causes a massive access issue to lots of disabled people. There has been an increasing desire to do ramps and steps. You have some steps and then you have a ramp that zigs-zags across those steps. It looks beautiful, but it is a nightmare if you are visually impaired. You wonder whether you have come to the end of the steps yet, because it is suddenly flat, but then suddenly, no, there is another step.

It is also very problematic, because many disabled people who cannot do steps also cannot do long distances. If you are saying to someone, "You need to get from A to B without steps, but your wheelchair ramp down those steps takes four times as long as just walking down the steps", that is not an access feature to somebody who cannot do steps but also cannot walk the distance.



A lot of people who have raised that with us end up in a situation where they go, "Actually, I cannot access this building, because I cannot do the steps and I cannot do the extra length of the ramp." They have to either find other entrances or do it really, really slowly. That is a design feature that is particularly problematic for some groups of people. Personally, I love them because they mean fewer steps, but they are an issue.

Chair: Can I thank you very much indeed for your time today? That was an incredibly good evidence session. I know it takes a lot of time out of your day to be here and to prepare for this so, on behalf of the Committee, thank you. Hopefully you will look forward to seeing the report when we publish it.

Sue Bott: We look forward to it.

Examination of witnesses

Witnesses: Martin McConaghy, David Petherick and Chris Fry.

Q21 **Chair:** This is our second evidence panel this morning. Can I, on behalf of the Committee, thank you for coming along and giving your time? I know it takes a lot of time to prepare for these sessions, so we are very grateful to you. Before we start, can I ask you to say your name and the organisation you come from?

Chris Fry: I am Chris Fry, managing partner at Unity Law. We are a firm that specialises in acting for disabled claimants and enforcing their rights to reasonable adjustments.

Martin McConaghy: I am Martin McConaghy. I represent the Access Association. We are a national network of access professionals who are passionate about inclusive design.

Chair: I apologise, David; is the sun in your eye there?

David Petherick: That's all right. I am David Petherick. I chair British Standards Committee B/559, which is about access to the built environment for disabled people.

Chair: That is great. Thank you very much. As you know, we have a set of questions for you. We are going to start with questions from Ben.

Q22 **Ben Howlett:** You have your own expertise in relation to building regulations, building standards and the Equality Act. I am quite interested to find out how these different parts of the framework operate with each other in a structured way. Maybe you could start, Martin.

Martin McConaghy: Okay.

Ben Howlett: We start off with a big question.

Martin McConaghy: You are looking for the relationship between the Equality Act and—



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Ben Howlett: Building regulations and British Standards, or any type of standards.

Martin McConaghy: Okay, I will attempt to give an overview, and my colleagues here will correct me if I am incorrect.

Planning policy is governed by the National Planning Policy Framework, which sets the high-level approach to planning across the country. Within that there is a requirement to consider the needs of disabled people, but that is as far as it goes in terms of what it asks for. Beneath that we have the building regulations, which have the statutory requirement where it applies—it does not necessarily always apply. Beneath the regulations themselves is the guidance, which is one way of meeting the regulation. The Equality Act fits within that. It is probably best if Chris explains that.

Chris Fry: The Equality Act fixes local authorities with duties and, separately, fixes individual businesses as service providers with duties to a claimant. In terms of planning, local authorities are bound by the public sector equality duty, in section 149 of the Equality Act, to consider the impact of any decision on disabled service users. Within a planning process, we would expect to see due regard to those duties within the equality framework.

What happens in reality is very hit and miss, because it depends upon how those duties are responded to by individuals who may or may not have adequate training in respect of the Equality Act and by local authorities that may or may not have appropriate policies. We see some really good examples of that. There is a planning policy in London that sets fairly exemplary planning standards to try to put provisions in to comply with the highest relevant standard for inclusion and accessibility, rather than taking a minimalist approach.

There is the Equality Act as it applies to the local authority and planning decisions generally on policies, and then there is the way in which the Equality Act bites on business, as a service provider, in its relationship with a service user or disabled customer. One is almost from the top down—for example, guidance from local authorities putting pressure on what those buildings and shared spaces might look like. Then the businesses that are going through that process have their own obligations in civil law, rather than public law, to the disabled customer. The Equality Act can be used—and it regularly is—in those cases by an individual applying for an injunction to require positive remedial or retrofitting works to premises or to make services more accessible.

We have the bottom-up way, which is the civil law, the way in which an individual can use that to enforce; and we have the top-down way, which is local authorities and their obligations in public law. They both put the obligation on the individual to take action. That can sometimes be problematic, because you need to find the right claimant who understands his or her rights and is in a position to challenge that within



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the relevant statutory timescales. For judicial review, that is three months; for a civil case for reasonable adjustments, it is six months. Those timeframes disappear very quickly, so you have to find the right claimant at the right time with an appetite for litigation and taking on a cost risk as an individual. The Equality Act works in that sort of dual capacity.

Q23 Ben Howlett: David, how does British Standards end up operating within that framework?

David Petherick: I will say a bit more about regulations and standards, and the symbiosis between the two. Regulations, like most regulations since the Robens work way back in the 1960s or whatever, are framed as functional requirements. The functional requirement for part M of the regulations is that people should be able to access and use a building and its facilities. It is as straightforward as that.

All the guidance that supports that, in the approved documents to part M, is just guidance. The guidance documents explicitly state that these are one way of satisfying the requirement, but not necessarily the only way. There is a suggestion that if you comply with the guidance, that is likely to be evidence negating liability. If you do not comply with the guidance, that is likely to be evidence supporting liability. How far that has been tested in the courts, I do not know.

There is this suggestion that if you stick with the approved document, you are likely to be complying with your statutory requirements. That will not necessarily be best practice, but it will be a minimal level of compliance.

Q24 Ben Howlett: Before we move back to Martin, how well does Government policy such as the NPPF help with the implementation of those standards?

David Petherick: I am not too familiar with the NPPF. My experience has all been with the regulations and standards. Can I just say something about standards? Prior to 2004, the Government were expecting the coming into effect of part 3 of the DDA, the Disability Discrimination Act. There was concern that there was insufficient guidance out there to enable service providers and providers of goods to comply with their obligations under the DDA as it then was—now the Equality Act. Government, therefore, supported the development of a British Standard, BS 8300.

That was seen as a way of enabling people to comply with a statutory obligation, but it was a way that was itself non-statutory. The standards are developed by a process of consensus with relevant parts of industry, with the representatives of organisations of disabled people and with people who are experienced in devising accessible solutions.

Q25 Ben Howlett: We will move on to that area a little later. It might be a good idea for you to analyse that in a bit more depth. Martin, how do



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you feel the operations between the NPPF and the implementation are going, in terms of these standards?

Martin McConaghy: Quite frankly, “inconsistent” is the key word our members use. London, as Chris mentioned, have the blueprint and have an exemplary position on it, because when London interpret the NPPF and the requirement to consider the needs of disabled people, they develop specific guidance requiring the highest standards of accessible and inclusive design. Outside London, very few authorities have adopted any clear policy on it. There are other authorities with guidance, but it is not actually policy in their local plan. For us, it is an inconsistent way of dealing with it. There is no compulsion on local authorities to adopt clear policy on it.

Q26 **Ben Howlett:** Because there are so few local authorities that have actually adopted their local plan as it stands, out of the ones that have, in terms of sharing some best practice here, are there outside London that have actually implemented that in their plan?

Martin McConaghy: Manchester half did it; they created some good guidance some years ago, but it does not have policy status. When push comes to shove in the planning process, it does not hold the weight needed. Leeds are certainly working on it. I would have to double-check, but a colleague says there are about 25 different authorities who have something on it, whether it is at policy level or just another layer of guidance.

Q27 **Ben Howlett:** As my local authority has a local plan, I will have to look into that myself. Are disabled people falling through the gaps of this framework, Chris?

Chris Fry: Yes, they are, and that largely comes down to a lack of cultural leadership at planning level in local authorities. Fundamentally, it is also because of the difficulties with the enforcement mechanism. It comes down to an individual, and at the moment there are gaps in terms of enforcement, as the House of Lords Select Committee on the Equality Act 2010 and Disability noted.

It puts the financial risk on an individual, which just does not provide for a level playing field. If an individual wants to take a local authority to a judicial review, then they are at a cost risk if they lose that judicial review. If an individual wants to take on that individual business to try to get ramp access or use an injunction to get them to put in a disabled toilet, then that one person is responsible for the cost of that action failing, for example. There is a financial imbalance, which creates a problem in terms of enforcement.

For me, the problem is not the legislative, structural framework, because the Equality Act gives adequate protection, but it is not engaged properly, because it relies upon an individual with those risk components taking those steps.



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Q28 Chair: Can I ask a supplementary question? When you look at that, is it because there is not a sufficient body of law to encourage businesses to take this seriously? If so, should the Equality and Human Rights Commission have been doing more to take some of those test cases and move this up the agenda?

Chris Fry: The leading authority on injunctions for restorative action, essentially, is *RBS v. Allen*, which is a 2009 Court of Appeal authority. In that case, the bank was required to put in additional access. That should be sufficient for most businesses, as a legal authority, to feel at risk and for an individual to take that action. That already exists as a body of law, but there is no follow-through; there are no more individual cases. Businesses do not feel the risk.

Q29 Ben Howlett: As a supplementary to that supplementary, obviously the 2009 case was a precursor to the 2010 Equality Act. Have you seen a change in that since 2010?

Chris Fry: No, not really. We are finding that some individuals have become alive to their rights. They will proceed as individuals, and they will repeat litigate, if you like. There are some businesses that have been stung once and taken remedial action. There was a case we did for Helen Dolphin, who is a disability and equality campaigner. She raised an issue with Pizza Express, which is a national chain. The buzzer for disabled access was at the top of a flight of steps, for example. In response to that, they immediately took positive action across the whole chain and made that difference.

We use the existing 2009 authority for that and other things, but ultimately the issue is that the Equality and Human Rights Commission has to take strategic cases because it has a limited budget. It looks for the big one-offs, whereas another way to look at it would be that it is better to have a steady flow of repeat lower-level cases to engender that change.

Martin McConaghy: Our membership is national, and we cover both public and private sector access professionals. It is fair to say that, in the early 2000s, as people were preparing for the implementation of the physical-adjustment duties of the DDA, we saw a lot of engagement from businesses and authorities. Lots of people were putting in quite a lot of effort, because there was this unknown risk coming in the form of legislation and civil rights. A lot of organisations have wound down their efforts and have not continued that effort since 2004.

Ben Howlett: Why is that?

Martin McConaghy: There is a perception that the risk does not come to fruition. It echoes Chris's point: many disabled people do not exercise their rights, so the risk has not come to fruition in the scale it could have.

Chris Fry: What I would say, just to chip in, is that the damages component of a failure to make reasonable adjustments claim is very



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modest. Most cases fall. If you cannot get into a building because there is no ramped access, for example, where it is a one-off event that did not lead to particularly catastrophic circumstances, the level of damages is around the £1,000 to £3,000 mark.

Most businesses look at the cost of the remedial work against the level of damages, and they see that most cases are complaints from individuals without awareness that there are lawyers who can do the work. They just think, "It is easier to buy them off. We will give them a gift voucher, and that will keep them happy." There really need to be repeat examples of those individuals going through and, time after time, hitting them with the damages that they are entitled to, with the injunctions, through the civil courts, to make those work and to get somewhere.

On the point I started to get to earlier, those individuals who are alive to their rights end up becoming tarred as vexatious litigants. One of my clients brought a case on his own recently; it failed because he did not draft the pleadings correctly so it was subject to a strike-out. He was then subject to an application for a civil restraint order to prevent him from making further cases. Happily, it was unsuccessful. Again, it comes down to an individual. If you have repeat individuals making repeat cases, there is a further difficulty.

Q30 Ben Howlett: I am, of course, going to ask one last question, which is about the top-down part, if you don't mind. I am sorry; I know we have asked a lot of questions around this area. You have talked an awful lot about the bottom-up, as you phrased it earlier on, but there is a top-down approach as well. The NPPF, joint spatial plans and place-making strategies are all there as this top-down layer of regulation and Government policy. Does that cause an issue in terms of those people who are identified as responsible for implementing a disabled-friendly spatial environment?

Martin McConaghy: That touches on several issues. First, an authority needs to make a commitment to have a clear, consistent and strong policy. Secondly, it needs the right expertise within its departments to deliver that. I dare say access professionals have decreased in recent years in local authorities; they have been merged into other, non-specialist roles. Many local authorities have no specialists at all. You are reliant on somebody who has not necessarily had any training in the subject to devise a policy, if they have one, and then implement it, which leads to poor results, quite frankly.

Q31 Chair: Before we move off this, a little earlier you talked about how it is working on the ground in different local authority areas and that some get their policy right. Does that policy always trickle down to improvements in practice? You talked about some getting the policy right, but do those that get the policy right also get it right in practice? If not, what could be done to improve that?



Martin McConaghy: On the first question of whether they get the policy right, largely we think policies around the country are not sufficient; they are not strong or clear enough. They lead to too much debate. Then, when the nuts and bolts of a planning application come together and the authority meets with the developer, there is a lot of discussion. Without that clear policy and the expertise there to ensure the policy is implemented, it does not work. That would be our view.

Q32 **Chair:** Is that the case even if the policies are there?

Martin McConaghy: If the policy is there and there is somebody enforcing it who has the necessary expertise, in theory it should work.

Chair: You need to have the expertise of enforcement even if the policy is there.

Martin McConaghy: Yes. When I say “enforcement”, it is not necessarily enforcement in the process, but throughout the negotiation of the planning. The planning department needs the expertise to apply the policy—“apply” is perhaps a better word.

Q33 **Mr Shuker:** Can you put in numerical terms how widespread noncompliance is?

Martin McConaghy: Noncompliance with what?

Mr Shuker: Building regulations.

Martin McConaghy: We do not have that sort of number.

Mr Shuker: Would anyone have that?

Martin McConaghy: DCLG would have some figures, but there is an important separation here. In terms of noncompliance, the building regulations are a tiny little thing. That is the regulation. It does not necessarily deliver the same functional standards as the guidance, which would deliver higher standards.

Mr Shuker: This is part M.

Martin McConaghy: This is part M, yes. The question would be: to what extent are buildings signed off as meeting the regulation without actually meeting the guidance? I do not know whether DCLG or anybody else keeps figures on that. In our experience, members have reported to us new buildings being built without lifts. It is that extreme. In terms of numbers, as an organisation we are not in a position to collate that.

David Petherick: It has to be understood that there are two means of enforcing compliance with regulations: the local authority and private approved inspectors. There is a perception on the part of some people that approved inspectors can be more lenient. Whether they would accept that, I do not know, but inevitably there is a degree of judgment involved, particularly when the guidance document to part M itself says that this is not the only way of doing it and that there may be other ways.



There is a higher degree of judgment on the part of building control, whether it is local authority or approved inspector. Therefore, the question of how much compliance or noncompliance there is becomes a very difficult one to assess. It might be possible to arrive at a figure of those buildings that comply precisely with the guidance in the approved document, but that would involve considerable survey work with local authorities.

Q34 Mr Shuker: Would it be fair to characterise noncompliance as being widespread?

David Petherick: That is certainly the impression we get from some of the members of organisations that are represented on my committee.

Martin McConaghy: Noncompliance with the guidance is certainly widespread.

Q35 Mr Shuker: The GLA has taken an interesting approach around M4(2) and looking at implementing that. Should that be the new standard? Are we better off focusing on raising the minimum standard or on compliance with the existing regulation?

Martin McConaghy: We need both. Specifically on housing now, it would be advantageous to require higher standards. This is the interaction between the building regulations and the housing standards. London, again leading the way, have already responded to the housing standards review and got their policy through. From what we see, most local authorities are taking a sort of “do nothing” approach to this. There is nothing that compels them to have a requirement for M4(2) and M4(3). As plans go to the Planning Inspectorate, we will see whether the Planning Inspectorate pushes back on that.

The other thing we know is that this will take time. Before these local plans are in place and these policies start to take effect, whatever effect that is, it is going to be several years. This country is supposedly about to start building a lot of houses quite quickly. The NPPF could compel authorities to put a policy in place. Another option would be—as volume 2 does with hotels: it requires a set provision via the building regulations—to set this nationally and be done with a level of debate. That would probably be quicker, if it were just set nationally.

David Petherick: It is also worth saying that the current base level of regulations dates back to 1991—it is very long in the tooth. That required step-free entrances. I am sure you have all seen houses built much more recently than that with steps at the front entrance. It is not widely complied with.

The Joseph Rowntree Foundation supported some work that was initiated by Helen Hamlin—and I forget who else—to devise lifetime home standards. Effectively, they are the option 2. In my understanding, there was a fairly widespread view among the housebuilders that that was going to be the new base level in 2010. It did not turn out that way.



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Mr Shuker: Why do you think it did not turn out that way in 2010?

David Petherick: That is a political question and I do not know the answer to it.

Q36 **Mr Shuker:** Could it be justified on the grounds of cost? Would the cost of creating homes in that way be sufficient for developers to say, "Well, we were going to do this, but we have actually decided not to go that way"?

David Petherick: There is plenty of evidence that the costs of building to the lifetime home standards, which are fairly long in the tooth, is not significant. I understand that in 2015 some of the house builders were making fairly significant dividends to their shareholders and the like. In that context, the cost of £500 to £1,000 per dwelling was not significant.

Martin McConaghy: David has got to the figure there, in terms of the figure quoted for the extra money to create lifetime homes. It is worth bearing in mind that, while it may cost a developer £500 to £1,000 up front, that is money well invested, because it saves the public purse in the long term in terms of the adaptation work. Most local authorities report that the need for funding for disabled facilities grants is increasing. Lifetime homes is all about making it cheaper to adapt at a later point, if you like, so it may cost the developer £500 or £600, but it saves a lot more downstream for the public purse.

David Petherick: It is also about NHS bed-blocking: some people cannot go home because their homes just are not suitable.

Q37 **Mr Shuker:** In crude terms, there is a question mark here around where potential risk should fall, particularly in older life. You are suggesting that it is not unfair to expect developers to develop to that standard, given where risk potentially would reside.

Martin McConaghy: It needs to be weighed up in terms of the cost to society in the long run versus the short-term cost to the developer's pocket. It is also worth noting that a well designed lifetime home is potentially more desirable than a smaller home anyway; it requires a certain level of space and downstairs toilets, which add value to some extent. You have to be careful about what you compare it with.

Q38 **Mr Shuker:** In your opinion, there is no evidence that people would choose a home that did not comply out of consumer motivation. People are quite happy with the homes they get that are built to this standard.

Martin McConaghy: I do not know whether that evidence exists. There is one thing I would add on housing. Before the housing standards review, the code for sustainable homes was in place. The upper levels of the code for sustainable homes required construction to lifetime homes. At this point in time, now the code for sustainable homes has gone, there is this question around whether we are currently building fewer lifetime homes than we were before the housing standards review, despite the



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optional standards. Over the next four years, until we get the plans in place, will we deliver fewer lifetime homes, or homes to M4(2) standards, than we would have, had we not done the housing standards review? I do not know whether that was weighed up, but it is a certainly a question that our members raised.

David Petherick: The other factor, of course, is that we are still building the smallest homes in Europe. If you have very, very small homes to start with, it is pretty important that they are designed fairly carefully to enable most of the events that can befall anybody in the course of a lifetime. Whether it is falling off a motorbike and breaking a leg or granny having had a hip replacement, these things take up more room.

Q39 **Mr Shuker:** Lastly in this section, what would be the most effective lever that Government could pull in order to raise compliance and also raise the standard? To all of you, what would you want us to be doing?

Martin McConaghy: Are you looking at housing specifically?

Mr Shuker: It is on housing in this section, yes.

Martin McConaghy: At the planning policy level, if we stick with the NPPF and allowing localised planning policy to switch on the optional requirements, we need to compel authorities to do their research, get the needs assessment done and go through viability testing in a serious timeframe. It needs to happen quickly. That is one option. If that takes too long or proves too complex, the other option is to specify a national minimum for M4(2) and for M4(3). In volume 2, we specify 5% of hotel bedrooms. That would conceivably be a quicker and more consistent way to get the country building to these standards.

In terms of delivering compliance, there is lots of work to be done around training and awareness. I know you have had submissions from other parties that are working on some of that, so I will not go too far into it.

Q40 **Mr Shuker:** Is it a resources issue, though?

Martin McConaghy: I have a note somewhere, but in 1986 one of the Government Departments said in a planning circular—I will send you the reference at some point—that local authorities should have “an access officer”; I think that was the phrase it used. They need expertise in there to help drive this along. When things become non-standard and subjective, they need the expertise to help with that. That is an important point: if we could compel authorities to have specialist expertise on board rather than making it a little part of a generalist’s role. We know most of the authorities who do well in terms of inclusive design and accessibility have an access officer.

David Petherick: We need much greater awareness, training of local authority building control and approved inspectors. Those would certainly help.



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Q41 **Chair:** Can I ask a couple of other things before we move on to the next section, so I can be really clear in terms of the reason why property builders are not building homes to lifetime standards? The implication of what you said is that there is not much of an excuse in terms of costs. Is it just down to ignorance or lack of training?

Martin McConaghy: You need to ask housebuilders. This debate has been ongoing for a while.

David Petherick: Putting a house together is not a straightforward business, and an awful lot of effort goes into meeting all the other requirements of the regulations, like sound insulation, thermal performance and all those other things. Training a workforce to get those bits right, again, is not a trivial exercise. There is a reluctance among house builders to change their basic plans beyond what their workforce are used to building. I understand that is a real difficulty. If there is a legal requirement, though, then they will do it.

Q42 **Chair:** I suppose the other cost associated with building to lifetime standards is the reduction in the number of houses you can put on a plot. While it might increase the costs by only £1,000, would it reduce the number of homes on a particular plot or not? Martin, you seem to be suggesting you would not agree with that.

Martin McConaghy: Lifetime homes are not necessarily a great deal bigger in terms of spatial footprint. There will be another organisation that will have a figure, perhaps. Wheelchair accessibility, M4(3), as everyone acknowledges, takes up a slightly larger footprint, but M4(2) is not a significantly different footprint.

David Petherick: When you think the house is only part of the plot, the effect on the plot needn't be significant.

Q43 **Chair:** Can I just ask another one? The optional standards do not apply to buildings other than dwellings, such as offices and shops. Are the standards in the building regulations as they apply to buildings other than dwellings high enough? Are the standards high enough for things other than dwellings?

David Petherick: The guidance in the approved document was based largely on the British Standard, BS 8300. BS 8300 has been revised three times since then, and I am not sure that the guidance in approved document M has quite kept pace. Again, there is the issue about the application of judgment on the part of building control officers. Negotiations take place with architects and designers about what would be acceptable or permissible.

Q44 **Chair:** You are saying that there is a gap between the dwelling and non-dwelling standards, which should be considered. Is that a no, Martin?



Martin McConaghy: When you first posed that question, the thing that came to mind was something called the limits of application. The building regulations apply in certain circumstances: new build, certain changes in use, extensions. We seem to be talking specifically about housing. If you take a large mill refurbishment, it is arguable that part M would not apply because of the limits of application, because it would not necessarily meet the definition of “building work”.

There are whole areas of work where people think the building regulations would apply but they simply do not, and that is because of the limits of application. It is limited by statutory instrument. That applies equally to housing. If you take the mill as a good housing example, somebody may create 200 flats and part M would not apply, which is in itself a fairly major problem, because we need to re-use our existing stock. In the commercial world, one retailer may move out of a shop that has a single step at the front and a new retailer may take up that shop. The limits of application would mean they would not be forced to deal with that.

David Petherick: That applies particularly in the case of conversions of offices to flats.

Q45 **Chair:** When you come to something that is brand new, are the standards that are non-dwelling standards high enough?

Martin McConaghy: You mean volume 2. No—that would be the opinion of our membership. Most of our membership would adopt BS 8300, which is a far more comprehensive standard and covers a wider range of needs. There is also an issue here. The ergonomic data—the measurements of wheelchair size and things—that underpins BS 8300 and consequently part M is from around 1997. It was Bob Feeney’s work.

David Petherick: Yes, it is.

Martin McConaghy: It is very dated, and it was from a sample of about 87 types of device. Devices change rapidly. There is a lot of work to be done on the basic ergonomics of space planning. This is also very light on features, shall we say, for other disabled people who are not wheelchair users, whereas the British Standard is far more comprehensive.

David Petherick: Approved document M only deals with those parts of the British Standard that it was felt necessary to refer to specifically in the guidance to the regulations. There are a whole lot more in BS 8300 that are not even touched by approved document M and, as I say, BS 8300 has moved on quite considerably.

Q46 **Mrs Drummond:** That brings me on to my point; I was going to talk about BS 8300. First, can I just say that the size of the building is really important, not just for people in wheelchairs but for those with mental health issues as well? It really concerns me that the Housing Minister



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said we should be building smaller units to get more in. That is the wrong way to go about it. I wanted to put that on the record.

Going back to BS 8300, which looks really good because it keeps being updated all the time, what are the benefits and disadvantages of having a voluntary approach? Should we perhaps be looking at some legislation around that?

David Petherick: Standards have always been developed through a voluntary approach. The standards are arrived at by consensus, i.e. consensus within the committee drafting the standard, and then they are subject to very widespread public consultation, so you do not arrive at standards quickly. They are a painstaking process. Because hopefully all the people affected by them will have contributed in one way or another, there is a great deal of buy-in. People accept things that they have contributed to and have helped develop. Therefore, there is a willingness to use them. That is a positive advantage of the standards approach.

We also have to recognise that standards do not exist in isolation in the UK. They are part of a much wider European and international process. It is easy to see that the level aspired to in standards is being continually raised. It is much more difficult to achieve that with a process of regulation. Where standards can become enforceable is where they are either required through the planning process or written into building contracts. Where a standard is specified in a building contract, that is the standard to which the building is required to be built; that is enforceable and failure to comply is subject to penalties.

Q47 **Mrs Drummond:** Martin, could you talk about that, and about how you encourage people to contribute and engage the community in developing the standards?

Martin McConaghy: I serve on David's committee, but in terms of the advantages it holds a marker of best practice. It is the cutting edge of what the profession believes is the best thing to do, so organisations that are serious about meeting the needs of disabled people will adopt it, in theory. In terms of the anticipatory duties under the Equality Act, it also sets a marker as to what people can anticipate. It is written in a British Standard, so you could have foreseen that that would be a problem.

One of the great things about British Standards is that if the planning policy is well structured and set up, it can effectively make the code of practice a requirement. Again, to come back to this, London—and I think Leeds has adopted the same phrase—requires the "highest". It is the "est" on the end that is important, because the question then is: what is the highest standard? The British Standard of best practice is BS 8300.

Through good planning policy and the expertise, there are instances where BS 8300 is used in the planning process. When the rest of the framework is there, it is very important to implement it. However, there are many developments that go on without any recognition of BS 8300,



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because the planning policy does not require it; because they only need to meet the minimal requirements of the building regulations.

Q48 **Mrs Drummond:** What proportion of new or existing buildings do not have those British Standards?

Martin McConaghy: I do not think anybody keeps tabs on that. It would be a phenomenal exercise to work that out. In my own professional experience, I have been to brand new schools that were contractually required to comply with it and did not.

You mentioned earlier that there were other submissions about awareness-raising, educating the professionals involved and that bigger picture of getting everybody thinking about this as a serious agenda. Hopefully people will spot, "We have a contractual requirement for BS 8300", and they will get some support to deliver that.

Chris Fry: That school being made inaccessible for a disabled student would then be subject to an individual action from a disabled student to retrofit it. There is some expense further down the line. It just needs to be co-ordinated.

To echo what Martin says about the standards themselves being constructed or perceived as minimalist standards. In particular, the building regulations are seen as the minimum that is required. A building must have an accessible toilet, for example. But the Equality Act is not minimalist in its purpose or in its overreaching of things like building and legislation on that. It stretches into whether or not you might comply because your building has an accessible toilet, but if it is being used as a storage locker, if it is locked or if anyone can use it, for example, you are in breach of the Equality Act.

My recommendations for change and how change can be leveraged would be to raise the standards and the perception of the standards from "minimal" into "highest", and again on the sign-off, but also to make it easier for individuals to enforce their rights. The easiest way to do that is to remove some of the access to costs in these individual actions. For example, just apply cost-shifting, as is available in personal injury cases, to equality claimants. Then there will be a sea change, because individuals can take those cases without the financial risks to themselves.

Q49 **Angela Crawley:** Coming back to the comments from earlier, we spoke about part M, the building regulations and the Equality Act. My question is whether they make it clear that there is a requirement for designing and managing buildings to go further than the minimum standard. Are developers and business owners aware of this? That is my first question.

Secondly, how effective are the reasonable adjustment provisions in securing accessible buildings? I suppose those are questions to David and then to Martin specifically, but Chris might also want to come in.



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David Petherick: I am afraid I did not hear all of the first part of the question. I am sorry.

Angela Crawley: That is okay. First, about the building regulations, does it make it clear that, within the Equality Act, there is a requirement, when designing and building buildings, to go further than the minimum standards? How effective are the reasonable adjustment provisions in securing accessible buildings? Maybe Martin would prefer to come in and give you time.

David Petherick: I am not sure that the Equality Act relates directly to building regulations. Building regulations stand on their own.

Chris Fry: It overreaches those, from a service user's perspective.

Martin McConaghy: A lot of the industry involved in the design and management of buildings thinks that meeting the building regulations means you have met the Equality Act, and it is not that simple. Chris pointed out a fundamental difference: this takes a minimalist approach. The Equality Act specifically states that it is not a minimalist approach. There is a fundamental gap there, which is the source of a lot of problems, to be honest.

Chris Fry: I would echo that and reinforce what I said earlier. Businesses and local authorities have an anticipatory duty, under the Equality Act, to consider the needs of service users more broadly than just in terms of complying with the minimum standards in building regs. On the point about the duty to make reasonable adjustments, it is a good and effective tool. The law provides adequate recourse to enforce rights to make reasonable adjustments in a civil action by an individual being able to get an injunction from the court to make work restorative and accessible. The tools are there; it is just that they are not practically accessible to every individual in the way we would hope.

Q50 **Angela Crawley:** Just to make my question clear, what I was basically saying was the guidance in part M of the building regulations makes it clear that the Equality Act may require people to go further, and the question was whether you think developers, builders and owners are aware of this. Is it effective?

Moving on to my next point, the Equality Act contains an exemption to the requirement to make adjustments to physical features of premises if it complies with part M of the building regulations or complied with those in force at the time it was built, so long as it was not more than 10 years previously. What is the practical impact of this exemption, Chris?

Chris Fry: I will try to do the easy bit, which is that while there is that exemption in respect of physical features to a building, there are other things that can be done. There is the existence of auxiliary aids, for example, which could be ramps or stair lifts that can be installed. It is not a complete "get out of jail free" card in that respect for a service provider or a building.



David Petherick: The other thing is that the exemption is specifically for features that comply with all the guidance in the approved document. If it is a situation, as is far more common, where the developer has come to an agreement with the building control officer about what might be reasonable in the circumstances—i.e. the building control officer has judged that it meets the functional requirement of the regulations but does not comply with the guidance in the approved document—that feature will not benefit from the exemption. That is not widely understood.

Q51 **Angela Crawley:** Thank you for clarifying that, David. Chris, Unity Law's submissions suggest that the public sector equality duty may not be being met by local authorities—you touched on this earlier—when developing their planning policies. What leads you to believe this and what more could local authorities be doing? You mentioned consistency earlier; how can we create that consistency?

Chris Fry: First, in terms of what can be done about it, I adopt what Martin said earlier about the sense of having properly trained access officers built into the sign-off stage. I would go further: the idea should be that those individuals are required to undertake some form of CPD to maintain an accreditation, which should include equality training as part of its repeat core.

In terms of the public sector equality duty and the way in which that is handled by the courts, it is a very expensive way to get very little determination, frankly. Recent case law on the application of the public sector equality duty came in a shared spaces case for Simon Goodall, who took on Reading over their decision to take out crossings from the shared spaces design there. In that case, the court decided—a decision we did not appeal for practical reasons—that, ultimately, the local authority had had due regard, because they had recognised there would be a disadvantage. Although there were steps that could have been taken, the court considered that the duty did not go as far as that in requiring the local authority to go back and make the reasonable adjustments that Simon Goodall, Guide Dogs and those supporting wanted.

The difficulty generally is that the public sector equality duty now appears to be treated by the courts as a very narrow approach, almost like a tick-box exercise, rather than having a substantive, purposive nature, which we say it ought to have. It will take us a long time to get there, to try to overturn that in a public law environment.

Q52 **Angela Crawley:** On that point, the Equality Act relies on the individual to enforce its provisions, and there are a number of proposals that could have made this easier. This is quite nuanced, so bear with me. This includes the issue of pubs, clubs and licensed premises. Should they be required to meet the duty to make these reasonable adjustments as a requirement of their licence? Could there be changes in the way costs are handled in tribunal cases to allow class actions? Do you agree with



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these proposals? What other changes could be made to improve this? The first question is on licensing and whether that should be amended; the second is on tribunal cases and whether class actions should be amended. Do you agree with these proposals or do you have any other proposals we should consider?

Chris Fry: I am not aware specifically of what the licensing proposals are, although I saw that the House of Lords Select Committee proposed that there be a specific amendment to the Licensing Act 2003, to write in an equality obligation. Yes, that would be great. They are under an obligation, as service providers, to make their service accessible to the individual in any event. It would make sense and connect the gap to have the local authority take more responsibility for that role at face value. I fully support that. It would reduce the need for class actions.

In terms of class actions and tribunals generally, again, fundamentally, there is an imbalance in terms of costs that needs to be addressed. The House of Lords Select Committee put forward a proposal to extend qualified one-way cost-shifting to provide that level playing field—for that purpose, I think.

Martin McConaghy: As an association, we think it is not correct to require individual disabled people to have to go around and force change on buildings one by one. We need other mechanisms.

It certainly looks to be a fairly simple option, by extending the Licensing Act, to enable the licensing authority to refuse a licence if premises have not been made accessible. It seems illogical to me that, to get a licence to operate a pub or café, you have to demonstrate that you have tested the plugs on the fan and things like that, but there is no requirement under the Licensing Act to be accessible. They have to do a lot of paperwork and things. That is certainly a fairly easy option. It would affect lots of premises—anywhere that sells alcohol, primarily. There would also be lots of premises that would not be affected, so we would still need to work out how we could address that issue.

Any amendment to the Equality Act to give people other than the individual disabled person an ability to take a case—whether through class actions or DPOs—sounds like a very sensible idea to us. It is perhaps not on your point, but we really need to amend the statutory instrument around the limits of application of the building regulations so that the regulations change more types of building as we progress with building works.

Chair: Thank you very much indeed. That was an incredibly helpful session. I really thank you for bringing your expertise into our inquiry. I am very grateful to you for taking the time to come along today and to prepare for this session in the way you have. Thank you very much.