

Women and Equalities Committee

Oral evidence: [Enforcing the Equality Act: the role of the Equality and Human Rights Commission](#), HC 1470

Wednesday 30 January 2019

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[Watch the meeting](#)

Members present: Mrs Maria Miller (Chair); Tonia Antoniazzi; Sarah Champion; Angela Crawley; Jess Phillips.

Questions 177–272

Witnesses

[I](#): Nick O'Brien, Annette Lovell, Director of Engagement, Financial Ombudsman Services, and Luke Tryl, Director of Corporate Strategy, Ofsted.

[II](#): Esther Leighton and Doug Paulley.

Written evidence from witnesses:

- [Financial Ombudsman Services](#)
- [Ofsted](#)
- [Esther Leighton](#)
- [Mr Doug Paulley](#)

Examination of witnesses

Witnesses: Nick O'Brien, Annette Lovell and Luke Tryl.

Chair: Let me welcome our witnesses, people joining us in the Gallery and those who are watching online. This session is one of a series of evidence sessions for our inquiry into enforcing the Equality Act: the law and the role of the EHRC. Today we have two excellent panels. The first panel will focus on the role of regulators, inspectors and ombudsmen, and the second panel will focus on how individuals can enforce their rights, so this is a really important session for the evidence that we are gathering for our inquiry. The format is the usual one: colleagues will be asking a series of questions—and doubtless having to go off for obligations elsewhere. I apologise for that in advance; this is always a bit of a moveable feast. Before we start, could you just say your name and which organisation you represent?

Annette Lovell: I am Annette Lovell, from the Financial Ombudsman Service.

Luke Tryl: I am Luke Tryl, from Ofsted.

Nick O'Brien: I am Nick O'Brien, an honorary fellow at Liverpool University.

Chair: This room, although built not that long ago, does not have great acoustics. I am going to remind myself to lean in a little bit—this is definitely a lean-in room—and if our witnesses could do the same, that would be great.

Q177 **Jess Phillips:** Hello and thanks very much for coming. Specifically to the representatives from the Financial Ombudsman Service—that is quite a mouthful—and Ofsted, what is your role in making sure that those you inspect comply with the Equalities Act?

Annette Lovell: We do not have an inspection role at all. Perhaps it is worth explaining what we do. Our role is to resolve disputes between consumers and financial businesses. We deal with individual disputes and make decisions on the basis of what we think is fair and reasonable in the circumstances of the individual complaint.

In reaching a decision on what we think is fair and reasonable, we are required to take account of a range of things, including the law, regulations and things such as good industry practice. We have to have regard to the Equality Act in reaching a decision on a complaint that comes to us.

Q178 **Jess Phillips:** If somebody came to you with a complaint that they were being discriminated against, on the basis of a man being offered a better interest rate than a woman on exactly the same terms, for example,



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would you take into account the Equality Act?

Annette Lovell: Yes. We would consider the requirements of the Equality Act in reaching a decision on what we thought was fair and reasonable. However, it is worth saying that our remit is what is called an inquisitorial remit. We do not necessarily need someone to bring a complaint to us that they have been discriminated against, although that does sometimes happen.

It is enough for someone to come to us and say that they have a problem with their financial services provider or that they think the way they have been treated is unfair. We would not expect them necessarily to articulate a complaint in the way that you describe. It is our job to think about aspects like the Equality Act. We look at a range of issues.

Q179 **Jess Phillips:** Have you ever undertaken an inquiry based specifically on the Equality Act?

Annette Lovell: Yes. As I say, it is our job to think about whether that applies to individual cases. It is certainly something that we consider. In the course of the year, we might resolve something like 400,000 complaints. The Equality Act is a feature of a relatively small number of those, but it is definitely there, and it is definitely something that our staff understand they need to think about and ask questions about, to get to the bottom of whether it is an issue or not.

Luke Tryl: We are an inspectorate. We inspect schools, as you probably know, but also colleges, nurseries, children's social services and various other smaller institutions, such as prison education institutions. Whenever we inspect provision, we look for compliance with the Equality Act. Recent litigation, in the case of the Al-Hijrah School in Birmingham, which you will of course be aware of, has established that we should comment on compliance with equalities law.

However, we are not the regulator of schools and colleges. While we can comment on compliance, we cannot take enforcement action against these institutions. We can in children's social care and childcare, for which we are the regulator.

Q180 **Jess Phillips:** So in schools and colleges you cannot take enforcement action if somebody is breaking the Equality Act?

Luke Tryl: No. We will comment on it in our reports, as we quite regularly do, but it is for the Department for Education to take action. We most often find a lack of compliance in the independent schools sector, particularly where there are clashes between protected characteristics, such as orthodox faith institutions that do not want to teach about LGBT issues, for instance. We always comment on that, and then the Department makes a decision on whether to take regulatory action.

Jess Phillips: For both of your organisations, if you found a trend—either in your inquisitorial or inspection work—but did not have the teeth of enforcement, would you report those organisations to the Equality and Human Rights Commission, for example? You are saying you would go



straight to the DFE and it is for the DFE to do that.

Annette Lovell: Yes, we would definitely consider whether that was something that we needed to do. It is worth saying that although we do not have general enforcement powers at all, if we make a decision in respect of an individual case and it is accepted by the complainant, the decision is binding, so the financial business will have to do what we say that it needs to do—so it has teeth in that sense. We also share insight and information about what we are seeing in our caseload, in an attempt to help the wider public understand some of the issues that we are seeing and to make sure that financial businesses understand how we will decide cases if they come to us.

Q181 **Jess Phillips:** Nick, how engaged are the regulators, inspectorates and ombudsmen in securing compliance with the Equality Act?

Nick O'Brien: I can probably speak most authoritatively about public sector ombuds, whose remit is the general one of maladministration and poor service. They don't have enforcement powers as such, so their recommendations are not binding, but they have a high level of compliance—up to 95% normally. Over the years, those ombudsmen have become more self-conscious about equality law and human rights law in particular. They have tried to weave those into their standards. They have public administration principles, which include fairness and equality principles, but they do not have a direct enforcement role, so it is more a question of commenting on the extent to which equality law has been taken account of, rather than finding a breach of law.

Q182 **Jess Phillips:** And you feel it has been taken account of in public sector regulation?

Nick O'Brien: The local government and social care ombudsman, the parliamentary and health service ombudsman for England, and the public services ombudsman for Scotland and for Wales try to do that. There have been cases where they have highlighted the gaps within provision in that regard, particularly in respect of disability, I think it is fair to say.

Q183 **Jess Phillips:** How do you think they are dealing with gender? I ask because the Committee has heard quite a lot of evidence from different regulators over the years and often—let's say on sexual harassment in schools and in the workplace—there was an awful lot of, "It's not our job. It's not our core remit."

Nick O'Brien: I think that is an issue. The fact that the EHRC is seen to have specialist expertise on that has possibly meant that ombuds institutions have not had the confidence always to be as bold as they might have been.

Jess Phillips: So it is sort siloed over to the edge, you would say.

Nick O'Brien: I think creating networks between EHRC and ombuds is probably a critical issue, as well as generating the expertise and confidence, so that ombuds feel that they have a primary role in that work.

Q184 **Chair:** Before you come in, Luke, can I just drill down on that a tiny bit, Nick? We were quite taken aback when the Health and Safety Executive told us that sexual harassment was nothing to do with them. That was quite surprising to us, because we thought that that was a safety-at-work issue, but they were unequivocal.

Nick O'Brien: That is surprising and disappointing. As I say, I think the specialist identification of the EHRC can in some ways be a disadvantage. I think in those jurisdictions where equality and human rights are being enforced most effectively, it is the network, the recognition of the need for an institution to serve as a catalyst, a mobiliser and a co-ordinator, which possibly produces the best results, so that everybody sees that they have a role in it. It is not about the national human rights institution, but more about the national human rights structures, which embraces all sorts of different bodies.

Chair: That is really helpful. Thank you.

Luke Tryl: From our perspective, we very much see this as part of our core role, because we do not think that you can provide excellent quality of education or care, if you are doing so in a way which does not comply with equalities legislation or is discriminatory. The downside of that is that we do occasionally feel quite isolated in that. Our inspectors are going out and having to make some quite tricky judgments, as I say, where there are potential clashes between protected characteristics. As we have commented in previous annual reports, we don't always feel that we get the support we need from the rest of Government in pushing that forward.

Q185 **Chair:** Again, drilling down on sexual harassment in schools, we were routinely told by children that teachers turned their head away from sexual harassment. It was only after our intervention that this started to become an issue that was on the inspectors' scoresheet when they went into schools. We were quite disappointed that Ofsted was not already doing that.

Luke Tryl: Certainly wherever we have received a complaint, we would always add that to the evidence base.

Q186 **Chair:** It isn't always just about dealing with complaints; it is about going in proactively and observing the schools.

Luke Tryl: When it comes to discrimination on the grounds of sex, we were challenged in the Al-Hijrah case, which was a school that was enforcing very strict gender segregation and denying girls the opportunity to have their lunch until their boys had had theirs. There were some very discriminatory texts encouraging violence against women. We took the decision to challenge the High Court ruling and take it to the Court of Appeal. We take the issue very seriously, and we were obviously very pleased with the result in that case, although we are disappointed that the school has not yet desegregated its secondary provision.

Q187 **Jess Phillips:** Okay. This is for Ofsted and the Financial Ombudsman Service. Can you give us a practical example of how you have used the



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Equality Act when inspecting or adjudicating on organisations, such as the Al-Hijrah example? To follow up on that, Luke, if they are not currently doing it, what teeth do you have to ensure that the law—in this case the Equality Act—is being followed?

Luke Tryl: I completely agree with you. I think that is where the real weakness is. The Court of Appeal ruling was in mid-2017. The Court of Appeal rightly said that schools needed a transition period where they were segregating, but Al-Hijrah and countless other schools are still doing so. They are mixed schools, but they are still segregating on the basis of sex. Similarly, other schools have refused to teach about sexual orientation issues. We have commented on reports and we have not seen a change there. This is why I talk about the isolation. We go out there and make these tough decisions. We often take quite a lot of criticism for the stance we take, but we do not always see the enforcement action that we would like to see.

Q188 **Jess Phillips:** Who is responsible for that enforcement action? The Department for Education?

Luke Tryl: The Department for Education.

Q189 **Jess Phillips:** You cannot shut down a school if you think it is unsafe for the girls who are there, for example.

Luke Tryl: No, the Department would have to do that.

Q190 **Jess Phillips:** The Department would have to shut down the school.

Luke Tryl: The Department takes the enforcement action, yes.

Q191 **Chair:** How many times in a year do you recommend that the Department takes enforcement action?

Luke Tryl: I would have to write to you with the specifics of that, but there have been a number of schools. We are particularly concerned that a number of independent schools have repeatedly failed the independent schools standards on equality issues and educational issues. We have not seen rapid enforcement action, and HMI highlighted that in her annual report. We think that quicker action needs to be taken where we persistently identify schools as being inadequate.

Q192 **Chair:** If we do not already have that in the evidence, could you supply us with that specific data?

Luke Tryl: Absolutely.

Q193 **Jess Phillips:** So you don't really have much.

Luke Tryl: We have the nudge power of what we put in our reports.

Q194 **Jess Phillips:** Do most schools or most children's services comply? You said that there was 95% compliance.

Luke Tryl: Absolutely. I want to be clear that the vast majority of schools and, indeed, the vast majority of faith schools in this country comply very well with equalities law. Where there are breaches of compliance, it is very

often where schools do not understand perhaps some of the more complex areas to do with gender identity. There is, however, a particularly small core of schools that are actively resisting what we believe to be the requirements of equalities law.

Jess Phillips: I am aware of quite a lot of those schools. Annette?

Annette Lovell: One of the things to say is that the casework we do in this area spans a broad range of issues. It could be that we are considering a complaint where someone has been unable to use a gender-neutral title in their relationship with a business, or it could relate to the physical access to a building. It could be about the terms and conditions of a product or service. It could be that those unreasonably prevented someone from using that product or service or that they were unreasonably applied to them—for example, if it related to an insurance claim. It is quite a broad range of things that we might consider. If it would be helpful, I would be happy to do this—all of our ombudsmen decisions are published, so they are in the public domain. We have a significant number that are available. They are anonymised from the point of view of the complainant, but the businesses concerned are named, so there is quite a lot of transparency. I would be happy to think about whether there are any specific ones that we could share with the Committee if that would help.

Q195 **Jess Phillips:** Specific case studies would be helpful. What we are seeking to see are not just the case studies of complaints. We are in an evolving equalities environment. We want to see how you as the regulator intervened and what the result was, because 95% compliance without enforcement is really good. The sticky issue is your Al-Hijrah and your 5% no-compliance. Regulators saying things for no reason and that falling on deaf ears is a part of the pattern, certainly in some of the protected characteristics that we appear to be coming across in our Committee, so that would be really helpful—thanks.

Q196 **Sarah Champion:** Can I build on what Jess was saying and ask if you think that your two organisations ought to have enforcement powers? I will ask Nick for his opinion as well. Annette, I'll start with you.

Annette Lovell: To be clear, we are not a regulator. I don't think we would consider that that is a part of our role. If you are talking about enforcement in terms of our decisions, if we make a decision against a financial business, we do not have the power to enforce that decision, but it can be enforced through the courts.

Q197 **Sarah Champion:** But I am asking whether you think that that should be gifted to your organisation.

Annette Lovell: In practice, I don't think it's an issue. If we come across a financial business that does not act on one of our decisions, that is something that we would take up with the regulator and we would expect the regulator to deal with it. So I don't think it is a broad, widespread issue for us.



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Q198 **Sarah Champion:** Luke, you have shared some of your frustrations. Would you like to have enforcement across all areas?

Luke Tryl: Obviously, it is a matter for the Department to decide our remit, along with legislation. In the areas where we do have enforcement action, in the early years space and with some of children's social care, we find we are able to take rapid action to deregister providers. I certainly think there is a case, given that we are the people going out and gathering the evidence for what is going on in these institutions. Perhaps it might be something that we look at in future.

Q199 **Sarah Champion:** Nick, you are impartial. What is your opinion?

Nick O'Brien: As far as public sector ombuds are concerned, I don't think that would be an appropriate function for them to have. The way they operate is necessarily a mandate of influence rather than one of sanction. That works well and it is important that that is retained. There are jurisdictions where ombuds institutions are the national equality body and they operate as a tribunal type of institution. In Scandinavia, for example, that has been the case. Going back to the point about networking, ombuds with their existing powers can be part of a broader picture of different niche functions. It is important to keep the ombuds one distinctive, so I wouldn't push for that particularly.

The other area where possibly the public sector ombuds in particular could play a more pronounced role is in relation to the public sector equality duty, which was introduced because of the perceived difficulties of individual enforcement. It seems that that is something that can be mainstreamed more easily into ombud-type investigations, and that could be an area where perhaps, with more self-conscious recognition of that and encouragement from others and the EHRC, that could play a part, I suspect.

Q200 **Sarah Champion:** When you say "encouragement from others", who would you see those others being? Ministers?

Nick O'Brien: I dare say that if this Committee were to conclude that that was a useful thing, it would embolden ombuds to think again about their role. If the EHRC were to see that as a priority, that would probably help as well. It is that sort of encouragement.

Q201 **Sarah Champion:** Annette and Luke, obviously equality law practice is evolving, so how do you keep your staff up to date with where the equalities legislation is?

Luke Tryl: We have a regular programme of training, both for office-based and inspection staff, that was refreshed this year. So there is both equalities legislation training and also, as you would imagine, some unconscious bias training. It includes case studies and examples of the things that you might find on inspection, and crucially how to reflect that in reports, so that if it is going to lead to enforcement action it is done in the right way. We also have a range of guest speakers—we have had people from faith institutions, from Stonewall and from others over the past year. Again, that is something that we take very seriously.



Annette Lovell: As do we. It is obviously a challenge, given the number of cases that we deal with and the staff that we have, so we do it in a number of different ways. It is important to say that our successful handling of complaints about these issues relies not just on a technical knowledge and understanding of the law, but on the ability to talk to consumers in such a way that they are able to share their experience with us. That is as important as technically knowing what the answer is, and we put quite a lot of emphasis on that.

Broadly, all caseworkers who join the organisation will go through a training programme that will include reference to this. We also have what we call a practice group, which has been set up to provide support in terms of the way we deal with some of our consumers, and that is in two areas. One is accessibility to the organisation—it's obviously important that people are able to use us in the way that they need to use us—but another is providing support and guidance on some of the issues that might be faced when tackling individual cases.

We also have a legal team that has expertise, so typically what you'd expect is that someone who was dealing with a case and decided that they needed some support would approach the practice group, and then if necessary, they would ask the legal team. It is something that we take very seriously, and we know that it is important that we keep up to date.

Q202 **Sarah Champion:** Luke, can I give you a specific case—which I hope you know, otherwise my question is going to be somewhat redundant? Following another tribunal judgment in August, the Equalities Act definition of disability widened to include some children in education who have a tendency towards physical abuse. The duty on schools to avoid discriminating against such children, including when making reasonable adjustments to help prevent or manage such behaviour, is now set out in law. I wondered two things: have you made any changes to your inspectors' methods of inspecting schools, and have you seen—or do you believe—that schools now understand this change and know that they need to make reasonable adjustments? Have you seen any evidence of that?

Luke Tryl: I would need to write to you on the specifics of changes to training. One of the things that we have highlighted, which has become a matter of national debate over recent months, is the issue of exclusions from schools, and in particular off-rolling—ensuring that schools are not using exclusion as a means to boost results, or when it is not in the interests of children in the school. Our new draft framework, which we are currently consulting on, has a particular focus on off-rolling. Obviously, we are entirely supportive of the right of heads to exclude where it is in the interests of the school community, but equally where it has been abused and where it is not appropriate for children with specific needs, it is something we will look at. We have been commenting on it in reports.

Sarah Champion: If you could get back to us about the specifics, I'd be grateful. Thank you.



Q203 Chair: Can I drill into a couple of those areas? Particularly in your area, Luke, keeping up to date on equalities is really difficult for your inspectors, isn't it? When it comes to their work, equalities will play into things like discrimination in terms of the expectations of different groups of children, or what is acceptable behaviour. Don't get me wrong: discrimination is never acceptable, but sometimes it is driven by what social norms are as well. Your inspectors face quite a tough task in making sure that they are not reflecting prejudice in society, and are actually upholding the law.

Your training courses sound great, but how are you dealing with the reality that your inspectors are having to deal with not just perpetuating existing discrimination, but challenging every form of discrimination? It might be that the expectation of a girl is different from the expectation of a boy, or the expectation of somebody from a BME background is different from the expectation of somebody who isn't from a BME background. This is a highly complex area, and I did not get the feeling that your training courses were very specific and detailed. How do you deal with that?

Luke Tryl: The new training that we have just produced drills down into some more of the specifics like that. I wouldn't say it's an area that is perfect: as you say, inspection is about human judgment. Very often in a primary school, for example, one inspector goes in for one day every four years, because of the constraints of our budget. They have to look at everything in that time and come to quick judgments about whether the school remains good. It is not easy to do. They are not experts in law. We similarly have a legal team that provides advice. If there is an issue on inspection, our inspectors can always talk to the legal team about the law, but we think there are more nuanced areas around expectations. They are the sort of things that get picked up in reports. We had a case of a school in Leicester where boys weren't doing art, because it was thought to be a subject for girls, and we commented on that as a breach of equalities law, because boys shouldn't be denied provision to a particular subject because of a gender stereotype. Those types of nuances are picked up, but I would agree that it is not perfect and inspection is a very constrained activity.

Q204 Chair: But you would agree that your inspectors should be adhering to the law, not perpetuating social norms in terms of discrimination.

Luke Tryl: Absolutely. Our inspectors should be following the law.

Q205 Chair: So why did we have young people before us, just two years ago, saying that slapping people's bums and pulling their pants down was part of their everyday life in school?

Luke Tryl: I am confident that if our inspectors came across that within in a school, they would comment on it and reflect it.

Q206 Chair: With the greatest respect, they won't come across it, because it won't happen in front of the inspectors. They need to have a regime to interrogate, to find out what is happening in schools. Simply hoping that



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they will come across it isn't going to work.

Luke Tryl: We are not an investigative body, quite deliberately. But one thing that we do on inspections, which can occasionally prove controversial, is hold meetings with groups of pupils and the inspectors. The inspectors are former school leaders, so they know how to engage with young people. They will talk to the pupils about what it is like in the school. That is where things such as the case you mentioned might come up. It would be very difficult to see how, in the course of a one or two-day inspection, we could feasibly pick up all instances of what might be happening in a school.

Q207 **Chair:** Well, because you might ask the school to record it better.

Luke Tryl: That will be a matter for the Department. We don't have a specific sort of requirements on what schools need to record and report. But if the Department were to do that and to ask us to look it, then we absolutely would.

Q208 **Jess Phillips:** Can I just check on that? You don't have to check whether a kid's attendance is followed? My kids get a whole lot of badges for going to school every day. That is entirely because Ofsted checks on the school attendance.

Luke Tryl: Absolutely, but it is not an Ofsted requirement. We check compliance with the requirement as set down.

Q209 **Jess Phillips:** Could you not do that with incidents of safeguarding and sexual harassment? For example, you could make that a similar requirement for a school to report that.

Luke Tryl: We will absolutely look at safeguarding incidents at the moment.

Q210 **Jess Phillips:** But not specifically sexual harassment? Schools are never going to record the volume of sexual harassment that girls—every single girl you ever meet—will have to put up with at school. Schools are never going to record that until they are told that they have to.

Luke Tryl: I wouldn't disagree with that.

Q211 **Jess Phillips:** They wouldn't be monitoring attendance if it wasn't for that.

Luke Tryl: Absolutely, but I think that would be a policy decision for the Department, which we would then inspect against. I am not saying I disagree with that. Safeguarding issues do have to be documented, and one would presume that many of these instances fall into that category.

Chair: No, they do not. They are not recorded that way. That is the problem.

Q212 **Tonia Antoniazzi:** Talking about the relationship you have with the EHRC, do you collaborate with the Equality and Human Rights Commission on achieving better compliance with the Equality Act?



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Annette Lovell: We talk to them from time to time. We would use them as an organisation if we needed support or assistance in considering a particular matter, so we would have contact with them on that basis. Is that what you mean?

Q213 **Tonia Antoniazzi:** Yes. Do you have any examples of when you would have done this?

Annette Lovell: I think it is one of those things that happens on a routine basis. I don't have a specific example that I could share with you.

Q214 **Chair:** When you say that it is on a routine basis, do you mean that you have regular meetings with them?

Annette Lovell: I would not say that we have regular meetings with them. We meet them from time to time, but I am thinking more about how we would use them as a route to raise an issue if we had a question about how we were considering—

Q215 **Tonia Antoniazzi:** So it is on a needs basis rather than meeting twice a year or anything like that—it is not something that is scheduled, but if you need their advice, you will take it.

Annette Lovell: Exactly.

Tonia Antoniazzi: What about you, Luke?

Luke Tryl: I certainly think that it is something we could improve. We have routine meetings where the chief inspector will meet the chief executive, but I think it is fair to say that we have not detected a particularly great degree of interest from the commission in our work. I have talked about isolation; when we are dealing with tricky issues around the protected characteristics, we have perhaps not had some of the support from the commission that we might have liked. There was a recent case where we made a referral and did not hear anything back from them, so I think there is some work to do to improve that relationship.

Q216 **Tonia Antoniazzi:** When you do a referral, is it a written request or would you pick up the phone?

Luke Tryl: The recent one was a written referral. I think we got an initial response but then heard nothing further.

Q217 **Tonia Antoniazzi:** That leads on quite nicely to my next question: do you have any concerns about the EHRC's approach to enforcement? What changes would you like to see in the EHRC, if any?

Annette Lovell: I don't think we have any issues at all in that respect. I think we have always found that if we need to contact them, they respond to us.

Q218 **Tonia Antoniazzi:** And do you have a good working relationship with them?

Annette Lovell: It is not a close working relationship, but I am very comfortable that we can speak to them as and when we need to, yes.



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Luke Tryl: As I say, we do have routine meetings, but it would be good to have more support from the commission, particularly in the trickier and more blurred areas.

It would also be good for the institutions that we inspect to have some clearer guidance. Some of the guidance is very good, particularly around disabilities, but I am aware that schools have been waiting for EHRC guidance on gender identity issues for really quite some time. That would help both us, as the inspectorate, and schools. I think it is more a case of supporting the institutions with the expectations on them.

Q219 **Tonia Antoniazzi:** Do you think it is up to you in Ofsted to chase that up and ensure it happens, or are you just waiting for it to happen?

Luke Tryl: It is not for Ofsted to make policy, but part of the reason we produce our annual report is to say, "These are the areas where we think there are concerns about the provision of education in care, and more could be happening." We could probably be more proactive in our work with the commission, but as I said at the beginning, it is slightly different for us: because the Department is the regulator and the enforcer, we tend to use it as our main conduit.

Q220 **Chair:** As organisations, you would be subject to the public sector equality duty yourself.

Luke Tryl: Yes.

Chair: Both organisations?

Annette Lovell: I think that's right, yes.

Q221 **Chair:** So you have to work hard to ensure that you take equality into account when you do your work. You are saying that the Department is responsible for making sure that you are inspecting the right things. I am paraphrasing it for laypeople like me, but you are not setting the standard; the Department does that, and you make sure that it is met. To what extent, under your public sector equality duty, do you have an obligation to make sure that the Department is taking the right things into account?

Luke Tryl: To be clear, we determine our own framework under Government policy. We determine the nature of the judgments and what comes under them, but we reflect what Government policy is; we can change what we look at and how we look at it, but it has to be in line with the requirements of Government policy. Where we have had concerns around equalities law and requirements, we have been quite public about them. For instance, where we have found texts in schools that encourage violent or misogynistic attitudes, we have been very clear in our public engagement that we would like to see the Department doing more to support us to tackle them.

Q222 **Chair:** I know you have a huge burden and a lot to do, and it's very difficult, but there are some basic things that we need to try and change in society in relation to equality, in terms of attitudes and expectations



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and children, regardless of whether they have a disability and regardless of their ethnic origin or gender. Do you feel there is more you could do in that area, with your public sector equality duty hat on, to drive forward that change?

Luke Tryl: We have to be very careful that we are enforcing, to return to your other question, the law as it is, but we cannot also be seen to be gold-plating in that instance and going above and beyond our requirement. As I say, we look for compliance; we report on it. The chief inspector, Amanda Spielman, takes this very seriously and in a number of high-profile speeches has talked about what she sees as unacceptable practices in some schools when it comes to equalities. We see that as our primary role. Equally, where the Department proposes policies that we think would be detrimental to the interests of young people when it comes to equalities—which, thankfully, are very few and far between—we comment on that both privately and publicly.

Q223 **Chair:** You used the phrase “gold-plating”. What would you say is absolutely essential, and what might be an example of gold-plating?

Luke Tryl: In the area of—again, this probably comes up most often—an independent school and teaching around, let us say, sexual orientation issues, we would not expect a very orthodox faith school to have to do some full-throated endorsement of people of different sexual orientations. They are entirely entitled to teach the tenets of their faith. What we believe is that they have to talk about the different types of families and relationships and be very clear that pupils should respect them as well. That is the balance there. Institutions are entirely entitled to teach in line with the tenets of their faith, but they have to also respect what is in British law and tolerate other people. It is a fine line for us to tread, but I think we do it reasonably well.

Q224 **Chair:** But in all your examples, you tend to go to the extreme. You are not looking at the mainstream. Discrimination doesn’t just happen in extreme circumstances; it happens in everyday life. For instance, if you saw different attendance rates for different ethnic groups, would Ofsted pick that up? Would you look to enforce attendance across the board? Would you address that issue particularly? Or is that a matter for the Department?

Luke Tryl: If we went into a school and saw evidence that there were different attendance rates by different groups of pupils, we would absolutely comment on that. One of the things that we have been looking at with the off-rolling is whether it is low-attaining pupils being pushed off school rolls, and kids with special educational needs, in particular. We understand some of the pressures that schools come under, but that kind of practice is obviously always unacceptable. So we absolutely would do that. I used the more extreme examples to show where we have particular difficulties, but that more mainstream discrimination we would absolutely comment on. The chief inspector gave a speech last year where she talked about white working-class boys in lots of our communities who are not being given the push that they need to succeed.



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Q225 **Chair:** You have said that it's the Department that needs to change the rules and then you make sure your framework reflects that.

Luke Tryl: In terms of data collection requirements.

Q226 **Chair:** Would you ever use the EHRC as an influencer to help strengthen your argument to the Department that other areas need to be considered? Can you give me an example of where you have done that?

Luke Tryl: Absolutely. The Department is currently consulting on a new range of standards for independent schools. We have engaged with the Equality and Human Rights Commission on some of our views and are working with the Department as they finalise the response to that.

Q227 **Chair:** Do you have an example of where you have done that with schools paid for by the taxpayer? You seem to talk a lot about independent schools, which is quite easy, because it is easy for the Department to throw stones in that direction. What about in those that are paid for by the taxpayer?

Luke Tryl: I do not know of any specific examples of working with the Equality and Human Rights Commission on that. Equally, where equalities issues have come up in the maintained or academy sector, we have reflected that in reports. Some of you will have seen the Yesodey Hatorah report recently, which was a case where they were redacting significant bits of text—for instance, bits about the Queen's supremacy in Elizabethan England, or about women having different careers. Again, we reflected that in the report. That was a state school. I've just been passed a note that tells me that the Equality and Human Rights Commission was an interested party in the Al-Hijrah case, so it joined us on that. Again, that was a state school.

Q228 **Chair:** You are the director of the corporate strategy. You seem to be talking a lot about things that are on the periphery; I would like you to talk about things that are essential to every child's everyday experience of schools. Can you give me an example of where you have worked with the EHRC—in your role of having a public sector equality duty—to try to improve discrimination situations children find themselves in every day in school, rather than in a faith school or a particular situation? Give me an example of where you have worked with the EHRC on everyday discrimination.

Luke Tryl: I would have to get back to you about working with the EHRC on that. However, I would say that front and centre in our framework is that we expect schools to be compliant with equalities law. In our safeguarding guidance, we expect pupils to be free from homophobic, sexist or racist bullying. We know that when we put something into the framework, schools react and take it seriously, because that is what they will be judged on. If I have given the impression that we only look at this stuff in the extreme, I apologise. We look at it across the board—it is a central part of our framework.

Q229 **Chair:** But you have given me that impression. I am quite surprised, because I know that work has been done on more mainstream issues, but



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that is not the impression that you have given me today. It would be really useful to have some examples—maybe following this meeting—of specific instances where you have been concerned about an equality issue in a mainstream school setting funded by the taxpayer, and where you have worked with the EHRC to try to influence the Department to address it.

Luke Tryl: I will get back to the Committee with it.

Q230 **Chair:** Nick, just a final question, because we need to move on to our next session. How would you react to what we have heard today? You are the expert. Do you think we need to pick up on particular areas in the way the EHRC works with regulators, inspectors and ombudsmen to try to make these equality issues more central to the work that is being done?

Nick O'Brien: To be fair to the EHRC, I know that, from about 2012, it used to convene an information-sharing forum of regulators, inspectors and ombudsmen. My impression is that it did not have enough bite in the end, and it got rather lost in the long grass. That sort of more formalised liaison, and possibly memoranda of understanding between them—

Q231 **Chair:** And that doesn't happen?

Nick O'Brien: No, I don't think that did happen. I know the Parliamentary and Health Service Ombudsman was seeking us at one stage, and, as far as I am aware, that did not happen. Another thing has not happened here, but has happened in Northern Ireland, where the Northern Ireland public services ombud has worked very closely with the human rights commission. They have had staff on secondment from the human rights commission to the ombud to try to establish how they can mainstream human rights considerations, including equality, into their work. They spent a year doing that and published a manual that has become quite celebrated and disseminated elsewhere. I don't think that has quite happened here—I suspect it is a question of prioritisation. In my view, taking those sorts of initiatives would be a significant step forward.

Q232 **Chair:** Which are the most important regulators, ombudsman and inspectors?

Nick O'Brien: Well, I used to attend the RIO forum, and the Care Quality Commission was certainly a key player there—obviously in health and social care, which is a huge issue. In education, clearly Ofsted has a key role to play. You have already mentioned the Health and Safety Executive. In respect to civil libertarian issues, prisons and immigration institutions can also be a very significant part of that picture. There are different levers for different sectors.

Q233 **Chair:** Do you think that, generally, these regulators, inspectors and ombudsman are aware of their public sector equality duties?

Nick O'Brien: I would be surprised if they are not aware of them, but it is probably at a fairly abstract level. I suspect that it is not prioritised. To get that prioritisation requires constant reinforcement. I am not sure that that has always been the case. Maybe we have taken our eye off the ball. The

equality duty was perceived as a massive step forward, turning equality law on its head. I think back to the Hepple report in 2000, which made this argument. Nearly 20 years on, I am not sure it has been quite realised in practice. The structures are there, but, as ever, it requires implementation, and that comes down to prioritisation.

Q234 Chair: And the EHRC has an important role to play in making it more of a priority.

Nick O'Brien: I think it has to be the catalyst and the mobiliser, because nobody else really is.

Chair: Thank you all so much. That was really helpful. That is the end of our first panel. I thank our witnesses for their time. I know it takes a lot of time to prepare for these things, so thank you very much. If our first panel can please move stage left so our second panel can take up their positions, I would be very grateful.

Examination of Witnesses

Witnesses: Esther Leighton and Doug Paulley.

Q235 Chair: Good morning. Thank you so much for joining us today as our second panel. I know it takes a huge amount of time out of your day to be here. We are immensely grateful to you for taking that time. We are really interested in all the incredible work you are doing in this area. As I said at the beginning of the first panel, the usual format is that Members have various question areas to go into. We will start the session with Jess Phillips, but before we do, can you give your name and the organisation you represent?

Esther Leighton: My name is Esther Leighton. I am here as an individual; I am not representing an organisation, although Doug and I, as well as some other people, are in the process of setting up an organisation called Reasonable Access.

Doug Paulley: I am Doug Paulley. I am similarly here as an individual, although I am also part of setting up this independent organisation called Reasonable Access.

Chair: Brilliant. Thank you very much. The first set of questions is from Jess.

Q236 Jess Phillips: Thank you very much for coming in. You have both acted to enforce your rights through the courts, but we have heard lots of evidence showing that most people do not do that. So why did you decide to take legal action?

Esther Leighton: I would say that I have enforced some of my rights somewhat effectively. The first time I decided to do that was when I was at Cambridge University. I was being discriminated against, and if I had not started legal action, I would have had to leave and not finish my course. That was then resolved as a result of me having started legal action. The second time was nearly a decade later. There is a street near



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my house, which has lots of shops with a single step to get in. I repeatedly asked different shopkeepers at different points to buy a ramp, or to buy a ramp between several shops. I had written to the traders' association, and they were not interested in doing it, so I started legal action against a number of shops in the street.

Doug Paulley: I guess that for both of us—certainly for me—it is outrage at the egregious treatment that I experienced in a specific instance. It involved marathon co-ordination that did not take into consideration disabled people. The point is also that we are, to a certain extent, able to do this. I was in a position to do so partly because of the support and guide of, at the time, the Disability Rights Commission, which put me in a position to challenge this—but the reason I challenged it was because it was so blatantly unfair, and it was the unfairness that got to me.

Q237 **Jess Phillips:** So you had support specifically from the Disability Rights Commission?

Doug Paulley: Yes.

Q238 **Jess Phillips:** Was there any other group, encouragement or support that you had in taking that action?

Doug Paulley: No groups per south-east. I was lucky that friends and family were very supportive. Most of the support came through the Disability Rights Commission, who were excellent.

Q239 **Jess Phillips:** And yourself, Esther, did you have any support?

Esther Leighton: Yes, absolutely. My partner sits on the employment tribunal, so throughout the time we have been dating, we have had these conversations, often almost daily: "Oh, here's another restaurant we can't get in—yet another thing." This particular street was somewhere we had wandered down a lot. I had spoken about how upset I was, and she was willing and able to support me in taking those initial cases. Now, I tend to do this stuff much more on my own, but then I had support—a lot of emotional support from other people and some very practical support from her.

Jess Phillips: You have both outlined the convenient position you happen to be in, being linked up already with the Disability Rights Commission, and because of good choices on your own parts.

Esther Leighton: Thank you.

Jess Phillips: My husband is a lift engineer; that is quite useful, but not really.

Esther Leighton: That would help me.

Q240 **Jess Phillips:** Funnily enough, disabled people always say to me, "Your husband is more important than you in an inequalities field." But there was no obvious phone number to call, or organisation that would have been obvious for you, had you not been well connected in the areas that



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you were?

Esther Leighton: No. In fact, quite the contrary; I did an awful lot of phoning round and trying to get help from my local councillor, from my MP, from the equality advisory online advice service, from Doug's website, and all sorts of other places. I tried to get support from other people and the citizens advice bureau, and none of them were able to help. There is lots of discrimination that I experience as a disabled person, but it was clear that this was the only way I was going to be able to do anything about this problem of steps. In a case that I have recently had settled, the adjustment cost £53.50, including next-day delivery. I am just outraged that we are here and that this is still a problem, as in Caffè Nero this morning—I asked them to get a ramp two months ago, and they still have not done it.

Jess Phillips: They don't cost much.

Esther Leighton: I know. So, yes, I felt there was nothing else I could do.

Q241 **Chair:** Doug, you specifically talked about the Disability Rights Commission, and you specifically did not talk about the Equality and Human Rights Commission. Explain.

Doug Paulley: To a certain extent, that was because you were asking how I first got into it, and I started before the Equality and Human Rights Commission. That said, I do feel there is a substantial difference between the Disability Rights Commission and the Equality and Human Rights Commission, in that I felt the Disability Rights Commission was much more proactive, approachable and useful than the Equality and Human Rights Commission has turned out to be. I need to be a little bit careful, because it backed me against First Bus to the tune of tens of thousands to hundreds of thousands of pounds, but I think the experience of disabled people approaching the EHRC is very different from the experience I had with the Disability Rights Commission.

Q242 **Chair:** How? In what way?

Jess Phillips: We don't want to put you in an awkward position regarding your litigation.

Doug Paulley: I just found the Disability Rights Commission much more proactive and easy to interact with. To be honest, it felt like they lost their mojo completely when they joined the other equality bodies and became the Equality and Human Rights Commission. I see the list of powers that they have, and the interactions and interventions that they can make, and think, "Blimey, I didn't know they had those." They don't seem to be anywhere near as proactive, as in the public eye or as supportive, particularly of disabled people and probably of other characteristics as well.

Q243 **Jess Phillips:** Do you think that that is a marketing thing? Again, my husband is a lift engineer, and when DDA came in, there was a huge public push, and the public became much more aware of things like there



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being a chair in a lift for people to sit down on, things being lower and so on. It seemed like things were really changing. Do you think that there is a problem with pushing out the idea that, for disabled people's rights, the EHRC is the avenue?

Doug Paulley: Yes I do. It is interesting how many people still refer to the DDA, even though it hasn't been around now for nine years.

Jess Phillips: I am sorry; I still call it the DDA.

Doug Paulley: I understand; in the transport sector, they certainly call it that.

I guess one problem with the Equality Act is that equality of treatment is not the same thing as equality of outcome. Disabled people have to be treated as special cases in order to have something approaching equality of outcome. In the First Bus case, when I was after equality, a lot of people said to me that equality is first come, first served for the wheelchair space on a bus, and that if somebody with a pushchair gets on before me, I am asking for special treatment if I want them to shift. The answer is that, yes, we do expect special treatment, because that is the only way that we can have something approaching equal access to the facilities that other people take for granted. I think that this whole thing of putting disabilities together with other protected characteristics is a major problem. That is part of the problem with the EHRC after the Disability Rights Commission became a part of it.

Q244 **Jess Phillips:** Esther, have you been supported or had any legal help? On your Caffè Nero example, would you ring the EHRC and say, "Get on to Caffè Nero"?

Esther Leighton: No. Caffè Nero I have settled with repeatedly. I have no confidentiality agreement. I have asked whether the EHRC are interested, and they are not, because it is not a strategic or interesting legal point. There is not really a question of whether a Caffè Nero in central London should have a ramp. That is not an interesting legal point. However, I would really like a coffee. There is no method—

Jess Phillips: There are better places than Caffè Nero.

Esther Leighton: There is no support for cases regarding things that are not enormous—such as an employment case or university, which take up your whole life—but that happen many times and are really cumulatively upsetting. They are horrible in the way that they pick away at your ability to be a full member of society. You can't get no win, no fee agreements, and the EHRC do not fund them. Being a litigant in person is the only way to take those cases.

Q245 **Jess Phillips:** Have you had any legal advice at any stage of taking enforcement action?

Esther Leighton: For one of my cases, I had some early legal advice. In the end, I had to settle that case, because getting legal advice meant that it had been put in the fast track, and my costs would therefore not be



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covered. They put in a really novel and weird defence, and there was a risk that, even though the case was really solid, enormous costs would be awarded against me. Despite it being a really solid case, I had to drop it.

In two of my other cases, a solicitor applied for EHRC funding for assistance, and the EHRC turned it down. I thought both of them had interesting legal points; in one of them, the guy rammed a letter into the back of my wheelchair, and I took that case on myself and won it quite some time ago. He chased me down the road with a complaint letter, put it in the back of my wheelchair, pushed the back of my back rest and moved my body. The EHRC was not really interested in that.

The other one was a case where the defendant thought that my letter before action was so objectionable that he reported me to the police. The police asked me to come in for an interview under caution for the offence of blackmail, which has up to 14 years in prison. They told me not to write upsetting letters to businesses.

Q246 Jess Phillips: Okay—so no is the answer. That is quite a comprehensive no, whereas you, Doug, have had legal advice, support and funding.

Doug Paulley: On some cases.

Esther Leighton: I have had some pro bono legal support for some of what I have been doing.

Q247 Jess Phillips: Obviously, the strategic issue that you have covered is the idea of changing things more broadly in interesting points in the law. What did you both want to achieve through bringing your action?

Doug Paulley: In the first action, I wanted it to be acknowledged that they had done some form of ill to me, and that it was illegal and unacceptable. Now, it has changed to being a little more strategic.

Q248 Jess Phillips: And yourself, Esther?

Esther Leighton: What did I want to achieve? I guess some kind of redress—a sense of justice or progress and that the Equality Act had some use in my life, and to feel less frustrated and hopeless. An unexpected result of some very negative publicity that I got was that the change was much wider. Around my whole city, there are lots of new ramps. I would really like businesses and service providers in general to do that because they ought to, but if the only reason they will do it is because they are somewhat afraid, I will accept that.

Doug Paulley: I guess there is a dichotomy: it has to be individual instances of discrimination to go to court. To test the point about what priority there should be for wheelchair users on buses, it had to be that one day back in February 2013. You want to win that case because of what happened on the day, but there are very few people who bring Equality Act cases for disability discrimination in services. Those who do are either people trying to achieve some form of wider change—I would say we are—and using this imperfect tool is one way of doing that, or they



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are people who have experienced something so terrible that they feel they had to take it on.

That is as well as trying to achieve a win in each case. For example, there was London Underground the other week. A couple of times they have taken out lifts and not provided proper information, and I wanted that recognised. It is also an attempt to achieve more of the strategic-level awareness and change in service providers' attitudes, which is difficult to do via individual legal action.

Q249 Jess Phillips: This is my last question. You both seem to have taken on quite a lot of litigation. Do you worry that because you, as individuals, have to do it, you will be tarred with bad publicity as frequent fliers looking for trouble?

Doug Paulley: Yes.

Esther Leighton: Yes.

Doug Paulley: I do worry about it because I know it happens.

Q250 Jess Phillips: So as litigants in person, you have been put in that position as well?

Doug Paulley: Yes.

Esther Leighton: Yes. That is something I have needed to address, both with people I am making complaints to and judges. There is an impression in some quarters that experiencing discrimination a lot makes you somehow immune to it, and that individual instances of discrimination become less upsetting. Our shared perspective is that it is the other way around: experiencing something on an ongoing basis that you know is really wrong makes it more distressing. That is definitely a problem. I feel that, at this point, it has already happened, so I might as well carry on.

Q251 Jess Phillips: Do you worry about the effect that it will have on your ability to get a job, and that people will look you up on the internet?

Esther Leighton: Yes, I really do worry about that. In one of my cases, I was explicitly threatened with all of my medical information being made public, because the defendant decided to defend the case—despite having my care plan and entitlement to PIP already—in part based on the fact that I might not be a disabled person. Therefore, he was requiring increasingly intrusive medical information. Because I was a litigant in person, I was afraid that my case was going to be thrown out, because he kept saying that I had not proved that I was a disabled person. I applied for a reporting restriction on my medical information specifically, which was granted, but that was very difficult to do. I think that it should be possible for cases to be reported anonymously, in order to get the wider benefit without bringing so much negative attention on an individual person, particularly with regard to sensitive disability-related information. The whole thing was hideous. I am really glad that the judge was kind and understood that I was clearly distressed, because otherwise I would have had to choose to withdraw the case.

Jess Phillips: Thanks very much. That is pretty impressive.

Esther Leighton: Thank you.

Q252 **Sarah Champion:** You are very impressive, as is the campaigning you do.

You gave the example of your personal information going into the public domain. What changes would you like to see to protect your personal information more? Or do you think it will be a consequence of going through our adversarial court process?

Esther Leighton: I think the court process is inherently adversarial. I would like to see lots of options that were not just the court process.

Q253 **Sarah Champion:** For example?

Esther Leighton: There is a process that the American ADA can use called structured negotiation, which makes binding agreements. I would really like to negotiate with Caffè Nero, so that they do not pay me off every time and we never end up in court, but they do something about every Caffè Nero in the country and prove to me that they have done it. Then, I will go away. I would like that to be public, so that other coffee chains and other people it applies to can see that that was really important.

Q254 **Sarah Champion:** Do you think that that is the sort of thing that the EHRC should be taking on? You say that with Caffè Nero they saw it as individual little things and it was not a big show stopper, whereas something like that could be.

Esther Leighton: Yes, I absolutely do. I also think there should be mediation with mediators who understand at least the basics of the Equality Act. My experiences with the small claims mediation service have been fairly dire. I think that that could be a meaningful process. Could you repeat the question? Sorry, I got distracted.

Q255 **Sarah Champion:** It is difficult because you are a litigant in person, which means that it is going to be personal. For example, should details about your condition not be in the public domain?

Esther Leighton: Sure. On disability information—personal disability information—I was, for example, quite happy to have in the public domain the fact that I have got a lifelong impairment that affects my upper and lower body and as a result I am a wheelchair user. That was relevant to the case, but I don't think that a long list of my diagnoses, what it might look like in the future and any other things that it affects should all be in the public domain, and I think that that should be quite automatic. I don't think that I should have to pay £255 extra to make an application for that to be private and for that to be at the discretion of the judge. On other information, it would be much better if there was a right, almost like there is in domestic violence, to have details of your discrimination redacted so that your name wasn't attached to it and people could talk about it in the



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press and quote what happened without it making my actions bigger when future employers and clients and so on Google me.

Q256 Sarah Champion: You mentioned the judges, and yet a judge at the beginning of your case could say what is admissible and what is inadmissible, as they do in other cases. Would it help if judges were given guidance?

Esther Leighton: That would be enormously helpful, yes. It would change the sorts of cases that I took and would also change my experience of taking those cases. It would make them less distressing.

Q257 Sarah Champion: Doug, your First Bus campaign case got a lot of positive publicity, but it also got a lot of negative publicity. Did you get any support to deal with that?

Doug Paulley: No. After the end of the case I arranged a meeting with David Isaac, the head of the EHRC, because I was concerned about the way that claimants were not supported. It got quite serious. The comments in local newspapers and on news websites don't bother me anymore—I expect them—but there was a proper attempt at hate crime and knocking me off the web. There was a massive DDoS attack—a denial of service attack—which my host confirmed was not just some random thing. It nearly lost me my website and my email address. I had had death threats and other such. In the end, I involved the police, but the police said that online crime cannot be hate crime, which I thought was interesting. So then I ended up having to fight the police. I put in a complaint and Action Fraud, which is the police arm that is specialist in online matters, changed. I don't feel I had the support that I needed to deal with some of the more unpleasant attacks that I had as a result of the First Bus case.

Q258 Sarah Champion: And that case was being supported by the EHRC.

Doug Paulley: Yes.

Q259 Sarah Champion: So effectively you were the face of something that—How involved were they? Were they just funding it or was it effectively their case?

Doug Paulley: It had been started by a campaigning lawyer, Cath Casserley, a barrister doing it as no win, no fee, and with after-the-event insurance against adverse costs. But then at appeal and Supreme Court level it was funded by EHRC. We actually had to break their agreement. All the publicity that we did was specifically against their funding agreement, which said that we would only be allowed to do publicity that had been organised or arranged by them, but they never organised or arranged any. At least half of the point of the case was raising this issue. Also, EHRC said that one of the reasons they funded it at Supreme Court level was because of the excellent publicity that had been generated, and yet that was directly contrary to their funding agreement for the case, so we had to break their rules.



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When I spoke to Mr Isaac, I asked for their support in trying to get the City of London Police to change how they investigated hate crime. In the end they kind of did. There wasn't any practical support around access needs or emotional support. They provided the money. The last time I criticised them in a Select Committee, they commented afterwards that I had been slightly less than grateful—that is what their staff had said inside.

Q260 **Sarah Champion:** Did they thank you at the end of the case?

Doug Paulley: No.

Q261 **Sarah Champion:** You said that the publicity it generates is a big driver for getting change.

Doug Paulley: Yes.

Q262 **Sarah Champion:** So whether or not you get legal change, you get the awareness. Esther gave the example of ramps going in because other people think, "Oh crikey, it's in the news so we ought to do something." I wonder how, as a litigant in person, you balance that public scrutiny with the need for publicity. Does one justify the other?

Doug Paulley: It is very difficult. There are so many things to try to triage. When I am thinking of taking on a case, I have to work out whether it is likely to succeed, whether it is likely to be worth the effort, what sort of change it might make, what comeback there might be, how best to tackle it and whether to do the publicity. At First Bus, in the first instance, we were very quiet and kept it under the radar, so that First Bus themselves were not aware of the significance of the case. That worked through not having publicity. That was a useful tactic. We do not know, and we cannot judge, how nasty a defendant—or their representative—we are going to get, or if they will be much more co-operative. Some of them are unknown. Every time I take a case on, it is—*[Interruption.]*

Chair: Excuse me. You are not allowed to take photographs in here.

Q263 **Sarah Champion:** Every time you take a case on, you have to weigh up all those things.

Doug Paulley: Yes. We cannot know, a lot of the time, how much it is going to take. I could issue against somebody and it gets through—that happened with a train company. I had had a terrible experience with their customer relations staff, then I issued and it got through to the people higher up and they were like, "Oh my goodness, I can't believe that our own staff have treated you in this way. Let's sort this all out and stop it happening again." Or it could be a negative reaction that is very defensive, with unpleasant solicitors using tactics that are as undermining as possible. So, as well as trying to plan things and work things out and triage which cases to take on based on a number of different factors, there is also that complete lottery.

Q264 **Sarah Champion:** But presumably you have to be in a strong place yourself emotionally.

Doug Paulley: Yes. I think sometimes I give the impression of being stronger than I really am.

Sarah Champion: We all do that.

Doug Paulley: Yes. There have been times when I have had severe mental health crises involving input from mental health crisis teams and all sorts as a result of the unpleasant treatment and threats that I have had as a result of taking cases on.

Sarah Champion: I am very sorry that that happened, but the changes that you are getting are amazing.

Doug Paulley: Thank you.

Chair: In the interests of time, I know you have other obligations, Angela, so we will go on to your section now.

Q265 **Angela Crawley:** I am conscious that I have limited time, so please do not feel like you are being rushed; it is just that I have to leave imminently. To come back to some of the cases that you have specifically taken to court, what was your experience of using the court system? Esther, you mentioned that there are other options, such as structured negotiation. Are there changes that you would like to see in the court process to make it easier for individuals to enforce their rights? Would you have preferred to be able to go to an ombudsman or a body that offers mediation?

Esther Leighton: I am not sure what I think about the ombudsman idea. I would definitely like there to be better support for mediation. My experience with mediation has been that I have offered it to several people—in fact, everybody who I have taken to court or settled with. Nobody has taken it up apart from the small claims mediation service, which some people do take up. The small claims mediation service—if you don't know—is limited to an hour and there is no requirement for either the mediator or the other side to have even a basic understanding of what we are talking about. In the mediations that I have been involved in, by about 50 minutes in you are starting to get somewhere where everybody has agreed that there was not a row. Then, the mediator says, "Our time's up now. Off you go to court," and that is the end of it. I feel like that could be a lot better.

With the mediation service, from a very practical point of view, it is also extremely difficult to ask for a reasonable adjustment to the mediation process itself. They are really resistant to it. I would like them to publicise the adjustments that are easily available and where you can contact someone if you need an unusual adjustment. When you are a litigant in person doing discrimination, there ought to be a longer period of time available and, yes, maybe a requirement for the defendants to read in advance. There is a requirement for things that you have to do before mediation. If reading some of the EHRC code of practice for service providers was part of that, maybe you would be coming to have a



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discussion with a bit of a shared understanding. Those are my thoughts on mediation.

In the court itself, again, asking for reasonable adjustments is really varied. I have had some excellent experiences. Judge Capon at Cambridge county court has really been excellent at providing me with reasonable adjustments, but then court staff have tried to ban my assistant from sitting near me, for example. It is very difficult to complain about those things when you are afraid that you would then get different treatment.

Q266 Angela Crawley: Let me turn quickly to the courts' powers. Obviously they have the power to award damages or, in the instance of county courts, issue injunctions requiring the prohibition of certain information. We have covered some of the instances that you have had of that, Esther. Through your efforts, you have secured specific remedies, which you wanted to enforce your rights. We have spoken about confidentiality and aspects of your medical records, but are there any other remedies that were not available to you that you think should have been?

Esther Leighton: I would like really clear guidance for the courts that says that refusing an NDA is an acceptable reason not to settle, because that is something that I am really afraid of and I have pushed back quite hard against NDAs. So far, that has been successful, but at the point at which somebody says, "No, we want to pay you this money, and you will have an NDA or you will have to go to court," I am afraid that the court will penalise me for not having accepted a reasonable offer.

Q267 Angela Crawley: On that point, are there any occasions on which you have signed a confidentiality agreement or an NDA, and is there a particular reason why you did so on those occasions?

Esther Leighton: Yes. There are two occasions. One is the case that I mentioned, where there was the potential for massive costs against me. I agreed to an NDA because we have a massive dispute about facts, so it is probably for the best that nobody talks about them. The two other times that I have applied for an NDA were when I was at the very beginning of this and I found negotiating with solicitors more difficult—I was not sure what I was allowed to push for or not. I have a partial NDA. They are both about petrol stations in Greater London. That was sufficient that I could talk about it to anybody I wanted, because that is not identifying. I do not know what I would do if it were a much more specific thing. Since then I have generally just refused them. Sometimes they try to reduce their offer when you have agreed to a settlement.

Doug Paulley: Some bits of the Equality Act are theoretically enforceable without people having to go to court, particularly the transport provisions—taxis and buses. They are criminal law. There is a criminal law obligation to do certain things regarding buses and taxis. In theory, that is better because—*[Interruption.]*

Chair: Sorry, just wait a moment. I know it is incredibly distracting—that is just the bell to say that the House is sitting. It will stop in a moment.

Angela Crawley: I apologise. I have to go.

Chair: Sorry. Angela has to go to question time. I'll take over.

Doug Paulley: The public service vehicle accessibility regulations are in there. There are bits about taxi accessibility, which the Lords Committee pushed for and got put in. In a way they should be better, because it is a third party that is enforcing—whether the DVSA, the police or taxi licensing officers at the local authority. You don't have to go to court and your name is not necessarily in it. Having done substantial research, particularly on taxis, and got legal opinions on things like rail replacement buses, I have found that the law is little recognised or implemented. If you try to complain about it, the bodies that are there to enforce it don't know about it and don't know how to implement it. Unfortunately, sometimes when there are enforcement mechanisms other than taking providers to court, it does not necessarily result in a better outcome.

It is largely through everybody's ignorance—disabled people are not aware that this is a criminal offence, neither are the police or the people who are committing them. For example, all providers of modern coaches have to ensure that coaches are accessible. If they have seats in the wheelchair space, they have to be able to be removed quickly. Yet nobody noticed that National Express, Megabus and Scottish Citylink—the three large coach providers in the UK—required wheelchair users to book 48 hours in advance, so that they could take the seat out of the wheelchair space. After I raised this, the DVSA told all the providers that they had to change their policies and practices, yet this had been the law since 2000 under the Public Service Vehicles Accessibility Regulations. That was under the DDA, and now it is part of the Equality Act 2010. There are not just problems in the county court system and in enforcing it. I very much miss the disability conciliation service, which became the equality mediation service. I successfully sued the small claims mediation service for disability discrimination, because it is so terrible at service provision on accessibility grounds. Having a specialist service on access issues was really valuable, and it has gone. It is such a shame.

Q268 **Chair:** We have heard in the evidence we have had before the Committee that suggests a strategy for making people more aware of equality law is to take a number of cases in a certain area—say 50 cases—and really make the point to employers and service providers that the law has teeth. Do you think that is an interesting strategy? Do you want to comment on that in terms of the Equality and Human Rights Commission and the deployment of its resources?

Doug Paulley: You just have to walk down the high street to see instances of discrimination all the time. There are so many places that I cannot get in. I am the stereotypical disabled person: a wheelchair user and a middle-aged white gentleman. Most disabled people are not wheelchair users, but it is easy to recognise the fact that many shops and businesses are not accessible. Service providers are not aware of their obligations or that there is any significant chance they will be taken to task for them, because there are not enough cases being taken. We need a lot



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more cases to be brought. I also wonder if it could coincide with an inquiry by the Equality and Human Rights Commission. It has lots of powers, but one is that it can look into one specific aspect across an industry, say. Maybe it could do both together—a whole load of strategic cases on one issue as part of an inquiry.

Chair: Coffee shops, maybe?

Esther Leighton: Certainly it would be great for high-street-level access to get better, and access for deaf people to interact in regular high street premises.

The other thing I would add is that the number of cases is probably not high enough, particularly if they are spread around different protected characteristics and different needs within those protected characteristics. Pragmatically, I think we should be making it better for litigants in person, because if just a few more litigants in person were doing this, it would have a substantial impact.

Q269 **Tonia Antoniazzi:** Thank you for all the work you are doing—it must be very distressing for you. I have come across a number of cases where access issues were just not dealt with at the planning stage. New buildings are going up—you talked about Costa, and that is a classic example. I just find it so frustrating—

Esther Leighton: To be fair, Costa are quite good; it is Caffè Nero.

Q270 **Tonia Antoniazzi:** Sorry, Caffè Nero—it starts with a C and it is Italian. As a parliamentarian, I am frustrated, because we should not even be in this situation. As Doug says, having an increased number of litigants will change the situation, but we should not even be at that stage—this should not be happening in the first place. One thing that I am trying to push is for wheelchair users and blind people in my constituency to feed into the council about planning decisions before they happen. I have written to the council, but I feel as if I am not making a difference. Do you agree that it should be down to somebody to ensure that these things do not happen in the first place?

Doug Paulley: Yes, I agree. Cath Casserley told the Equality Bill Committee 11 years ago that trying to achieve societal change through individual disabled people taking legal action puts a heavy burden on them. She was right: it is a heavy burden and there are not enough of us who are able to do it. I make no criticism of other people who do not, because I am in the incredibly privileged position of being able to—but we should not have to.

The whole individualising approach, where individual disabled people have to take things to court, is part of the problem. Yes, we have been discriminated against in a specific instance, but what we are trying to achieve is not just for our benefit. The whole individual tort law system does not really do the job. It is incredibly frustrating.



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Also, sometimes you take action and people promise to make changes, but then you go to another branch—or even the same branch some time later—and find that that has just not happened. It does not work as an enforcement system, and the evidence for that is that so many providers ignore their obligations with impunity or do not even know what their obligations are.

Q271 **Chair:** I am very conscious of the time, because I know that a number of Members have to go to another meeting. What would you like to see in the EHRC's new enforcement strategy? Quickfire answers, please.

Esther Leighton: Ways of supporting litigants in person, including having a mandated database of settlements, and publishing and paying for judgments in the lower courts in services cases—there are so few of them that we only get them if we pay for them out of our damages.

Chair: Sorry—I don't understand.

Esther Leighton: When a judge gives a judgment that goes into great detail about why steps are a problem for wheelchair users and should not be there, if I pay the court for that judgment I can use it in future cases to negotiate to get a ramp so that we do not need to go to court. The judgments are only published when they are given in higher courts, and there are very few cases.

Chair: That is a really good practical suggestion.

Esther Leighton: As well as transcripts and a database of settlements, we need a list of aggravating factors. If Caffè Nero keeps paying me off, that should make it worse—and if I am being discriminated against a lot, it should not make the judge think that it is lesser.

Q272 **Chair:** Doug, are there any particular things that you would like to see in the EHRC's new enforcement strategy?

Doug Paulley: A target for a number of interventions, injunctions, judicial reviews, threats of them, inquiries, investigations, agreements and assessments. Those seem to be their main powers, so a target for a substantial number of those would be really good.

Chair: So it is about having targets for them to deliver a certain number of those things during the year.

Doug Paulley: Yes, because frankly they do not.

Chair: Brilliant. I have to say that we could have gone on all morning—this has been an incredibly helpful session. On behalf of the whole Committee, I thank you for all the work you do anyway, but also for taking the time out of your diaries to come here today on top of that. We are immensely grateful. Thank you very much—and I am sorry that this room is not more accessible. That is not terribly easy to explain, given that this is not one of the Victorian parts of our building, but it is probably indicative of why Parliament probably needs a few more people like you here.