

Equality and Human Rights Commission's response to the report of the House of Lords Select Committee on the Equality Act 2010 and Disability: the impact on disabled people

Recommendations to the Commission

Recommendation 8: We recommend that the Equality and Human Rights Commission engage with disabled people and their organisations to co-produce a disability-specific action plan covering the full range of the Commission's powers. The Disability Committee's involvement will be fundamental to the development and implementation of the plan, but it must belong to the whole organisation. (Paragraph 137)

1. Accepted in principle. The Commission engaged with disabled people's organisations and the Disability Committee when developing our [Strategic and Business Plans](#), which set out our aims and objectives across our remit and using the full range of our powers. This was part of wider stakeholder engagement and we have published [an analysis of the equality and human rights implications](#) of our Strategic Plan 2016-19, and a [report on the outcome of the consultation](#). The Disability Committee has also engaged with disabled people's organisations and other key stakeholders, and information from this engagement has supported the development of its priorities.
2. Disability is embedded across our work programme, including through a number of projects aiming to address issues affecting people sharing a number of protected characteristics, such as pay gaps and the impact of changes to the welfare system. Projects involve stakeholder engagement, including with disabled people's organisations and the Disability Committee where appropriate. Specific disability projects include our forthcoming housing inquiry, a report on tackling disability-related harassment and new research on disability, as well as current work on air travel and on

addressing the experiences of people with learning disabilities in the criminal justice system in Scotland.

3. Building on this, we will continue to strengthen our engagement with disabled people and their organisations. However, we do not consider that a separate co-produced action plan would be the most effective way of embedding work to tackle the barriers facing disabled people in our corporate approach.

Recommendation 9: We recommend that, from 1 April 2017, the Equality and Human Rights Commission use its powers under Schedule 1 to the Equality Act 2006 to re-establish its Disability Committee as a decision-making body, in a way that as closely as possible mirrors the current statutory functions and powers of the Disability Committee. We welcome the fact that the EHRC continues to provide dedicated staff support for the Committee, in the face of staffing reductions, and recommend that it ring-fence specific resources for the Committee. (Paragraph 144)

4. Not accepted. It is a key aspect of the Commission's 2016/17 Business Plan to manage the transition from the current Disability Committee to new arrangements after the Committee ceases to be a statutory body from April 2017. In our view, it is essential that in doing so we think more broadly about how we engage all people affected by our work.
5. We are keen to work closely with experts, practitioners and delivery partners to ensure that our work is well-evidenced, relevant and has impact, while maintaining our independence. We remain absolutely committed to working closely with disabled people and their organisations to protect and promote equality and human rights, and will be talking to Disability Committee members and other stakeholders about the best engagement model for the future. We will take this forward as part of a wider look at our governance structure in the autumn.

Recommendation 11: We further recommend that, once the Equality and Human Rights Commission is again responsible for the services provided by the Equality Advisory and Support Service, it should develop a service specification and strategy to realise fully the advantages of in-house provision, including face-to-face legal advice, the restored conciliation service and the link to its enforcement function. (Paragraph 156)

6. Accepted. We strongly support the Committee's recommendation that the Equality Advisory and Support Service (EASS) be returned to the

Commission, either in-house or as the contract managers for a tendered-out service (Recommendation 10).

7. Contrary to the Government's response to the Committee (under Recommendation 10), the Commission made clear to the Government that we would like to take back responsibility for overseeing the EASS or, at the least, have a greater level of control over its operation. In December 2015 we wrote to the Government setting out our concerns in relation to the quality and effectiveness of the EASS service. We concluded: 'Our proposal is for the reshaping and retendering of the EASS helpline to be led by the EHRC, rather than Government. The EHRC is better-placed than Government to provide the expertise, support and strategic relationships which would address the shortcomings of the current service and ensure the new service delivers better value for money'.
8. The Government did not take up this offer but instead invited us to comment on the draft specification for the service and issued a new invitation to tender in April 2016. We asked to be involved in selecting a contractor and be made a party to the contract, so that we could have more control over delivery of the EASS. The Government rejected these proposals, but has invited us to sit on the project board which will manage the contract once awarded. We have indicated that we wish to take up this role and, in doing so, will seek to ensure, to the extent possible under the terms of the new contract, that the EASS:
 - a) provides a high quality service, offering meaningful advice and support to those who have experienced discrimination
 - b) collates and disseminates information about those contacting the service and the nature of their concerns in a way which allows the Commission and others to identify trends in people's experience of discrimination, and
 - c) notifies the Commission of issues in relation to which the Commission may wish to take enforcement action or use its litigation powers.
9. We will continue to keep the operation of the service under review and, if appropriate at that time, will press again for it to be returned to us when the new contract expires.
10. In addition, we are exploring ways of increasing access to effective and efficient dispute resolution for equality and human rights disputes including, in particular, whether it would be appropriate for the

Commission to play a greater role and, if so, to define a model for any new function.

Recommendation 14: We recommend that the Equality and Human Rights Commission work with local and national disabled people's organisations to undertake a wide programme of educational activity, raising awareness of the rights of disabled people and the responsibilities of those subject to duties under the Equality Act 2010. (Paragraph 191)

11. Accepted in principle. The Commission has already launched a £100,000 project to fund a report by disabled people's organisations for next year's examination of the UK under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). We will also shortly be publishing a report focusing on disability, containing analysis of evidence according to impairment. We will use both reports to inform our work and raise awareness. In addition to this, we note the concerns of the Committee and will explore, with disabled people's organisations, what would be effective ways of raising awareness of rights and responsibilities.

Recommendation 18: The Equality and Human Rights Commission should prepare a specific Code of Practice on reasonable adjustments to supplement the existing Equality Act Codes. This would provide an appropriate balance between flexibility and clarity. (Paragraph 231)

12. Not accepted. Extensive guidance about reasonable adjustments is already available publicly in our existing Codes of Practice on Equal Pay; Employment; and Services, Public Functions and Associations, and we have produced specific guidance on reasonable adjustments for certain areas such as employment and education. We have two types of guidance on reasonable adjustments in schools: a) guidance that explains the law and how it applies; and b) an e-learning course, '[Unlocking Opportunities](#)', to help schools to meet their Equality Act duties and remove barriers to education for disabled learners. We do not, therefore, believe that an additional Code of Practice would be an effective way to provide the clarity needed. However, we will review the existing information provided by the Commission about reasonable adjustments to ensure it is presented in a sufficiently clear and accessible way for disabled people, their organisations, employers, service providers and others. We will do this in discussion with disabled people's organisations and will seek to improve the clarity and accessibility of this information, if needed.

Recommendation 19: Alongside the new Code, the Equality and Human Rights Commission should produce, in consultation with organisations of and representing disabled people, industry-specific guidance on reasonable adjustment. Where appropriate this should be done in partnership with relevant professional and regulatory bodies. Regular updates on case law developments will be essential to the effectiveness of these guides, and should be provided by the EHRC. (Paragraph 234)

13. Accepted in principle. We have recently reviewed our guidance to ensure that it is clear how the reasonable adjustment provisions in the Equality Act 2010 should work in practice. We are assessing what is the best approach for us to supplement existing Codes of Practice and guidance, including the use of case studies and examples that would be helpful for employers and service providers to fully understand their obligations regarding reasonable adjustments. We will ask for feedback on any guidance that we develop from service providers, employers, disabled people and disabled people's organisations. We will also seek to ensure the information on our website is more easily accessible.

14. We will consider how best to promote the use of reasonable adjustments in collaboration with disabled people's organisations building, for example, on the model we used to co-produce guidance on assistance dogs with Visit England. In addition, we now publish the disability case law developments on our website, setting out what these mean for members of the public. We will support, where possible and appropriate, professional and regulatory bodies in the production of industry and sector-specific guidance.

Recommendation 23: The Equality and Human Rights Commission should work with carers' organisations to produce and disseminate guidance on the rights of carers under the Equality Act 2010. (Paragraph 269)

15. Accepted in principle. We will review the information we have about carers of disabled people in discussion with carers' organisations.

Recommendation 24: The Government Equalities Office, the Office for Disability Issues, the Department for Business, Innovation and Skills, and the EHRC should undertake joint work to encourage employers to respond positively to flexible working requests from carers of disabled people. (Paragraph 270)

16. Accepted. We are already undertaking work to improve flexible working for people sharing different protected characteristics, including carers of

disabled people. We are intending to test whether we can encourage employers to increase the number of jobs advertised flexibly and part-time. Timewiseⁱ already advocates flexible hiringⁱⁱ and we are discussing our respective work with them, with a view to maximising our impact among employers.

17. Along with Acas, the Commission provides guidance for employers on legal requirements and flexible working. We explain the legal position on flexible working, advertising roles and indirect discrimination in the Equality Act 2010 Employment Statutory Code of Practiceⁱⁱⁱ and a non-statutory guide, 'Your Rights to Equality at Work: Working Hours, Flexible Working and Time Off'.^{iv} Acas provides advice on recruitment and flexible working^v that covers the way roles are defined and advertised.

Further recommendations of direct interest to the Commission

Recommendation 12: We recommend that the Government lay before Parliament as Codes of Practice the technical guidance on the Public Sector Equality Duty, Schools, and Further and Higher Education that have already been drafted and extensively consulted on by the Equality and Human Rights Commission. (Paragraph 164)

18. We strongly support this recommendation and have urged the Government to do this,^[1] in recognition of the fact that Codes of Practice provide businesses, employers, education providers and public authorities the information they need to understand the Equality Act, exercise their rights, and meet their responsibilities in the most straightforward way.
19. The Commission has the power to produce Codes of Practice, but we are entirely reliant on Government to lay our draft Codes before Parliament. There is an expectation among our stakeholders, such as public bodies

^[1] The Commission worked closely with GEO, DfE and other departments in arriving at agreed draft texts for six Codes. These were: three on the PSED (separate Codes for England, Scotland and Wales); two Schools Codes (one covering England and Wales, with a separate Code for Scotland); and a Further/Higher Education Code (GB-wide). The decision not to lay the draft Codes was initially brought to our attention by GEO in November 2011. This began an extended dialogue between the Commission and GEO, which culminated in the final decision by our Regulatory Committee (May 2012) to produce these drafts as technical guidance, in the absence of any commitment on the part of Government to support further Codes of Practice at that point.

(including schools and colleges), businesses, service providers, lawyers, advocates, courts and tribunals, human resources officers and voluntary sector groups, that the Commission will produce Codes of Practice. Codes can be used in evidence in legal proceedings and clarify the law. They have authority which non-statutory guidance lacks.

20. Our most recent draft Code of Practice was the draft Age Supplement (draft Age Code) to the Services, Public Functions and Associations Code (Services Code). The Government confirmed its support for its production in December 2012 and this was widely supported by stakeholders. However, after seeking to make progress over 18 months, the Government confirmed in March that the draft Age Code would not be laid before Parliament. As a result, the Commission published the text as technical guidance in April 2016.
21. Statutory Codes of Practice remain an essential component of our regulatory framework as they provide clarity to duty-holders on how their compliance will be assessed.

Recommendation 44: We recommend restoring the Equality and Human Rights Commission’s power to arrange the provision of conciliation services for non-employment discrimination claims. The service specification should provide for a range of delivery methods to ensure it is accessible, including provision of face- to-face conciliation, and the service should take direct referrals from the Equality Advisory and Support Service or its replacement. (Paragraph 450)

22. The Commission strongly supports this recommendation. We opposed the removal of our conciliation service when it was proposed. As set out in our response to Recommendation 11, we are currently exploring whether the Commission should take on a greater role in the resolution of equality and human rights disputes.

The Commission's response to relevant recommendations made by the House of Lords Committee to the Government and other bodies

Oversight within Government

23. We agree with the Committee that the Minister for Disabled People should be accorded the appropriate status to reflect the Government's commitment to the rights of disabled people. We also agree that the Minister for Disabled People should be a member of the Cabinet's Social Justice Committee, and that work on issues concerning disability should be coordinated across Government.

Accessible sports grounds

24. We welcome the recommendations on accessible sports grounds. The Commission will be monitoring the commitment made by the Premier League to comply with the accessible stadia guidelines by August 2017.

Enforcement through the judicial process

25. The Committee rightly points out that rights which are not enforceable are not worth having. Recent changes to court and tribunal fees and legal aid, together with a reduction in the funding of the advice sector, have led to increased barriers to accessing justice. In September 2015 the Scottish Government announced that Employment Tribunal fees will be abolished in Scotland and we will monitor the impact of this.

26. As stated in our Business and Strategic Plans, we are exploring ways of increasing access to effective and efficient dispute resolution for equality and human rights disputes. This includes looking at whether it would be appropriate for the Commission to play a greater role and, if so, to define a model for any new function. In developing the options, we will engage with governments, representatives of the legal profession, advice services, parliamentarians and civil society organisations. We will continue our work to increase the advice sector's capacity and expertise in relation to equality and human rights law so it is better able to advise clients.

27. In addition, we will continue to monitor the impact of changes and press governments to mitigate adverse effects on access to justice for people in particularly vulnerable situations. We will use our strategic litigation powers including to challenge the lawfulness of the new Employment Tribunal fee

regime, which has been linked to a reduction in claimants pursuing discrimination-related complaints, and to highlight the impact on prisoners of recent legal aid restrictions which deprive them of legal representation to challenge decisions about their conditions of imprisonment and opportunities for release.

28. In line with our Strategic Litigation Plan and the Regulators' Code, we engage with bodies early in proceedings and only use formal enforcement as a last resort.

Unimplemented provisions of the Equality Act 2010

29. We welcome the Government's announcement that it will implement two of the sections of the Equality Act (s165 and s167) relating to taxis by the end of this year. However, implementation of the other taxi provisions in the Equality Act is also essential. Implementing only s165 (passengers in wheelchairs) may lead to a perception that all drivers will be covered. This is not the case because s165 would impose duties only on the drivers of taxis or mini cabs who are 'designated' by the licensing authority (the local authority), and therefore required to assist a wheelchair user. Drivers of vehicles that are not designated by the licensing authority are not covered. The provisions under s167 provide for a local authority to keep a list of accessible vehicles. However, this is optional.
30. The provisions under s167 cover accessibility requirements, which include allowing passengers to stay in their wheelchairs when travelling in a taxi as well as allowing them to choose to get out of their wheelchair and be assisted by the driver. However, implementing s167 only would not guarantee improved accessibility without making regulations under s160 and s163-4 which would set out requirements for vehicles to be accessible. Without those sections being implemented, for example, the duty to assist a wheelchair user would not cover drivers with saloon cars. We therefore call on the Government to commence in full all of the provisions relating to the use of taxis by disabled people.
31. The provisions relating to the reasonable adjustments to common parts of rented residential premises should also be fully implemented in England, Scotland and Wales. The Commission has recently been supporting the case of a disabled tenant whose landlord refused to take action to alter the common areas of the premises where the tenant lives, in particular leisure facilities. This case highlights a legislative protection gap concerning the reasonable adjustments duty which does not apply to the physical features of common parts in leasehold and common hold residential premises due

to the incomplete implementation of section 36 of, and Schedule 4 to, the Equality Act 2010.

Participation in politics

32. The Commission shares the Committee's concerns about regression in the number of disabled MPs who were elected to the Westminster Parliament in 2015. We also note the reduction in the number of disabled MSPs elected to the Scottish Parliament in May 2016. In our submission to the UN Special Rapporteur on Disabilities' inquiry on this issue, the Commission recommended:

- a. Enactment of s106 of the Equality Act 2010, so that political parties are required to publish diversity data about their candidates.
- b. Regular, sensitive and confidential collection of disability data from elected Members of the House of Commons, National Assembly for Wales and Scottish Parliament to ensure disabled members get the support they need to fully participate in public life; and a confidential disability survey of all current Members of the House of Lords.
- c. The Government should reopen the Access to Elected Office Fund in England, and work with the Scottish and Welsh Governments to explore options for making the scheme, or similar funds, available across Great Britain.

Cumulative Impact Assessments

33. We strongly support the Committee's recommendation that the Government, supported by the Government Equalities Office and the Office for Disability Issues, should produce an assessment of the cumulative impact of budgets and other major initiatives on disabled people. The Commission has pressed the Government to assess the cumulative impact of its policies on disabled people and other protected groups, and included this in our ICESCR (International Covenant on the Economic, Social and Cultural Rights) submission.

34. Commission [research](#) has modelled the impact of tax, welfare and spending policies and, contrary to assertions by Government, concluded that cumulative impact assessment by equality group was feasible and practicable.

35. Given the Government's inaction, we are commissioning as a priority within our Business Plan this year an assessment to determine how changes to the welfare system have affected equality of opportunity and the human rights of certain groups. This will enable us to identify whether the system effectively supports all groups into work, and where improvements are needed to address unintended consequences.

Transport

36. The Commission agrees with the Committee's comments about the lack of progress made by taxis, train and bus companies and the lack of disability-awareness training given to transport staff. We have supported legal cases in order to challenge barriers to disabled people using transport and will continue to do so. The Commission is currently supporting Doug Paulley in his case against a bus company (Paulley v First Group PLC) because of the importance of public transport for many disabled people. The case also has wider legal implications in relation to disabled people's ability to enjoy access to other facilities and the duty to make reasonable adjustments.

37. The Committee's report echoes the findings of the UK Independent Mechanism on the UN Convention on the Rights of Persons with Disabilities that disabled people continue to experience significant barriers to accessing transport, including problems arising from the lack of integration between the different modes of transport, and the attitudes of staff. The new Buses Bill provides an important opportunity to improve the accessibility of bus services for disabled passengers, and could have benefits such as helping disabled people to travel to work and reducing social isolation. We urge the Government to produce a detailed equality impact assessment of the Bill.

38. The Commission also agrees with the Lords' recommendation on 'shared space' that: 'the Department for Transport should update its 2011 Local Transport Note to offer guidance to local authorities on how shared spaces schemes can best cater for the needs of disabled people. Local authorities should review existing schemes in the light of that guidance, make changes where necessary and practicable, and base any new schemes on that guidance'. Reference should also be made to the Equality Act 2010. We are in discussion with the Department and the Chartered Institute for Highways and Transport in order to contribute to the forthcoming guidance on shared space.

Education

39. We agree with the Committee that schools should be encouraged and supported to make adjustments that can help to address the educational inequalities faced by disabled children and young people, including those whose disability gives rise to challenging behaviour. Our report 'Is Britain Fairer?' highlighted a number of challenges with respect to education. There are widening educational gaps as well as higher exclusion rates for children with special education needs. There are also higher rates of bullying carried out against some children (including disabled children) and there is lower participation of disabled young people in education, employment and training.
40. We agree with the Committee's recommendation that the Equality Act 2010 (Disability) Regulations 2010 should be amended 'so that a tendency to physical abuse of other persons ceases to be treated as not amounting to an impairment for the purposes of the definition of "disability"'.¹ This would accord with the relevant articles in the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

ⁱ The Timewise group is headed up by the [Timewise Foundation](#), a community interest company. The foundation's core mission is to shape and grow the flexible hiring market in the UK, so that everyone can find the flexibility they need in their careers, without reducing their value in the workplace.

ⁱⁱ http://timewise.co.uk/wp-content/uploads/2016/01/JRF_Flexible_Hiring_Research_Summary.pdf [accessed: 18 July 2016]

ⁱⁱⁱ Equality and Human Rights Commission (2011), 'Equality Act 2010 Code of Practice: Employment Statutory Code of Practice', paragraphs 16.25, 17.11.

^{iv} Equality and Human Rights Commission (2014), 'Your Rights to Equality at Work: Working Hours, Flexible Working and Time Off: Equality Act 2010 Guidance for Employees'.

^v <http://www.acas.org.uk/media/pdf/j/m/Flexible-working-and-work-life-balance.pdf> [accessed: 18 July 2016]

¹ Paragraph 503