



Work of the Ad Hoc Committees in 2015–16: House of Lords Equality Act 2010 and Disability Committee

Summary

On 11 June 2015, the House of Lords Equality Act 2010 and Disability Committee was appointed to conduct post-legislative scrutiny of the disability provisions of the Act. The Committee published its report, [Equality Act 2010: the Impact on Disabled People](#), on 24 March 2016. The Committee report made recommendations about areas where it believed disabled people were being poorly served by the Equality Act. Particular emphasis was on the following areas:

- the effectiveness of the public sector equality duty;
- a number of provisions relating to access to buildings, dwellings and transport facilities which had not been brought into force;
- access to justice, particularly the imposition of tribunal fees and reductions to legal aid; and
- the functions of the Equality and Human Rights Commission.

The Government published its response on 11 July 2016. The report was debated in the House of Lords on 6 September 2016. Subsequently, in December 2017, at the request of the House of Lords Liaison Committee, the Government Equalities Office published a further update on the status of the report's recommendations.

Following the Committee report's publication, section 165 of the Act, placing a duty on taxi drivers to carry wheelchair users, has subsequently been brought into force. The Government has made a commitment to bring into force section 36, placing a duty on landlords to make adjustments to common parts of buildings. In addition, the Committee had raised concerns regarding the imposition of employment tribunal fees. These fees were abolished by the Government following a Supreme Court judgment in July 2017, which ruled them unlawful.

This Briefing summarises the Committee's recommendations, the Government's response, the debate in the House of Lords in September 2016, and subsequent developments.

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1. Background

The House of Lords Equality Act 2010 and Disability Committee was established in order to “consider the impact on people with disabilities of the Equality Act 2010”.¹ However, as described in the Committee’s report, “thorough post-legislative scrutiny of the whole Act would have been a greater task than one committee could sensibly tackle in a single session”.² Therefore, the suggestion was made to the House of Lords Liaison Committee that scrutiny should be limited to the Act’s disability provisions. This recommendation was accepted, and the House of Lords established the Committee on 11 June 2015, with a remit to “conduct post-legislative scrutiny of the disability provisions of the Act”.³

The Equality Act 2010 replaced a range of existing equality and anti-discrimination legislation, including the Disability Discrimination Act 1995 and the Disability Discrimination Act 2005. As stated in the Committee’s report, the Equality Act consolidated the previous legislation and expanded anti-discrimination law to create nine ‘protected characteristics’. The report explained:

[The Act] expanded the anti-discrimination law applying to race, sex and disability, and applied the same principles to age, gender reassignment, marriage and civil partnership, religion or belief, sexual orientation, and pregnancy and maternity—the nine “protected characteristics” covered by the Act.⁴

2. Committee Report and Government Response

The Committee’s remit focused on whether the Equality Act 2010 “adequately supports the fight against disability discrimination”.⁵ The report questioned whether the Act’s provisions disadvantaged disabled people,⁶ who, it noted, may require “different treatment” if they are to enjoy access to facilities and services on the same terms as the non-disabled:

[The Act] ignores a crucial distinction between disability and the other protected characteristics. For the other protected characteristics, with the possible exception of pregnancy and maternity, equality of opportunity is largely achieved by equality of treatment. For disabled

¹ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 8.

² *ibid.*

³ *ibid.*

⁴ *ibid.*, p 7.

⁵ *ibid.*, p 5.

⁶ The report referred to different views expressed by witnesses regarding use of the terminology ‘disabled people’ or ‘people with a disability’. The report stated that the Committee used both phrases in its call for evidence. This is the convention followed in this Briefing.

people, equality of opportunity, to the extent that it is achievable, often requires different treatment.⁷

As a result, the report concluded that “combining disability with the other protected characteristics in one Act did not in practice benefit disabled people”.⁸ Witnesses had been “almost unanimous” that advocating for the rights of the disabled “had been easier with a dedicated Disability Discrimination Act and with a single Disability Rights Commission, rather than a Commission [the current Equality and Human Rights Commission] covering all inequalities and human rights”.⁹ However, the report conceded that attempting to separate statutory treatment of disability from the other protected characteristics would now be “impractical”, and therefore its intention was to “concentrate on improvements to the Act which will give greater prominence to disability and will increase the protection of disabled people”.¹⁰

To this end, the report made recommendations concerning: the public sector equality duty; access to buildings, dwellings and transport facilities; access to justice; and the functions of the Equality and Human Rights Commission. The following section of this Briefing considers each of these areas in turn, summarising the Committee’s recommendations and the Government’s response, published in July 2016.

2.1 Public Sector Equality Duty

The public sector equality duty (PSED) is contained in section 149 of the Equality Act 2010. It requires public authorities and those exercising public functions to have “due regard” to eliminating discrimination and promoting equality of opportunity between people who share a protected characteristic, as defined under the Act.¹¹ The Committee criticised the wording of these provisions, which it argued gave public service providers the ability to evidence that they had taken due regard in the formulation of policies, yet implemented outcomes that disadvantaged the disabled. The Committee concluded that the current duty was “fundamentally flawed”, particularly given:

[A] public authority can make no progress towards the aims of the general duty and yet be judged compliant with it by the courts. We have heard convincing evidence that an amendment is needed to remedy this.¹²

⁷ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 21.

⁸ *ibid*, p 23.

⁹ *ibid*, p 5.

¹⁰ *ibid*, p 23.

¹¹ *ibid*, p 94.

¹² *ibid*, p 99.

The report continued:

We recommend that a new subsection should be added to section 149: “To comply with the duties in this section, a public authority in the exercise of its functions, or a person within subsection (2) in the exercise of its public functions, shall take all proportionate steps towards the achievement of the matters mentioned in subsection (1)”.¹³

The government response made no specific commitment to amend the PSED. However, it did make reference to a 2013 review of the PSED undertaken by an independent steering group chaired by Lord Hayward (Conservative),¹⁴ which had recommended the Government conduct a formal evaluation of the PSED by 2016. The Government’s response stated that it was considering a further review of the duty. Further, the Government was committed to ensuring the Committee’s “concerns and recommendations are taken into account” in the event of any such review.¹⁵

2.2 Access to Buildings, Dwellings and Transport Facilities

The Committee made recommendations about disabled people’s access to buildings, to housing, to sports stadia, and to transport facilities. Sections 20 and 21 of the Equality Act consolidated the concept of “reasonable adjustments” first introduced under the Disability Discrimination Act 1995. The Equality Act imposes a duty on employers and service providers, such as educational institutions, landlords, and transport services, to “take such steps as it is reasonable” to avoid putting disabled people “at a substantial disadvantage”.¹⁶ This section focuses on the report’s recommendations related to adjustments to dwellings, licensed premises, and transport facilities.

Buildings and Dwellings

“Common Parts” of Buildings

Section 36, and schedule 4, of the Equality Act place a duty on landlords of let common-hold premises (such as blocks of flats) to undertake reasonable adjustments to the common parts of those buildings (eg entrances, lifts, stairs, etc) to make them more accessible to the disabled. The provisions do not place an anticipatory duty on landlords: disabled tenants must request the adjustment. It is legal for the landlord to ask the tenant to bear the cost

¹³ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 99.

¹⁴ GOV.UK, ‘[Review of Public Sector Equality Duty](#)’, accessed 16 March 2018.

¹⁵ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 24.

¹⁶ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 59.

of the alteration if it is deemed reasonable and if other tenants have been consulted.¹⁷ At the time of the Committee report's publication these provisions had not been brought into force. The report cited evidence received from the then Minister for Women and Equalities, Nicky Morgan, who told the Committee that the Government, in line with the decision of previous governments, had delayed implementation of section 36 due to concerns relating to how the provisions would work in practice and their cost.¹⁸ However, she also informed the Committee that she had instructed the Government Equalities Office to further review the common parts provisions.¹⁹ However, the Committee concluded that another review was not necessary, and the provisions should be brought into force without delay:

We do not understand why yet another review is needed of the commencement of the provisions dealing with alterations to common parts. There is no justification for further delay. They must be brought into force forthwith.²⁰

The government response acknowledged the Committee's frustrations with the implementation of section 36, and stated that as a "general point" landlords should seek to cooperate with reasonable demands for adjustments.²¹ However, the Government also stated that it "is concerned that the consequences of implementing the remainder of section 36, and any supplementary regulations, are unclear".²² The Government stated that, although in the first instance such cases are matters between landlord and tenant, the provisions potentially had a wider impact on government policy as they could incur a charge on the Department of Health-administered Better Care Fund (BCF).²³ The government response included an update on the review:

The review of section 36 therefore needs to take account of the impact on private landlords, any consequences for landlords' willingness to let premises to disabled tenants, and the implications of additional calls on the BCF [...] The Government will inform the [House of Commons] Women and Equalities Select Committee once the review is complete and a decision on commencement of the provision is reached.²⁴

¹⁷ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 71.

¹⁸ *ibid*, p 72.

¹⁹ *ibid*.

²⁰ *ibid*, p 73.

²¹ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 16.

²² *ibid*.

²³ *ibid*, p 17.

²⁴ *ibid*.

Licensed Premises

The Committee report stated that “too many restaurants, pubs and clubs are difficult to access; many do not provide such basic facilities as a disabled toilet”.²⁵ Premises such as pubs and entertainment venues require a license from the local authority. The Committee argued that “a one-line amendment to the Licensing Act 2003 would allow local authorities to refuse to grant or renew their licenses until they make the necessary changes [to improve access]”.²⁶ Section 4(2) of the Licensing Act 2003 states that a license can only be refused for failure to comply with one or more specific objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.²⁷ Under the current arrangements, a disabled person who believes they have been disadvantaged by the facilities at licensed premises must make a claim for discrimination. The Committee reported evidence from witnesses that this procedure disincentivises disabled people from making such a claim, as the process is “lengthy, costly and difficult”.²⁸ The Committee suggested that the list of criteria by which a license could be refused should be amended to include adherence to the provisions of the Equality Act, thereby shifting the focus of responsibility for its enforcement from individual disabled people to local authorities. The report concluded:

We recommend that section 4(2) of the Licensing Act 2003 be amended to make a failure to comply with the Equality Act 2010 a ground for refusing a license.²⁹

However, the Government rejected the recommendation, stating “it would be inappropriate for the Licensing Act 2003 to duplicate the requirements of the Equality Act 2010”.³⁰ The Government stated that the Equality Act already places requirements on employers and businesses not to discriminate against staff and customers, and in its view “this offers sufficient protection”.³¹ Further, the Government reported that it had secured pledges from members of the hospitality industry to implement best practice on a voluntary basis, and that it would “keep this situation under review”.³²

²⁵ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 6.

²⁶ *ibid.*

²⁷ *ibid.*, p 129.

²⁸ *ibid.*, p 128.

²⁹ *ibid.*, p 130.

³⁰ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 31.

³¹ *ibid.*

³² *ibid.*

Transport Facilities

The Committee stated that the written evidence it received reported more “problems with transport than about any other single topic”.³³ The report made a number of recommendations about the accessibility of trains, buses, taxis and private hire vehicles.

Trains and Buses

The Committee reported it had received evidence from witnesses that seven stations had been designed without step-free access under the original plans for the London Crossrail project.³⁴ Although many of these design issues have since been rectified, the Committee claimed that when Crossrail opens some stations will still not have step-free access.³⁵ The Committee stated “we find it astonishing that, in the development of new rail infrastructure, retaining stations without step-free access could even have been contemplated”.³⁶ The Committee further claimed that “much of the rest of the country lags behind London” on transport infrastructure, highlighting issues on new infrastructure design and the facilities at existing stations. The Committee recommended that on a national level:

Network Rail, Transport for London, train operators and bus companies should put more of their resources towards making their stations and vehicles more easily accessible to those in wheelchairs [...] The Driver and Vehicle Standards Agency must enforce strictly the Regulations governing access to vehicles.³⁷

In response, the Government stated that mandatory accessibility standards had been in place for all new rail vehicles since 1998, and “currently 62 percent of all rolling stock—both heavy and light rail—are compliant with accessibility standards”.³⁸ All remaining train rolling stock would achieve “100 percent compliance by 2020”.³⁹

The Government claimed that whenever work was carried out on rail station infrastructure it must meet accessibility standards. For stations at which no major renovation work is planned, the Government has continued implementation of the Access for All programme, which since 2006 “has

³³ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 80.

³⁴ *ibid*, p 5.

³⁵ *ibid*.

³⁶ *ibid*, p 81.

³⁷ *ibid*, p 83.

³⁸ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 20.

³⁹ *ibid*.

delivered accessible route at over 150 stations”.⁴⁰

For buses, the Government stated that all buses designed to carry over 22 passengers on local and scheduled routes must comply with the Public Service Vehicle Accessibility Regulations (PSVAR) by 1 January 2017. The Driver and Vehicle Standards Agency enforces the PSVAR, and the Government said that of the 7,000 vehicle inspections it carried out in 2015, “only 47 were found to be non-compliant”.⁴¹

The Committee also made recommendations about the installation of audio-visual annunciators on trains and buses, and bus and train staff training. The Committee accepted that progress had been made in the roll-out of audio-visual annunciators (which broadcast information such as the destination and next stop) on trains and buses, particularly in London. However, it recommended that more resources should be devoted to retro-fitting annunciators on vehicles which do not have them, and that “no new vehicles should be put into service which do not have audio and visual annunciators”.⁴² The Committee also highlighted the importance to disabled passengers of public transport staff who had received disability awareness training. The Committee argued that such training was “essential”, and if no adequate level of training could be agreed with employers, Ministers should be willing to use the powers provided in section 22(2) of the Equality Act to make and enforce regulations in this area.⁴³

In response, the Government confirmed that no new train rolling stock had been put into service without audio-visual annunciator equipment since 1999.⁴⁴ For trains that need to be retro-fitted, a 31 December 2019 deadline had been set for installation. On buses, the Government response stated that “traditional methods of providing such information have tended to be expensive to fit and maintain, and we have resisted calls to mandate their use in order to avoid placing disproportionate financial burdens on the bus industry”.⁴⁵ However, the Government claimed it was supporting initiatives to develop lower cost solutions.⁴⁶

On bus and train staff disability awareness training, the Government stated that for front-line rail staff, such training was already mandatory.⁴⁷ For bus staff, the Government acknowledged that many operators recruit on the

⁴⁰ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 20.

⁴¹ *ibid*, p 21.

⁴² House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 85.

⁴³ *ibid*, p 86.

⁴⁴ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 21.

⁴⁵ *ibid*, p 22.

⁴⁶ *ibid*.

⁴⁷ *ibid*.

basis of “strong customer service skills”, but it remained of the view that “legislation is not the appropriate tool for delivering meaningful disability awareness training in the bus and coach sector”.⁴⁸

Taxis and Private Hire Vehicles

Sections 160 to 167 of the Equality Act concern the accessibility of taxis to wheelchair users. The majority of these provisions were not in force at the time of the report’s publication. The Committee highlighted the importance of taxi services to disabled people and made recommendations relating to those provisions not in force, particularly section 165 which places a duty on taxi drivers to carry wheelchair users. The Committee noted:

The only one of these provisions [sections 160 to 167] fully in force is section 166, dealing with exemptions. Section 160, giving the Secretary of State power to make Taxi Accessibility Regulations, is not in force, so that no such Regulations have been made; nor are sections 163 and 164, which deal respectively with making taxi licences conditional on compliance with such Regulations, and with exemptions from such Regulations.⁴⁹

Also not in force was section 165(4), which would impose the following duties on taxi drivers:

- to carry the passenger while in the wheelchair;
- not to make any additional charge for doing so;
- if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
- to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
- to give the passenger such mobility assistance as is reasonably required.⁵⁰

The Government suggested to the Committee the reasons why section 165 of the Act had not been brought into force. These related to burdens placed on drivers and small businesses, and whether legislation was the most effective means of changing behaviour:

This Government is committed to reducing the amount of regulation we place on people, particularly small businesses, and making sure any

⁴⁸ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, pp 22–3.

⁴⁹ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 87.

⁵⁰ *ibid.*

regulation is absolutely necessary. Therefore, in this case we need to consider whether there are alternative ways of improving driver behaviour and the service the public receives before implementing legislation.⁵¹

However, the Committee rejected these arguments, and recommended that section 165 should be brought into force without delay:

The reasons offered by the Government for failing to bring section 165 into force 20 years after its enactment are entirely unconvincing. Ministers should be considering the burden on disabled people trying to take taxis, not the burden on taxi owners or drivers. Section 165 and the remaining provisions of Part 12 of the Act should be brought into force forthwith.⁵²

In its response, the Government announced it would be bringing section 165 into force:

Having given careful consideration to the effects of commencing sections 165 and 167 of the Equality Act, including ensuring that drivers understand fully their responsibilities, we will now proceed to bring the measures into force, aiming for commencement by the end of 2016.⁵³

Sections 165 and 167 were subsequently brought into force effective from 6 April 2017.⁵⁴

With regard to the remaining sections in part 12 of the Act not in force (sections 160 to 164), the Government stated its position “remains the same as at the time of the Inquiry and we have nothing further to add at present”.⁵⁵

2.3 Access to Justice

The Committee argued that the rights for disabled people enshrined in the Equality Act “are of little value unless they are enforced”.⁵⁶ The Committee

⁵¹ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 88.

⁵² *ibid*, p 89.

⁵³ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 23.

⁵⁴ Department for Transport, [‘Wheelchair Access in Taxis and Private Hire Vehicles’](#), accessed 6 March 2018.

⁵⁵ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 23.

⁵⁶ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 108.

raised concerns about developments which, in its view, had made it more difficult for the disabled to access justice through tribunals and the courts, particularly as “the burden of seeking redress [falls] on the disabled person who has suffered discrimination”.⁵⁷ In particular, the Committee highlighted the imposition of tribunal fees, reductions in the availability of legal aid, and the removal of the Equality and Human Rights Commission’s power to provide conciliation services in non-employment discrimination claims.⁵⁸

Tribunal Fees

Fees for bringing claims in employment tribunals were introduced by the Coalition Government through the [Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013](#).⁵⁹ The Committee claimed that fees created a barrier to disabled people bringing claims, and cited evidence from HM Courts and Tribunal Service that showed a reduction of approximately 50 percent in disability discrimination employment tribunals initiated twelve months after the introduction of the fees.⁶⁰ The Committee stated “it is inconceivable to us that it [the fees] has not played a major part in the abrupt fall in the number of claims”.⁶¹ The Committee also cited evidence received from the Bar Council, the Law Society, the Discrimination Law Association, and the Law Centres Network, which raised concerns about the policy.⁶² At the time of the publication of the Committee report, the Ministry of Justice was undertaking a post-implementation review of employment tribunal fees. The Committee recommended that the review “act on the strong evidence that tribunal fees are unfairly obstructing discrimination claims under the Equality Act”.⁶³

The Government response noted the review, which was “well underway and will conclude shortly”.⁶⁴ The Government further acknowledged that “there has been a sharp fall in the number of claims lodged”, however it questioned the reasons for the reduction:

[W]hile we do accept that the fees have had an impact on the volume of claims, other factors, such as changes to employment law, the improving economy and the availability of alternative dispute resolution services (such as the ACAS early conciliation scheme) are also likely to

⁵⁷ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 108.

⁵⁸ *ibid.*

⁵⁹ *ibid.*, pp 108–9.

⁶⁰ *ibid.*, p 109.

⁶¹ *ibid.*

⁶² *ibid.*, p 110.

⁶³ *ibid.*, p 111.

⁶⁴ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 26.

have had an impact.⁶⁵

The Ministry of Justice published its review of tribunal fees on 31 January 2017. It concluded that the introduction of fees had “broadly met its objectives”, but the review also identified some concerns.⁶⁶ The Ministry of Justice commenced a consultation on proposals for reform of the fee system, which ran from 31 January to 14 March 2017.⁶⁷ However, reforms were superseded by a judgment by the Supreme Court in July 2017, in a case brought by the union UNISON. The Supreme Court ruled tribunal fees unlawful. In response, the Government has subsequently abolished tribunal fees. The Supreme Court judgment is referred to in further detail in section 4 of this Briefing.

Legal Aid and ‘Qualified One-Way Cost Shifting’

In addition to tribunal fees, the Committee highlighted the impact of reductions in the availability of legal aid. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force on 1 April 2013, and removed employment law from the scope of legal aid. Discrimination law in non-employment cases remains within the scope of legal aid.⁶⁸ The Committee raised concerns about “the deterrent effect of the reduction of legal aid” in reducing disabled people’s access to justice.⁶⁹ To address the issue, the Committee recommended a partial remedy that would not require primary legislation, namely, an amendment to the Civil Procedure Rules (CPR). The Committee explained the context for its recommendation:

Previously, where a claimant was not financially eligible for legal aid funding, disability discrimination claims could be funded through a Conditional Fee Agreement (CFA) with After-the-Event insurance (ATE). This effectively meant that, if the claim was successful, the defendant would pay the claimant’s costs including the ATE premium; while if the claim was unsuccessful, the claimant would have to pay his or her own costs but was insured against paying the defendant’s costs. However, one consequence of LASPO is that ATE premiums are no longer recoverable from the defendant even if a claim is successful.⁷⁰

⁶⁵ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, pp 26–7.

⁶⁶ Ministry of Justice, [‘Review of the Introduction of Fees in the Employment Tribunals’](#), 31 January 2017.

⁶⁷ Ministry of Justice. [Review of the Introduction of Fees in the Employment Tribunals](#), accessed 6 March 2018.

⁶⁸ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 112.

⁶⁹ *ibid*, p 113.

⁷⁰ *ibid*.

The abolition of the recoverability of ATE insurance was a recommendation of the 2009 Review of Civil Litigation Costs undertaken by Lord Justice Jackson. The Committee observed Lord Jackson had recommended the introduction of Qualified One-Way Cost Shifting (QOCS), “meaning that if a claim is unsuccessful, the claimant is protected against paying the defendant’s costs despite not having ATE”.⁷¹ Lord Jackson’s recommendation was limited to the area of personal injury claims. However, the Committee sought to broaden its application, recommending “the Civil Procedure Rules should be amended to apply Qualified One-Way Cost Shifting to discrimination claims under the Equality Act”.⁷²

In its response, the Government stated that “legal aid is available for legal advice and representation for cases alleging unlawful discrimination, harassment or victimisation under the Equality Act 2010”.⁷³ On Qualified One-Way Cost Shifting, the Government claimed that its operation was under review and that although the Committee’s report “assists that consideration”, it was “not conclusive”.⁷⁴ The response continued:

The Government would need to consider carefully the arguments in favour and against the extension of QOCS in different categories of law, including whether QOCS was the right way forward to address any access to justice issues [...] In any event, the Government is committed to undertaking a post-implementation review of part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act in 2018. Access to justice considerations, including whether QOCS should be extended to other categories of law, will be addressed as part of that review.⁷⁵

2.4 Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) was established by the Equality Act 2006, replacing a number of bodies charged with oversight of anti-discrimination which had existed hitherto, namely: the Equal Opportunities Commission; the Commission for Racial Equality; and the Disability Rights Commission. The Committee made a number of recommendations related to the functions and efficacy of the EHRC across a broad range of areas. However, the report’s executive summary highlighted two recommendations, namely, the power of the EHRC to provide conciliation services and the removal of the EHRC’s ‘in-house’ equality advisory helpline.

⁷¹ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 113.

⁷² *ibid*, p 114.

⁷³ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 27.

⁷⁴ *ibid*.

⁷⁵ *ibid*, pp 27–8.

Conciliation Services

One of the predecessors to the EHRC, the Disability Rights Commission, had the power to provide a conciliation service for non-employment discrimination claims. When the EHRC replaced the Disability Rights Commission, it inherited this power under section 27 of the Equality Act 2006.⁷⁶ In March 2011, the Coalition Government undertook a consultation on the functions on the EHRC, including its power to provide conciliation services. The Committee observed that, of the 293 submissions received in response to the consultation, 61 agreed that the EHRC should be stripped of this power, 206 disagreed, and 26 were not sure.⁷⁷ Despite this, the Government proceeded with the repeal of the power as part of the 2013 Enterprise and Regulatory Reform Act. The Committee report stated:

We recommend restoring the Equality and Human Rights Commission's power to arrange the provision of conciliation services for non-employment discrimination claims.⁷⁸

In its response, the Government rejected the recommendation, claiming that the EHRC's conciliation service was "expensive and yet accounted for very low volumes of cases".⁷⁹ Further, the Government did not agree that conciliation constituted one of the EHRC's core functions and returning the power would "require primary legislation".⁸⁰

Equality Advisory Helpline

The Committee also criticised the removal of an equality advice helpline previously provided by the EHRC. The helpline was removed following a review in 2011, and replaced by a contracted-out service called the Equality Advisory and Support Service (EASS).⁸¹ The Committee claimed that this decision was "much regretted" by its witnesses, who questioned the quality of the service the helpline now provided.⁸² The Committee recommended that "the Equality Advisory and Support Service be returned to the Equality and Human Rights Commission, either in-house or as the contract managers for a tendered-out service".⁸³

⁷⁶ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 124.

⁷⁷ *ibid.*

⁷⁸ *ibid.*, p 125.

⁷⁹ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 30.

⁸⁰ *ibid.*

⁸¹ House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 46.

⁸² *ibid.*

⁸³ *ibid.*, p 48.

In its response, the Government rejected this recommendation. The Government expressed satisfaction with the EASS's performance, but also confirmed that the contract to provide the service would expire on 30 September 2016. The Government claimed that "in early discussions between the Government Equalities Office and the EHRC about the future of the service, the EHRC did not express an interest in taking it 'in-house'".⁸⁴ The Government confirmed that the contract had therefore been put out to tender and "the EHRC has been invited to sit on the Management Board of the service".⁸⁵

The EHRC [published its own response](#) to the Committee report's recommendations on 20 July 2016.

It was subsequently reported, on 26 July 2016, that the contract to operate the EASS had been awarded to the security firm G4S, with effect from 1 October 2016.⁸⁶ This decision received criticism from some members of the Committee during the debate on the Committee's report in the House of Lords in September 2016. The debate is summarised in section 3 of this Briefing.

3. House of Lords Debate

The House of Lords debated the Committee's report on 6 September 2016. The debate was opened by the chair of the Committee, Baroness Deech (Crossbench). She described the remit of the Committee and stated its overarching conclusion:

Our committee was charged with post-legislative scrutiny of that portion of the Equality Act dealing with disability. Our task was to consider the adequacy of the law. Has it strengthened disability discrimination law? [...] Is enforcement of their rights effective and accessible? [...] The answer to those questions in our report, after investigation, was a resounding no.⁸⁷

Baroness Deech claimed that, given the evidence presented in the report, it is "impossible for any Government [...] to ignore its recommendations, which have been crafted to be almost cost free".⁸⁸ Commenting on the Government's response to the report, Baroness Deech articulated the

⁸⁴ Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 12.

⁸⁵ *ibid.*

⁸⁶ Alan White, '[G4S To Take Over Running Of Government Discrimination Helpline](#)', BuzzFeed News, 26 July 2016.

⁸⁷ [HL Hansard, 6 September 2016, col 965.](#)

⁸⁸ *ibid.*, col 966.

Committee's disappointment with its findings:

We were disappointed with the Government response in July, which in general I can sum up by calling it buck-passing and the dragging of heels [...] A recurring theme in the Government response is that conversation and raising awareness achieve more than regulation and are cost free. Sadly, the evidence in our report shows that this is a faulty belief.⁸⁹

Baroness Deech pressed the Government for its reasons for failing to bring into force various sections of the Equality Act, stating, "it is shocking how many sections of the Act lie dormant, ignored and un-commenced".⁹⁰ She welcomed the Government's announcement of its intention to commence sections 165 and 167 of the Equality Act, relating to duties on taxi drivers to carry disabled users, but described the decision not to bring other relevant sections into force as "incomprehensible":

[W]e call on the Government to commence the entire chapter of the Act; otherwise, one can conclude only that yet again the Government are more mindful of the alleged burden on taxi drivers and local authorities than the real burden on disabled people.⁹¹

Baroness Deech also criticised the decision to award the contract to operate the Equality Advisory and Support Service helpline to the security firm G4S. Referring to concerns regarding the firm's past corporate behaviour, Baroness Deech stated "the precious lifeline for the disabled person who is seeking advice does not seem to be safe in G4S's hands, so it must go back to the EHRC".⁹² She closed her remarks with a summary of the Committee report's recommendations:

In sum, we call for the restoration of the Equality Advisory and Support Service and conciliation services to the EHRC. We call for a cumulative impact assessment of the effect of cuts and financial changes on disabled persons; for amendments to the PSED, buses Bill and licensing objectives; and for technical guidance to be laid before Parliament as codes of practice [...] In general we call for a fresh approach—a positive and holistic one—to every member of society who is not 100 percent young and fit, and that means all of us eventually.⁹³

Lord McColl of Dulwich (Conservative), a member of the Committee, limited his remarks to the subject of transport. He welcomed the

⁸⁹ [HL Hansard, 6 September 2016, col 966.](#)

⁹⁰ *ibid.*

⁹¹ *ibid.*, col 968.

⁹² *ibid.*, cols 968–9.

⁹³ *ibid.*, col 969.

Government's announcement to commence section 165 of the Equality Act, but sought clarification as to the date:

Today I ask the Minister not only for details of when we can expect the commencement of sections 165 and 167 of the Equality Act 2010 but for her assurances that the Government will put into place clear guidance and structures to enforce these duties.⁹⁴

Baroness Prosser (Labour) spoke on the subject of the EHRC, and also expressed concern about the award of the helpline contract to G4S, stating, "it does not have a reputation for a deep and clear understanding of the needs of vulnerable people".⁹⁵ She also questioned the level of the EHRC's funding, stating that its duties "cannot be produced out of thin air".⁹⁶ However, Baroness Prosser disagreed with the Committee's recommendation to retain a dedicated disability committee within the EHRC:

[T]he Commission has responsibility for issues relating to all protected groups, and it is my opinion, having been deputy chair of the Commission for six years since its inception, that disability issues are likely to be much better served within the overall family structure of the Commission as a whole.⁹⁷

Baroness Campbell of Surbiton (Crossbench), a member of the Committee, stated that the report "recommends workable, low-cost, legislative and practical changes that would greatly enhance equality for disabled people".⁹⁸ On the public sector equality duty, she claimed that it was "deeply dispiriting" that the Government's response was simply that the Committee's views will be "taken into account in any review".⁹⁹ She also claimed that, having served at both the Equality and Human Rights Commission and its predecessor, the Disability Rights Commission, she was "uniquely placed to compare disability equality under two Acts and two commissions, one with a specific disability focus and one generic".¹⁰⁰ Baroness Campbell stated that while taking evidence on the Committee, she had been struck by the number of complaints from "disabled people and their organisations [that] the broader remit [of the EHRC] was not effectively combating disability discrimination".¹⁰¹ She claimed that the Committee's recommendation to retain a dedicated disability committee at the EHRC may "at the very least provide a structure to focus on the

⁹⁴ [HL Hansard, 6 September 2016, col 970.](#)

⁹⁵ *ibid*, col 973.

⁹⁶ *ibid*, col 974.

⁹⁷ *ibid*.

⁹⁸ *ibid*, col 978.

⁹⁹ *ibid*, col 979.

¹⁰⁰ *ibid*.

¹⁰¹ *ibid*, col 980.

barriers specific to disabled people”.¹⁰²

Speaking on behalf of the Government, the Minister for Equalities, Baroness Williams of Trafford, described the report as “timely and comprehensive and it highlights the continuing challenges and obstacles which disabled people face on a daily basis”.¹⁰³ On the subject of Qualified One-Way Cost Shifting in civil cases, Baroness Williams confirmed that the Government:

[W]ill consider the possible extension of qualified one-way costs shifting to other categories of law, including claims made under the Equality Act, in due course, once there is some experience of the regime in personal injury.¹⁰⁴

On the issue of the public sector equality duty, Baroness Williams stated that the Government disagreed with the assessment that disabled people were “losing out” under the current system:

[W]e disagree, first and foremost because two of the leading cases brought under the PSED on the spare room subsidy and the independent living fund were brought by, or on behalf of, disabled people. We feel that if public bodies were under separate duties to have regard to each of the protected characteristics in the Equality Act, we would have a more complicated and bureaucratic scheme than at present.¹⁰⁵

Baroness Williams rejected the accusation that cumulative funding cuts had disproportionately disadvantaged disabled people:

Considering the impact on people with disabilities and those with other protected characteristics is an integral part of the Government’s approach to their policy work. It includes measures taken at all Budgets and other fiscal events and reflects the Government’s principal commitment to fairness as well as their legal obligations.¹⁰⁶

About the award of the EASS helpline contract to G4S, Baroness Williams defended the Government’s decision:

G4S was the winner of a thorough, competitive tender process for this contract to run the Equality Advisory and Support Service. We believe that the G4S group has a good background for taking on the EASS functions [...] The EHRC did not bid to operate the helpline itself, nor

¹⁰² [HL Hansard, 6 September 2016, col 980.](#)

¹⁰³ *ibid*, col 1007.

¹⁰⁴ *ibid*, col 1008.

¹⁰⁵ *ibid*, col 1009.

¹⁰⁶ *ibid*, col 1010.

did it propose operating it in discussions with the Government Equalities Office. The EHRC proposed to manage the tender process but acknowledged that, because of the value of the contract and EU procurement requirements, there was insufficient time to conduct the procurement outside a preapproved framework. That was the approach that the Government used.¹⁰⁷

Commenting on the retention of the EHRC's disability committee, Baroness Williams stated:

[T]he EHRC's arrangements for its disability work are essentially a matter for the commission itself. I note that the EHRC rejected the relevant recommendation in the committee's report. None the less, Ministers meet the EHRC chair and the chief executive from time to time, and I know they would be happy to discuss at a forthcoming meeting their plans for ensuring that its disability work remains effective and well supported by evidence.¹⁰⁸

Concluding the debate, Baroness Deech, summarised the report's intentions:

Our report is not just about disability. We are all on a spectrum of disability at some stage; we will all get there. Our report is talking about making society inclusive [...] [W]e want the Government to give a green light to all these recommendations, which cost so little, or nearly nothing.¹⁰⁹

4. Further Developments

On 6 November 2017, Lord McFall of Alcluith, in his capacity as chair of the House of Lords Liaison Committee, wrote to the then Minister for Women and Equalities, Justine Greening, requesting an update on the status of the recommendations of the Committee. Lord McFall made reference to some of the report's original recommendations. He requested an update on the Government's previous statement had it was "considering a further review of the PSED".¹¹⁰ He also sought an update on when the outcome of the 'common parts' review would be published.¹¹¹

Lord McFall welcomed the Government's announcement, in its original response, that it would bring into force section 165 of the Equality Act, placing a duty on taxi drivers to carry wheelchair users. However, he asked

¹⁰⁷ [HL Hansard, 6 September 2016, col 1011](#).

¹⁰⁸ *ibid*, col 1011.

¹⁰⁹ *ibid*, cols 1013–14.

¹¹⁰ House of Lords Liaison Committee, '[Letter from the Senior Deputy Speaker to the Rt Hon Justine Greening MP on the Select Committee on Equality Act 2010 and Disability](#)', 6 November 2017, p 1.

¹¹¹ *ibid*, pp 1–2.

the Government for its reasons why section 163, which makes the granting of a taxi license conditional on compliance with disabled accessibility, was not also being brought into force.

Lord McFall requested an update on what further action the Government was taking in order to improve access to justice for the disabled. His letter made reference to the judgment of the Supreme Court in July 2017, *R (on application of UNISON) v Lord Chancellor [2017] UKSC 51*, in which the Court upheld the principle that “the constitutional right of access to the courts is inherent in the rule of law”.¹¹² This judgment prompted the Government to cease imposing employment tribunal fees.

The Government Equalities Office (GEO) replied to Lord McFall’s letter on 21 December 2017.¹¹³ In its response, the GEO reiterated the Government’s commitment that “the path a person takes in life should not be dictated by their disability or health condition”, and stated that the Government has set out “an ambitious programme to improve the lives of disabled people”.¹¹⁴ In relation to disability and employment, the letter highlighted the Government’s policy paper, [Improving Lives: The Future of Work, Health and Disability](#) (30 November 2017), a “ten year plan to increase the number of disabled people and people with long term illness in work by a million”.¹¹⁵

With regard to the public sector equality duty, the GEO’s response said that the Government had made a commitment that leaving the European Union would have no impact on the status of the existing protections in the Equality Act. However, it also confirmed that it had no plans to review or amend the primary legislation relating the PSED:

The Government is committed to retaining all the existing protections in the Equality Acts—including those relating to the PSED—as we leave the EU [...] We therefore have no current plans to review the form of the PSED in the Act or to change primary legislation from the existing ‘due regard’ duty to a more prescriptive form.¹¹⁶

The GEO’s letter stated that the Government had decided to bring section 36 of the Equality Act requiring landlords to make reasonable adjustments to common parts of let premises into force, “subject to Parliamentary passage of any regulations, should these prove necessary”.¹¹⁷

¹¹² House of Lords Liaison Committee, ‘[Letter from the Senior Deputy Speaker to the Rt Hon Justine Greening MP on the Select Committee on Equality Act 2010 and Disability](#)’, 6 November 2017, p 2.

¹¹³ Government Equalities Office, ‘[Letter from the Rt Hon Justine Greening MP on the Select Committee on the Equality Act and Disability](#)’, 21 December 2017.

¹¹⁴ *ibid*, p 1.

¹¹⁵ *ibid*.

¹¹⁶ *ibid*, p 2.

¹¹⁷ *ibid*, p 3.

However, the Government stated that it was not minded to amend the Licensing Act 2003 in order to make the granting of a license conditional on providing disabled access.¹¹⁸

On the issue of disabled access to transport facilities, the GEO letter stated that “progress has been made against many of the transport issues raised in the Committee’s initial report”.¹¹⁹ For example, the Government stated that “more rail and bus vehicles now meet accessibility standards”, and “we are introducing a specific delivery plan in our rail franchise competitions which will require bidders to set out how they will meet the needs of disabled passengers”.¹²⁰ The Government stated that the Bus Services Act 2017 included powers to introduce an Accessible Information Requirement, to provide audio-visual annunciators on local bus services throughout Great Britain. To implement this power, the Government stated that it expected to “consult publicly on a proposed approach during 2018”.¹²¹ The letter also stated that “from 1 March 2018 it will be mandatory for bus and coach drivers to have received disability awareness training”.¹²²

With regard to taxis, the letter confirmed that the outstanding provisions of sections 165 and 167 of the Equality Act 2010 had been brought into force in April 2017. However, the Government confirmed that it had “no plans to commence section 163” of the Act, relating to granting of taxi licenses.¹²³ The rationale provided was that while some wheelchair users require taxis and private hire vehicles (PHV) to be wheelchair accessible, the resulting modifications can make those vehicles difficult for ambulant disabled people to access. Therefore, the Government’s preferred policy was one which “encourages local licensing authorities to use their existing powers to ensure that the overall taxi and PHV fleets meet the needs of passengers wishing to use them”.¹²⁴

Finally, on access to justice, the letter confirmed that the Government “took immediate steps to stop charging fees in employment tribunals following the recent Supreme Court judgment”.¹²⁵ The Government reiterated the position it had set out in its original response to the Committee report in July 2016 on legal aid and Qualified One-Way Cost Shifting.

¹¹⁸ Government Equalities Office, ‘[Letter from the Rt Hon Justine Greening MP on the Select Committee on the Equality Act and Disability](#)’, 21 December 2017, p 6.

¹¹⁹ *ibid*, p 3.

¹²⁰ *ibid*.

¹²¹ *ibid* p 4.

¹²² *ibid*.

¹²³ *ibid*.

¹²⁴ *ibid*.

¹²⁵ *ibid*.