



House of Lords Select Committee condemns Equality Act's failures to secure equality for disabled people

On 24 March 2016, the House of Lords' Select Committee published its report on the Equality Act 2010 and Disability entitled "**The Equality Act 2010: the impact on disabled people**".

The House of Lords Select Committee ("the Committee") was established in 2015 to carry out post-legislative scrutiny on the disability provisions of the Equality Act 2010 ("the Act") - in particular to consider:

- The adequacy of the law;
- Whether the Act had achieved the aim of harmonising and strengthening protection for disabled people;
- Whether it had enabled disabled people to fully participate in and contribute to society with dignity and respect;
- Whether the reasonable adjustments provisions are being implemented effectively and whether disabled people can enforce their rights to them
- The effectiveness of the Equality and Human Rights Commission.

The Committee issued a call for evidence on 25 June 2015 and received and accepted 144 responses. It also heard oral evidence from 53 witnesses and received supplementary evidence from some.

The Committee's Report sets out some damning conclusions that include:

- Combining disability with the other protected characteristics in the Act did not in practice benefit disabled people;
- The duty to make reasonable adjustments is neither well known nor well understood and there are barriers to individual people enforcing their rights under the duty;
- The Government's use of the 'Red Tape' challenge as a pretext for removing protection from disabled people and making changes under it increased the problems of disabled people; and
- There is a fundamental flaw in the equality duty.

Leisure facilities and housing are too often inaccessible, the Report notes, lacking facilities that are taken for granted – such as the basic facility of accessible toilets in many cases.

The Report said that in respect of transport, there have been 20 years of inertia which is “scarcely credible”. It notes that that the first plans for Crossrail included seven stations without step-free access; and some still will not have step-free access when Crossrail opens.

As for enforcement, the Government has hindered disabled people’s access to justice in respect of the Act by imposing fees in tribunals, reducing legal aid and changing the costs rules.

The Report goes on to make 55 recommendations to address the issues raised during its inquiry, some of them requiring legislative change, others not and many of them requiring low cost and practical adjustments. Those which are likely to be of particular interest include those set out in Chapter 9 of the Report on enforcement:

- That the collection of data regarding disability claims is treated separately from other claims in courts and tribunals;
- That the Ministry of Justice, in its ongoing review of tribunal fees, takes into account the strong evidence that tribunal fees are unfairly obstructing discrimination claims under the Act;
- That the Civil Procedure Rules are amended to apply Qualified One Way Cost shifting to discrimination claims under the Act (this would mean that costs would not be recoverable in the county court from Claimants other than with the permission of the court, as in personal injury claims);
- That the questionnaire procedure should be reinstated;
- That the power of the employment tribunals to make wider recommendations should be reinstated;
- That s.14 of the Act on dual discrimination should be brought into force;
- That the Government should consider changing the law to allow charities and other bodies, which do not themselves have a legal interest, to bring proceedings in the interest of classes of disabled people who are not themselves claimants.

Other recommendations likely to be of interest include those relating to the equality duty – s.149 of the Act, which the Committee received considerable evidence about. It recommended that there should be a new subsection added to section 149 of the Act as follows:

“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 appropriate step towards the achievement of the matters mentioned in subsection (1).”

In addition, the Committee recommended that the Government replace the Equality Act 2010 (Specific Duties) Regulations 2011 with provisions that require a listed public authority to:

- Develop and implement a plan of action setting out how they will meet the requirements of the general duty in all of their functions;
- Involve disabled people in the development and implementation of actions to collect public data to measure progress against the aims of the general duty; and
- Report regularly on progress.

In an extremely topical recommendation, the Committee proposed that there should always be an assessment of the cumulative impact of budgets and other major initiatives on disabled people, involving the Government Equalities Office and the Office for Disability Issues.

The Report recommends only one statutory change to the definition of disability – that the Equality Act 2010 (Disability) Regulations 2010 are amended so that a tendency to *physical abuse of others* ceases to be treated as not amounting to an impairment for the purposes of the definition of disability. This is as a result of the evidence of disabled children being excluded from school as a result of violence arising from impairments such as autism.

The Report is a thorough consideration of the provisions of the Act. The only area which is not the subject of extensive consideration – other than in respect of common parts – is that of premises, but this area suffers from a particular lack of caselaw other than in respect of possession proceedings.

The recommendations are likely to form the basis for campaigning and lobbying on change for effective disability rights for the next decade, in the same way that the Disability Rights Taskforce and the review of the DDA by the Disability Rights Commission set out the future agenda. According to reports, one of the recommendations – to bring into force section 165 of the Act (in respect of accessible taxis) has already been agreed by the Minister. Progress already!

ⁱ Catherine Casserley is a barrister at Cloisters and acted as the Select Committee’s specialist adviser for the Report. She has appeared in a number of the cases referred to in the Report and obtained the injunctive relief the Report referred to.