



Women and Equalities Committee's Inquiry on the Enforcement of the Equality Act

Written evidence submitted by Business Disability Forum, October 2018

1. Business Disability Forum: Who we are, what we do, and our submission

1.1 Business Disability Forum is a non-profit membership organisation which exists to transform the life chances of disabled people. We do this by bringing business leaders, disabled people, and Government together to understand what needs to change to improve the life opportunities and experiences of disabled people in employment, economic growth, and society more widely. We provide practical, evidence-based, strategic solutions for businesses to recruit, retain, and provide inclusive products and services to disabled people.

1.2 We are committed to an evidence-based approach to developing our inquiry responses. To help us develop this response, we have therefore worked with 14 businesses and 89 disabled people. We spoke to both customer and employee facing roles in businesses. Although we recognise this consultation is pan-diversity, we have focussed our response on disability and disabled people's rights.

2. How well responsibilities towards disabled people under the Equality Act are understood and known about by businesses

2.1 Our research showed service providers generally understand their duties to disabled people under the Equality Act slightly more than those in employee-facing roles. This did not surprise us as we often see heavier investment in training for customer facing staff than on staff responsible for managing and supporting disabled employees.

2.2 Business Disability Forum encourages its members to draw learning from any disability related disputes, whether they are in-house procedures or progress to legal proceedings. However, we know that many organisations deal with complaints and disputes in isolation to diversity and inclusion teams who are often best placed to implement measures for learning from the incident. This was reflected in our finding that 13 out of 14 employers we spoke to said that they did not know if a legal disability related case had been taken against them.

2.3 In other research we have undertaken on making reasonable or workplace adjustments and managing staff with disabilities, line manager and HR **knowledge** about their legal responsibilities towards disabled people under the Equality Act remains low. Even where line managers have knowledge of the Act, they themselves report that they lack **confidence** in putting these responsibilities into practice in the workplace. We would therefore recommend that knowledge of the Equality Act and whether that knowledge is effectively being put into practice be considered separately. Disabled people are most often failed because managers and employers do not put their knowledge of the Equality Act as well as their own policies and procedures into practice.

2.4 We asked the businesses we spoke to **how effective** the Equality Act is in advancing and protecting disabled people's rights. The response was balanced, with a near-equal number of businesses saying the Act is effective as those who said it is not effective.

2.5 When we asked businesses, what should change to **improve legal protection** for disabled people and increase enforce of rights, there was a range of answers, including:

- More education should be given at school and throughout education about disabled people's rights in employment and as users of services.
- More financial investment should be made in supporting businesses to make adjustments for disabled people (employment and services).
- There should be improved access to up to date information for businesses to stay informed.
- There should be better access to training for businesses on supporting and meeting the needs of disabled people.

3. How well disabled people understand their rights under the Equality Act and bringing a claim

3.1 We asked disabled people how well they understood what their rights under the Equality Act. Responses indicated that:

- 18 per cent understand their rights very well;
- 49 per cent understand their rights a little;
- 25 per cent do not know what their rights are at all.

3.2 Many disabled people told us accounts of discrimination and unfair treatment, predominantly in employment situations. Overall, disabled people knew they were being treated unfairly, but they often **did not know how their experience fits**

within the context of the law. Two disabled employees cited that they had used ACAS¹, the EHRC, or sought a lawyer to get advice. One employee even mentioned seeking support from their MP. On each occasion, individuals cited that the process for each of these was long, stressful and expensive, meaning that each individual did not see their claim through. One employee called this “process fatigue”. Three employees told us they started legal proceedings against a business, but did not see it through as the process was “too difficult”.

3.3 Understanding rights under the Act was one thing, but when we asked disabled people about **how they would go about bringing a claim** for discrimination against an employer or service provider, 75 per cent said they would not know how to do this. At the time of research, 5 per cent of disabled people were in the process of or intending to bring a claim of discrimination against an employer or service provider. 5 per cent had sought advice or support from the EHRC to bring a claim.

3.4 Even where knowledge of the law and the legal process was relatively good, there were three main themes which came through for still not concluding bring a claim against a business:

- As above, financial disadvantage. It costs money to bring a claim, particularly if the claim is against an employer and the employee is not working whilst the claim is being pursued.
- “Fear” of bringing a claim or reporting discrimination, particularly when the claim was against an employer. This included fear of losing their job completely (not being reinstated); fear of being seen as a “trouble maker”; fear of not being promoted or progressing with that employer.

3.5 There was an overall feeling that no one (group, bodies, or government) had effectively ensured that disabled people, particularly people with non-visible disabilities, **know their rights or how to bring a claim** when they feel their rights have been breached. This was reflected by words of another employee on the same issue: “Nobody is on our side [or] fighting our corner”. Two disabled people said there should be more of an onus on local authorities to ensure citizens understand their rights. Another person commented that the most supportive place or ‘setting’ for disabled people is the welfare system; that if you receive welfare

¹ Regarding using ACAS to bring a claim, one disabled person commented: “It [the removal of the fee to bring a claim before the employment tribunal] is a distinct improvement. However, the overly complicated nature of bringing an employment tribunal claim still means the recourse to an independent resolution is out of reach from an individual, unless they have sought quality guidance. The process should be easier and much of this responsibility rests with ACAS who play a pivotal role as gatekeepers to progressing any claim of discrimination. Their website is overly complicated and the actual process to start a resolution is not clearly accessible.”

payments, the website is accessible, there is information about disability and access, and communications (such as text messages and updates about application and claim progress) are improving. One person commented that this level of adjustments and accessible information is (a) not practiced by employers or service providers enough, and (b) is hugely inconsistent (one employer might be very good at disability inclusion, but another might be hugely poor at this).

4. Types of discrimination experienced by disabled employees

4.1 Discrimination and unfair treatment in employment situations were more common than discrimination by a service provider, although there are reasons for this nuance: for example, we know that many disabled people simply do not return to a service where they are mistreated, whereas it is much harder to walk away from a job. Many disabled people told us that the **financial pressure** of leaving a workplace where they were being discriminated against and the time it would take to pursue a claim was not realistic in terms of not having an income during that time. This means, as research for this submission revealed, disabled employees are repeatedly experiencing discrimination, bullying and harassment because of their disability, or unfair treatment at work, but they nonetheless remain there unhappy, with reduced productivity, and lacking morale, with most camaraderie and support coming from a disabled employee network. This also means talented employees are remaining 'static' as a type of 'presenteeism', and not be allowed to realise their full potential.

4.2 **Knowledge of the law and legal process** is pivotal to bringing businesses to account. Disabled people told us that they had been treated and the level of knowledge they have about their rights *and* the legal process for enforcing them is pivotal in deciding whether or not to seek redress:

- One person told us that, if the process was easier and they had access to more advice, there would have been three occasions where they felt they could have brought a discrimination claim against three separate employers. This individual had not been able to seek redress on any occasion.
- Another disabled person told us that they had received a job offer which was subsequently withdrawn. Since they knew they had the right to request the recruitment paperwork, they requested to see their paperwork for this job application and offer. It was only at this stage they saw that each of their disabilities had been written out and underlined by the employer on their application form.
- Three other disabled people said that they had become aware their employers were delaying their responses which was effectively leading to claimants being "timed out" of legislative timeframes in which they could bring a claim to an employment tribunal.

4.3 Disabled people also brought up wider **systemic discrimination**, such as inaccessible transport and poor welfare support, which effectively enforces ‘layers of discrimination’ before even getting to an employer or service provider. One person commented on how they have had to turn down offers of employment when the job has been located where transport links are inaccessible.

5. Disabled people’s views of the Equality Act

5.1 A repeated frustration from disabled people was that disabled people’s rights were viewed by business, government, and society more widely as **not as important as race and sex** related rights. Campaigns and government action on pregnancy, older people, race, sex and sexual harassment, although still seen as important, were felt to be given an imbalanced amount of attention compared to the rights of disabled people.

5.2 Disabled people repeatedly told us they feel the Act has not effectively protected a wide range of impairments. People with **diabetes, mental health conditions, long-term health conditions, and who use assistance dogs** said they often have to “fight” an employer or service provider to get support. We were told that people with such conditions, particularly **non-visible conditions**, are often asked to provide “medical proof” that they might need support, which reinforces an unhelpful “hierarchy of types of disabilities” but also has the effect of people with non-visible conditions being less ‘believed’ and needed to provide more “proof” of their need for adjustments than people with visible disabilities.

5.3 Disabled people said they felt the Act is not explicit enough about protecting people, particularly employees, who **become disabled**. Since the Act covers people “long-term” defined by a period of twelve months after diagnosis, employees who acquire conditions are often waiting a year before their employer will support them by making adjustments. This is seen as a “dangerous” time for an employee who has acquired a condition, because they need adjustments to do their job but are not getting them and so they are performing less well and being less productive. They are then subject to formal warnings or managed under performance or capability procedures. Four disabled people told us they, or someone they knew in their organisation, had been “managed out” of the organisation for disability related issues, often under a performance policy.

5.4 We gave disabled people a ‘free text’ space to tell us how they would like to see the Equality Act and its enforcement **changed or improved**. Although this was a ‘free text’ answer and we did not make suggestions for any changes, many disabled people raised three main issues:

1. Organisations need to know more about protections in the Equality Act for disabled people *and* what this means in practice.

2. Organisations who do not comply with the Act should be “fined”, “reported in the press”, “prosecuted” or “sanctioned”.²
3. Disabled people need to be better equipped to understand their rights and how to enforce them.

6 The legal process of enforcing disability rights

6.1 Business Disability Forum (formerly known as the Employer’s Forum on Disability) was heavily involved with the consultations which resulted in the Disability Discrimination Act 1995. We said then and still maintain, that for legislation that addresses a social ill such as discrimination against disabled people (which sees disabled people excluded from the workforce and society), to be effective, it has to be credible in the eyes of both disabled people and business. By this we mean that it must balance the rights and responsibilities of both sides. It also, crucially needs to be enforceable by the people it seeks to protect. Legislation that is not enforceable by disabled people either because of an overly complex process or because of prohibitive costs is ineffective: rights which cannot be enforced are not true rights. Unenforceable legislation aids neither disabled people nor business since the law is not clarified by judgements and precedent. This can mean that businesses can implement policies without any certainty of their legality and both sides remain “in the dark” about what should be done and they should act.

6.2 The complexity of the process and the cost of bringing a claim in the County Court means that there have been relatively few disability discrimination claims brought **against service providers**. This does not mean that there is or has been no discrimination; it merely means that **discrimination goes unaddressed** and continues as disabled people have been unable to enforce their rights and change systems that place them at a disadvantage. This includes both intentional discrimination but far more often the unintentional barriers that service providers continue to erect because there is insufficient sanction for “getting it wrong” and excluding disabled people. Our members had told us that they seek “ammunition” to persuade senior colleagues and Boards to change policies and practices that

² One person said that where an employer had discriminated against a disabled person, and where that discrimination had resulted in the employee leaving their job, the employer should have to continue to pay the salary until the disabled person found an alternative job. This would address three issues: (1) There would be a sanction for the employer who had discriminated; (2) the individual would not experience a financial burden on the back of being discriminated against; and (3) as the individual is still receiving a salary, they would not need to go into the welfare system. We are, however, aware that a successful tribunal claim will result in an order that takes into account whether the claimant has another job, how long this took and if they haven’t another job how long reasonably they will be unemployed (taking into account the nature of the disability) and the award is calculated on that basis for financial recompense. However, this can take time, during which the individual still experiences financial disadvantage which is not resolved unless their case is successful.

are not inclusive of disabled people. We are often asked for legal cases and precedents as well as levels of compensation awarded in discrimination cases by businesses as such “ammunition” but, since this does not exist (in the same way as it does in the USA, for example), there is little incentive for some businesses and business leaders to change their practices, particularly as service providers.

6.3 The best chance of being successful in both the County Court and in an employment tribunal is to have **legal representation**. Accessing lawyers can be complicated to the people who need them most; digital skills to access and ‘search’ for lawyers can be difficult in themselves with the inaccessibility of many websites, and legal communications can be difficult to understand. One person said when they were bringing a claim that they just needed to be told about the process and what was needed in “plain English”. We also know the accessibility of court buildings, case documentation, and the hearings and trials are carried out to be a huge barrier for many disabled people.

6.4 Whilst we and the people who responded to our survey welcomed the removal of fees to bring a claim in the employment tribunal, there has been in recent years a ‘rowing back’ of the rights of claimants in discrimination claims; rights such as the ability to issue pre-claim discrimination questionnaires and to ask a tribunal to make recommendations:

- **Pre-claim discrimination questionnaires** can be onerous on the employer to complete, but they can also assist employers by enabling them to ascertain whether or not discrimination has occurred before going to the tribunal hearing. In many cases this can lead to an employer settling a case and changing their practices, procedures and policies without the expense and distress of a hearing (for both parties). Similarly claimants can realise that their claim does not have merit and with little chance of success can withdraw it on receipt of a completed questionnaire. There might be an argument for limiting the length of questionnaires but removing them does not help with the enforcement of rights under the Equality Act.
- Under the Deregulation Act 2015, judges lost the **power to make wider recommendations** in discrimination cases. This was a huge loss for both business and disabled people. As well as helping employees prepare to bring a case, recommendations were also helpful for employers as they made clear what the law intended and what a tribunal expected the employer to do to meet the requirements of the Act. Removing the power to make recommendations was an unhelpful and retrograde step.

7 The role of the Equality and Human Rights Commission (EHRC)

7.1 Businesses generally had very little interaction with the EHRC when promoting, upholding, or improving disability inclusion in their organisation – most having none at all. Ten out of 14 businesses had heard of the EHRC but were not clear what the EHRC’s role was in enforcing the Equality Act. None of the businesses

we spoke to had been contacted by the EHRC for enforcement purposes, but some were unsure if this had happened (see section 2.2 above).

7.2 The EHRC is not generally seen as a 'go to' body for disabled people. Only 23 per cent of disabled people we spoke to had heard of the EHRC and understood its role, and 59 per cent had heard of the EHRC but did not understand its role. An additional 19 per cent had not heard of the EHRC at all. Only 1 per cent of disabled people felt the EHRC was effective in enforcing their rights, but 27 per cent felt the EHRC was "a little effective".

7.3 Business Disability Forum is concerned that the EHRC has not been equipped or enabled by a number of factors to be as effective as its disability specific predecessor, the Disability Rights Commission (DRC). The DRC had more funding; more strategic, disability specific focus; and it had resources in terms of lawyers who were resourced enough to take cases on behalf of disabled people. An additional strength of the DRC is that it worked as an advisory body for both business and disabled people. While the EHRC have produced good quality and helpful disability specific research, such outputs do not help disabled [people enforce their legal rights.

8 The strength of and need for the Equality Act

8.1 There are generally three levers or narratives for disability inclusion and supporting disabled people that we see within businesses:

- Legal/legislative – 'we *must* do this';
- Moral – 'it is the *right* thing to do'; and
- Commercial – 'being inclusive attracts better talent to work for us and more customers/clients'.

8.1 Regarding section 8.1, we generally see the 'moral' lever is not enough; therefore the 'legal' lever is still needed. This is supported by research we recently carried out on digital accessibility and making public sector websites and apps accessible. A number of disabled people and businesses said that the only way to ensure websites and apps are accessible is to write this into legislation and implement sanctions for non-compliance. We are seeing a move towards disabled people and businesses saying not just that we still need legislation, but that we need more of it, and on a wider range of issues (such as digital accessibility and enhanced/updated legislation on built environments).

8.2 Legislation, however, must be accompanied by an accessible legal process: rights that are unenforceable are not real rights. As one person said, "At the moment, workers have to fight for most things [even] under current legislation". Rights in legislation are not enough; they need to be enforced.

9. Recommendations

Business Disability Forum would like to see the following:

1. Allocation of more financial resource for the EHRC to employ lawyers who take disability discrimination cases and develop a strategic role to improve the rights and experiences of disabled people in the UK (see section 7.4).
2. The power for tribunals to make recommendations be reinstated (see section 6.3).
3. Affording enhanced powers to the EHRC to enforce recommendations made to businesses by tribunals.
4. Claims against service providers to be directed to the employment tribunal system (see section 6.1).

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