House of Commons
Work and Pensions Committee


Third Special Report of Session 2008–09

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The Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

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Terry Rooney MP (Labour, Bradford North) (Chairman)
Anne Begg MP (Labour, Aberdeen South)
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The following Members were also Members of the Committee during session 2008-09

John Penrose MP (Conservative, Weston-Super-Mare)

Powers
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Publications
The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/work_and_pensions_committee.cfm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff
The current staff of the Committee are James Rhys (Clerk), Emma Graham (Second Clerk), Amy Sweeney and Hanna Haas (Committee Specialists), Laura Humble (Committee Media Adviser), John-Paul Flaherty (Senior Committee Assistant), Hannah van Schijndel (Committee Assistant) and Jim Lawford (Committee Support Assistant).

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Third Special Report

The Work and Pensions Committee agreed its Third Report of Session 2008-09, The Equality Bill: how disability equality fits within a single Equality Act, on 20 April 2009. The Report was published on 29 April 2009 as House of Commons Paper No. 158. We have now received the Government’s Response to this report in the form of a memorandum from the Minister for Disabled People, Jonathan Shaw MP. This memorandum is printed as an Appendix to this Special Report.

Appendix: Government response

Introduction


2. The Disability Discrimination Act 1995 has been amended by this Government to improve and strengthen rights for disabled people and has provided them with the opportunity to participate more fully in society. The Equality Bill (which was introduced on 24 April) will significantly strengthen and streamline discrimination legislation to make Britain a fairer and more equal place.

3. The Equality Bill will work hand in hand with the Government’s welfare reforms to ensure everyone, whether disabled or non-disabled, young or older is given the opportunity to make a full contribution to society.

Conclusions and recommendations

The single Equality Bill

1. We welcome the Government’s intentions to simplify and streamline legislation across the different equality strands into one single Equality Bill. This will make discrimination law easier to understand and comply with. We also welcome the Minister’s assurance that the new Bill will not resile from current protection for disabled people. We recommend that, where appropriate, distinctive disability equality provisions, namely the requirement to make reasonable adjustments, disability-related discrimination, and the public sector duty to consider more favourable treatment, should be retained. (Paragraph 18)

4. The Government made a commitment in the consultation on the Equality Bill that there should be no erosion of existing levels of protection from discrimination for disabled people and the Equality Bill delivers strengthened and streamlined disability discrimination law.
5. The Equality Bill retains the requirement to make reasonable adjustments and contains a clause restoring protection against discrimination arising from disability. The public sector Equality Duty directs public authorities to consider whether they need to treat people from all protected groups, including disabled people, more favourably.

2. We received evidence that the Government’s response to the Malcolm judgment of introducing indirect discrimination in disability legislation will not provide the same level of protection as was previously provided pre-Malcolm. The pre-Malcolm interpretation of the disability legislation was widely understood and familiar to employers and employees alike. The Government should use the opportunity the Equality Bill presents to reform provisions for disability-related discrimination to re-establish the situation that existed before the Malcolm judgment. This could be achieved by removing the requirement for a comparator, in line with current sex discrimination law regarding pregnant women. (Paragraph 34)

6. The Government carefully considered the responses to the consultation on improving protection from disability discrimination and it published its response to the consultation on 27th April 2009 to coincide with the publication of the Equality Bill. The Equality Bill includes protection from indirect discrimination and a revised form of protection from disability-related discrimination. The new provision will once again make it easier for disabled people to bring individual cases when they are discriminated against for reasons arising from their disability.

3. We welcome the Government’s intention to harmonise the different provisions that currently permit employers, service providers, landlords and others to justify disability discrimination in certain circumstances. We recommend that the objective justification permitted for disability-related discrimination should be, as proposed by the Equality and Human Rights Commission, where the treatment in question is ‘objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’. (Paragraph 40)

7. The Government considers that adopting the wording “appropriate and necessary” would be problematic because of the extremely pressing nature associated with the term "necessity" in domestic law. Use of this wording risks being interpreted by the courts as meaning that, in order to satisfy the test, the treatment would have to be the only possible means of achieving the legitimate aim, whereas it is the Government’s policy that treatment which is proportionate should be permitted.

8. The Government therefore believes it is better to align the test of justification for discrimination arising from disability with that relating to indirect discrimination, namely that it should be a proportionate means of achieving a legitimate aim.

4. We welcome the Government’s intention to simplify discrimination legislation by extending the concept of discrimination to association and perception across all strands. We recommend that this form of discrimination should be prohibited under employment and the goods, facilities and premises provisions. (Paragraph 52)
9. The Government has decided to extend the prohibition of associative and perceptive direct discrimination and harassment to other strands and areas where this does not currently apply. The Equality Bill will therefore prohibit direct discrimination and harassment based on association and perception in respect of race, sex, gender reassignment, disability, sexual orientation, religion or belief and age in relation to both employment and areas beyond this, such as the provision of goods and services.

10. The provisions relating to association and perception in the Equality Bill implement, and go beyond, the judgment of the European Court of Justice in Coleman v Attridge Law,¹ and the extension to other protected characteristics is in keeping with the overall aims of the Equality Bill to simplify and strengthen the law.

5. We welcome the Government’s announcement to include carers in the forthcoming single Equality Bill, which will give carers the protection they currently lack in employment, the provision of goods, facilities and services and through public sector equality duties. However, the decision in Coleman means that only direct discrimination and harassment based on association with a disabled person must be prohibited under domestic legislation. Coleman does not address the matter of flexible working – and in particular, it does not provide carers with a right to request reasonable adjustment, which may be necessary in order to ensure their effective participation in the workplace. We believe that the Bill should make this provision. (Paragraph 61)

11. The Equality Bill provides protection from discrimination based on association with a disabled or older person - and by their nature associates will include carers for disabled or older people.

12. The protection in the Equality Bill for associates of disabled people does not extend to requiring reasonable adjustments, such as flexible working. Such a provision is not necessary. This is because, in recognition of the very valuable role carers play and the additional responsibilities and challenges that people face when they act as carers, the Government has already extended employment legislation to include the right for carers to request flexible working.

6. The current legal framework is totally inadequate to address cases of multiple discrimination where people are treated less favourably on more than one ground simultaneously. The single Equality Bill is the first opportunity to address this omission and should clarify that a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds. However, the Bill should also make clear that there should be no lowering of the standard of proof required. (Paragraph 68)

¹ http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-303/06&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100
13. The Government published a discussion document on 27 April[2] with a proposal for protection from multiple discrimination which would enable claims of direct discrimination to be brought combining two protected characteristics. The document makes clear that any provision for multiple discrimination would require the same standard of proof as currently required for single strand claims. In the light of the feedback received, the Government will decide whether protection from multiple discrimination should be introduced and if so how, taking into account progress on the Equality Bill currently being considered by Parliament.

7. We believe that for the purpose of direct and disability-related discrimination the social model - protection from discrimination to everyone who has (or has had) an impairment without requiring the effects of that impairment to be substantial or long-term - should apply. The focus should be on whether or not the treatment of an individual was justified, or whether it was on the grounds of their impairment. It is inequitable to protect some disabled people from discrimination but not others because their impairment is less significant. (Paragraph 84)

14. The Equality Bill adopts a hybrid model approach to protection from disability discrimination. The Government considers that in order to establish who is protected from discrimination there must be an acknowledgment that the disabled person has an impairment of some kind. However, the Equality Bill then takes a social model approach through the duty to make reasonable adjustments, the purpose of which is to overcome the disabling barriers that people with impairments face in society.

15. An impairment-based approach (which might include temporary conditions) would be contrary to the aims of the legislation which is to protect those who have a disability in the generally accepted sense: people who have a long-term or permanent condition.

8. However, for the third discrimination ground – the failure to make reasonable adjustments - a medical model approach must be retained. This will ensure clarity for business about the extent to which they have to make adjustments and ensures that the most vulnerable receive the support they need. (Paragraph 85)

16. One of the key aims of the Equality Bill is to simplify the legislation. The Government considers that the adoption of different approaches to protection from disability discrimination according to which duty applies would complicate the legislation. Instead of providing clarity it would lead to confusion for both disabled people and those with duties under the Bill.

9. It is paramount that the Government and the Equality and Human Rights Commission (EHRC) monitor the implementation and progress of the single Equality Act effectively. The EHRC has a unique role as the only public organisation that has responsibility for all equality and diversity strands. It needs to ensure that none of the rights under the current strands are diminished under a single Equality Act. (Paragraph 90)

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17. In addition to other forms of post-legislative review such as internal review or through the Impact Assessment process, the Government established a new system in March 2008 for promoting the post-legislative review of Acts, by which the responsible department will, within 3-5 years after an Act has received Royal Assent, submit to the relevant Commons departmental Select Committee a Memorandum reporting on certain key elements of the Act’s implementation and operation. The Government Equalities Office will continue to ensure that the Commission meets its obligations under the Equality Act 2006, and that due priority is given by the Commission to the implementation and monitoring of the Equality Bill when it is enacted.

10. The division of responsibility for equality issues within government departments is confusing and risks undermining the effectiveness of any single Equality Act. The Government Equalities Office (GEO) should lead on equality matters after the single Equality Act comes into force. To co-ordinate disability policy across Whitehall effectively, the GEO needs specialist expertise on disability, as currently provided by the Office for Disability Issues (ODI). The GEO should also lead on all of the PSAs that relate to inequalities and discrimination. (Paragraph 97)

18. The Government recognises the importance of a clear lead on equality issues across Government. That is why the Prime Minister established the Government Equalities Office in 2007 to strengthen further the Government's ability to deliver across the entire equalities agenda.

19. The GEO works closely with other Departments and units, like ODI, in this role. In addition to the Equality PSA, on which GEO leads, a number of other PSAs seek to address inequalities, and the GEO works closely with other Departments on these PSAs. In addition the Cabinet Sub-Committee on Communities and Equalities brings together Ministers from across Government to discuss key policies on equalities.

**Equality in Employment**

11. We note the Government’s long-term ambition for the overall employment rate of disabled people to match the employment rate of the general working age population. We believe this ambition is laudable but impractical. However, we are disappointed that the Government can claim to be on course with an upward movement in the employment rate of just 1.41%. (Paragraph 109)

20. There appears to have been some misunderstanding over the figure of 1.41% presented to the Select Committee. Due to the sample sizes used in the Labour Force Survey - the survey DWP uses to measure employment rates - 1.41% represents the minimum decrease DWP would need to observe in the gap between the employment rate for disabled people and the general working age population before DWP could be confident there had been a statistically significant change.

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21. In previous periods there has been strong progress against the employment indicators. The gap between the employment rate of disabled people and the overall population has seen a steady reduction over recent years. Over the last 10 years and comparing equivalent quarters, the gap has actually narrowed by 6.7 percentage points from 32.4% in 1999 to 25.7% in 2009.

12. We recommend a more realistic long-term target accompanied by interim targets with a timetable for measuring progress. We recommend the Government sets an interim target over 5 years. By then we would expect the gap to have declined significantly. We also recommend that the Government monitors progress by physical impairment, mental illness and learning disability, as set out in the Labour Force Survey data, to ascertain whether more progress is being made in some groups of disabled people than in others. (Paragraph 110)

22. The Government is committed to policies that will continue to narrow the gap between the employment rates of disadvantaged groups and the overall rate - as set out in PSA 8: maximising employment opportunity for all. HM Treasury published a delivery agreement in December 2008 that sets out how government intends to monitor progress through the relevant Cabinet Committee. This was developed in consultation with the relevant government departments, the Equal Opportunities Commission, the Commission for Racial Equality, the Disability Rights Commission and Jobcentre Plus. The PSA8 board, comprised of senior officials from across Government meets quarterly to discuss progress and consider further actions in any areas of concern. As well as this DWP, EHRC and GEO have recently published a joint report summarising headline labour market figures for various demographic groups, including disabled people.

23. Measuring employment rate by physical impairment, mental illness and learning disability can be extremely problematic. For example, for learning difficulties the Labour Force Survey (LFS) produces a central estimate for the employment rate of 15%. The relatively small sample size means that this estimate may be out by +/- 4.3 percentage points.

24. DWP is working alongside the Cabinet Office and the Department of Health to see how we can better measure the employment rate of those with moderate to severe learning disabilities. The cross-government Learning Disability Employment Strategy, to be published this summer, will contain more details about this work.

13. In light of the judgment by the European Court of Justice, we recommend that the Government removes regulation 30, which permits employers to continue to compulsorily retire employees at the age of 65. This regulation contradicts the Government's wider social policy and labour market objectives to raise the average retirement age and allow people to continue to work and save for their retirement. (Paragraph 122)

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*Monitoring the impact of the recession on various demographic groups, June 2009
25. The Government is committed to undertaking an evidence based review of the default retirement age. With the assistance of representatives of the business community, trades unions and the age lobby, The Department for Business, Innovation and Skills (DBIS) and DWP are in the process of gathering the evidence which will be needed to enable it to undertake this review in 2011.

26. If the conclusion of the review is that the evidence demonstrates a default retirement age is no longer necessary, the Government will take the necessary steps to remove it.

14. We believe that the legal position of carers in employment should be made clear to both employers and employees by extending protection from discrimination to carers as discussed before. DWP also has a role to play in improving its service to carers who access Jobcentre Plus services. (Paragraph 132)

27. The Equality Bill will extend protection from discrimination on the basis of association with disabled and older people. The Government is committed to supporting carers in the workplace and recognises the difficulties that can be caused by their additional caring responsibilities. This is why the Work and Families Act 2006 extended the right to request flexible working to carers of adults from April 2007. Under the legislation the person cared for must be a relative or live at the same address as the carer. This definition covers approximately 80% of carers. The Department for Business, Enterprise and Regulatory Reform (BERR), now the Department for Business, Innovation and Skills (DBIS) will review the definition of carer in relation to flexible working once the impact of the current extension has been evaluated. This is part of the short-medium term commitments in the Carers Strategy.

28. Government is currently running a campaign to increase both carers’ and employers’ awareness of this right. DBIS and GEO will target both carers and employers to make sure the campaign has maximum impact, and it coincides with the extension of the ‘right to request’ to parents of those aged 16 and under which came into effect from April this year.

29. The Carers Strategy sets out additional Government commitments to carers in the workplace and these include providing more support to carers entering/re-entering the job market.

30. During 2009, Jobcentre Plus will introduce a range of new services, these include:

- introducing Care Partnership Managers in every Jobcentre Plus district;
- improving information about flexible job vacancies;
- introducing specialist training for Jobcentre Plus advisers who work with carers;
- funding replacement care for those carers participating in approved training;

5 The Employment Act 2002 gave the parents of children aged under six or disabled children under eighteen, the right to apply to their employers to work flexibly. These rights and duties came into force on 6 April 2003. The Work and Families Act 2006 gave the Secretary of State a power to make regulations for the extension of this right to carers of adults. These regulations came into force on 6 April 2007.

• ensuring carers have access to appropriate employment programmes; and
• investigating ways of providing return to work support through third sector organisations.

15. We recommend that DWP should support adults who become carers during their working lives to combine work and care and enable those who wish to return to paid work when caring ends or changes to do so. A ‘joined up’ intergovernmental approach is required to ensure that carers are supported in the wider social care system by adequate arrangements to inform them of their rights and entitlements and of how to access an appropriate range of support and services. Links must be made at a local level so that advisers are able to help carers find social care services in the same way they do with parents who need support to access childcare. (Paragraph 133)

31. The Care and Support Green Paper due for publication by the Department of Health in June 2009 suggests ways to improve the system of care in terms of funding and delivery. The Government vision is:
• to give people independence, choice and control; and
• make sure that everyone can get the care and support they need; BUT
• that funding is targeted at those most in need: and
• be affordable for the Government, individuals and families in the long term.

32. Jobcentre Plus is currently recruiting district Care Partnership Managers whose role will include improving the skills and knowledge of advisers and making local links to support working carers in similar ways to Childcare Partnership Managers. These will be in post by September 2009.

33. DWP will support eligible employed carers to combine paid work and care responsibilities, for example:
• those carers who are working and in receipt of Carers Allowance; and
• those ex-Jobcentre Plus customers who are provided with additional support once they become employed.

34. The key support for the majority of carers who combine work and care is the ability to work flexibly and the adequacy of support care systems. New National Insurance credits for parents and carers will be introduced from 6th April 20107 as part of major reforms which will extend the coverage of the State Pension. These credits will protect carers’ entitlement to basic State Pension, State Second Pension and also Bereavement Benefits for a spouse or civil partner.

16. We strongly believe that discrimination legislation should apply to volunteering as it does to other aspects of day-to-day life such as access to goods, facilities and

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7 Under the Pensions Act 2007
services, employment and education. Volunteers currently have less legislative protection against discrimination than someone going into a sweet shop. Better protection would also recognise the contribution of volunteering and its importance for disabled people as a route into employment. We recommend that the Government clarifies the position of volunteers in terms of protection from discrimination in the single Equality Bill. (Paragraph 137)

35. The Government recognises the contribution of volunteering to society and shares the Committee’s view that volunteers should be treated with respect and care. Where a relationship between a charity or organisation and an individual amounts to one of employment, protection against discrimination exists. Volunteers will also be protected in some circumstances as recipients of services, for example when dealing with an agency which arranges volunteer placements. The Equality Bill will extend this protection to discrimination because of age.

36. The Government funded the publication of Volunteers and the Law\(^8\) in 2005, which provides clear guidance on the legal issues for volunteer managers and stresses that it is good practice for organisations to avoid practices that could be seen as unfair or discriminatory.

17. We welcome the Government’s intention in the single Equality Bill to give employment tribunals extended powers to make recommendations that employers amend their policies or practices. We believe the Government should monitor whether this measure encourages better employment practices. We recommend that tribunals should also be given binding powers to order reinstatement in discrimination cases. (Paragraph 140)

37. The Government recognises that strong and effective enforcement is necessary to make a reality of legal rights. This is why it decided to use the Equality Bill to extend the power of tribunals to make recommendations that benefit the wider workforce, as well as the individual claimant. A recommendation can help an employer understand what he or she needs to do in order to comply with the law in the future. This will help to reduce the risk of other employees facing the same type of discrimination thereby helping to tackle systemic discrimination.

38. The Equality and Human Rights Commission is currently, and will continue to be, notified of recommendations made in discrimination cases and has the option of offering further advice or assistance to the organisation concerned. This process will help both the Commission and the Government Equalities Office to monitor the effectiveness of this measure in improving employment practices.

39. The Government does not consider that an express power to order reinstatement in discrimination cases would be appropriate. This is because in the majority of cases involving discrimination the claimant’s relationship of trust with the employer will have irrevocably broken down and therefore ordering reinstatement would be inappropriate and not what the claimant wants. This is also why reinstatement is a remedy which is used very little in unfair dismissal cases. There is, however, the potential for a tribunal to use its

recommendation-making power to recommend that a person be reinstated and the Government believes that this is sufficient.

18. Relying upon individuals to bring about systemic change through individual litigation places a heavy burden upon them. It also places a heavy burden on employers and the tribunal system itself. We recommend that the Government introduces provisions for representative and class actions in the single Equality Bill, enabling bodies such as trade unions or the EHRC to take cases to court on behalf of a group of individuals. We believe this will benefit individuals, employers and the administration of justice. (Paragraph 141)

40. As representative actions would be a new departure for Great Britain and could affect litigation across the board (not just discrimination cases), the Government considers it important that it is fully aware of the possible impact before deciding whether or not to legislate. This is why there are no provisions dealing with representative actions in the Equality Bill. The Government is instead analysing the review undertaken by the Civil Justice Council, an advisory body to the Ministry of Justice, which was published at the end of 2008 and which looks at the impact of representative actions across all areas of the law. Any proposals for reforming this area of the law would then be subject to a consultation.

41. The Government is committed to ensuring that where disputes arise they are resolved as quickly and effectively as possible and has introduced, through the Employment Act 2008, a package of measures to simplify and enhance the framework for dispute resolution in the workplace.

19. We endorse the Disability Rights Taskforce’s recommendation that disability related enquiries before a job offer should be permitted only in very limited circumstances. As a general rule such questions should only be permitted after a conditional/provisional job offer has been made. There will be cases where a job offer is withdrawn because of health-related concerns or because reasonable adjustment for a disability is not possible. However, the process would then be transparent, and where there is disagreement as to the decision, further consideration or mediation are possible. (Paragraph 156)

42. The Government is not convinced of the need to outlaw pre-employment disability-related enquiries, particularly because the information provided can help the employer to decide what reasonable adjustments, including any adjustments to the recruitment process, the disabled person may require.

43. The Government recognises that some employers require a health declaration. However, the employment provisions in the Equality Bill make it unlawful to use information about a person’s disability to discriminate against that person. Any disabled person who considers that the employer has discriminated against them because of their disability may take action under new procedures for settling internal disputes which the Government has made simpler and more flexible since 6 April 2009. They can also make use of the DL56 Questions Procedure. Formal enforcement action may be taken by

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making a claim to an Employment Tribunal, where the burden of proof falls on the employer to show that it has not discriminated.

20. There is a sharp discrepancy between disabled peoples’ perception that discrimination in recruitment is a major problem and the number of cases taken to employment tribunals. Our recommendations for representative and class actions and wider powers for tribunals to make recommendations on employers’ policies and practices, including recruitment processes, are particularly relevant in improving compliance and enforcement of equality in recruitment. (Paragraph 162)

44. The Equality Bill will simplify, harmonise and consolidate discrimination law, and enable the provision of clearer guidance for employers. This should make it easier for everyone to understand their rights and responsibilities and reduce inadvertent non-compliance and subsequent tribunal claims. As indicated above, the Government is extending the recommendation-making powers of tribunals in the Equality Bill to help improve compliance and is considering the case for introducing representative actions following the review undertaken by the Civil Justice Council.

45. The Government also believes it is desirable that, where disputes arise, they are resolved as quickly and simply as possible using alternative methods of dispute resolution such as mediation and conciliation where appropriate. It has introduced a package of measures to simplify and enhance the framework for effective dispute resolution in the workplace through the Employment Act 2008. These measures should help to reduce the future number of claims brought in the Employment Tribunals by offering employers and employees a chance for early conciliation of their problems.

21. We also recommend that the Equality and Human Rights Commission takes a strategic approach to improving enforcement by taking on cases in recruitment to improve compliance with the law. It should conduct more strategic research in this area and launch investigations into discrimination in recruitment, where appropriate. (Paragraph 163)

46. The Government Equalities Office will continue to work with the Commission in defining its strategic priorities.

22. We agree with the Equality and Human Rights Commission that legal challenges to discrimination are a very poor second best to reducing the actual incidence of discrimination in recruitment. We recommend that the Government launches an information campaign for employers and employees to promote the case for employing disabled people and tackle the false perception that they would be a burden to business. (Paragraph 164)

47. The Government, through the recent Employability campaign which concluded in March 2009, has engaged with employers to improve their understanding of disability and their attitudes towards employing disabled people and those with health conditions. The key aim of the programme was to challenge negative assumptions about the skills and talent that disabled workers and those with long-term health conditions have to offer,
therefore building the confidence of employers in recruiting and retaining these workers and applying best practice in recruitment to take full advantage of the available talent pool.

48. The Government also wants to encourage employers to look at what prospective employees can do rather than what they cannot do, and avoid the forensic examination of historic health records that may support an adverse approach to recruitment. The Government is also committed to helping employers to understand that current health conditions, or previous health history, may have little if any impact on productivity in an accommodating workplace and indeed that self-motivation and attitudes to work are often more important than diagnosis or severity of condition.

23. We are extremely concerned by the evidence from the Employers’ Forum on Disability that 85% of online recruitment sites were inaccessible and that 1.3 million people were being prevented from applying for jobs. If the employment rate for disabled people is to be improved, this should be a priority for the Government and the Equality and Human Rights Commission to address. (Paragraph 167)

49. Employment duties under the Disability Discrimination Act already require reasonable adjustments to be made for disabled people and the Equality Bill maintains this requirement. Such adjustments can include adjustments to the recruitment arrangements and processes, such as job applications. If disabled people believe that they have been discriminated against during the recruitment process, they are entitled to take action to enforce their rights through an Employment Tribunal.

50. The Government is committed to accessibility and will work on this with the Equality and Human Rights Commission.

24. We recommend that the Equality and Human Rights Commission conduct more research into the extent of the use of inaccessible technology in the recruitment process, with a view to taking further action in raising awareness of the problem amongst employers and launching its own investigations. (Paragraph 168)

51. The Government will work with the Commission on accessibility issues.

**The Access to Work Scheme**

25. We have heard that too many employers and disabled people are unaware of what support is available for them through the Access to Work scheme. We welcome the Minister’s assurance that every single member of Jobcentre Plus frontline staff knows that the support is available. We recommend that all staff receive training in order that they can advise their clients correctly. We also call on DWP to work with disability charities and employer organisations to identify the right approach to marketing the scheme more widely, also through intermediaries. (Paragraph 176)

52. The Access to Work (AtW) National Team has implemented a new model to enable improved delivery of AtW. This includes:
• Locating AtW advisers within Jobcentre Plus districts, co-located with other Jobcentre Plus advisers to raise the profile of AtW within districts and to be more accessible to customers and employers.

• Basing AtW Regional Managers alongside Jobcentre Plus External Relations teams. This allows AtW Managers to continue to raise awareness of the programme within Jobcentre Plus and proactively engage with a wider range of employers and stakeholders to promote AtW.

53. The National AtW Delivery Team has appointed external relations managers to work with employers and groups that represent AtW customers and raise the awareness of the service that the programme offers. AtW advisers and their managers work with the local Jobcentre Plus external relations teams to ensure AtW is included in all their communications with employers.

54. The National Delivery Team is actively engaging with disability charities through regular meetings with organisations such as the RNIB, RNID and British Dyslexia Association. AtW managers and staff are attending increasing numbers of events, held by disability groups, to present and promote the AtW programme.

55. The team has established a very positive working relationship with the Employers Forum on Disability (EFD). A much greater understanding of the employer position with AtW has been gained through consultation and recent secondment of a member of AtW staff to EFD. By working closely with EFD, AtW has successfully engaged with a number of major employers to promote the employment of disabled people with their assistance.

56. As part of the customer service strategy and as a result of consultation with customers, disability organisations, employers and EFD, AtW has produced customer and employer information packs to guide them through the AtW process.

57. AtW has also worked with the Jobcentre Plus National Sales team to produce an employer information leaflet.

26. We believe that portability of AtW support would have a crucial impact on the employment rates of disabled people. We also believe that what is already available under the scheme for self-employed and freelance workers should be made available for disabled employees as well. This would give them the confidence to talk about their disability when applying for jobs and would give great assurance for employers too that support was available. (Paragraph 180)

58. The current policy is that the employer owns the aids or equipment that they purchase and maintain for their employees. AtW actively promotes portability with employers and has developed information products for both employers and employees. The information for employers includes advice that they should allow employees to take aids or equipment with them if they move to a new job.

59. AtW support is tailored to the needs of a person in a specific job, simply carrying forward the support provided for a previous job may not fully support the customer’s needs in a new role. When a customer starts a new job AtW will review the customer’s needs and ensure that all the required support is in place as quickly as possible. Customers
who have received AtW support in a previous period of employment can be confident that they will receive the support they need in a new job.

60. AtW is one element that will be included in the Right to Control trailblazers scheduled to start in October 2010. This will mean that customers have greater personal control over the support they receive, thereby further increasing choice and flexibility in the programme.

27. We welcome the Access to Work pilot to support people with mental illnesses and fluctuating illnesses but believe that the Department should commit to the principle of extending the scheme to include support for these people. Pilots should also be used to introduce innovative uses of Access to Work such as individual support in form of credits for people with mental health or fluctuating health conditions to pay for temporary cover or work trials. We recommend that, if successful, this support should be rolled out nationwide as soon as possible. (Paragraph 183)

61. On 28th November 2008, Jobcentre Plus launched the small London pilot of Flexible AtW, in conjunction with Mind. Mind are providing specialist support directly to customers and employers; the support will be available when it is needed, waiting in reserve to respond quickly when mental health deteriorates or problems emerge. The intention is that with specialist intervention, employers will build a greater capacity to support their employees in times of ill health, without the assistance of Mind or AtW.

62. Early customer experiences of the pilot have been positive, with reports that the support is enabling customers to be more confident about their ability to work. An evaluation of the pilot is expected in early autumn, with preliminary work on possible expansion underway. DWP will also consider whether this approach could be used to help customers with other fluctuating conditions, not related to mental health.

63. From 1st April, disabled customers have been eligible for AtW support when undertaking a Work Trial. This is mainstream AtW policy, not a pilot, and is available nationally.

64. Currently there are no plans to pilot arrangements giving credit for temporary cover as a new element of support.

28. We support measures to improve marketing and take-up of the AtW scheme. We note that this could bring AtW spending up to the budget cap. However, it is not acceptable, to quote the Minister, that “somebody could apply and be told that they should wait until the new financial year.” We call on DWP to clarify what it intends to do with applications if the budget runs out before the end of the year. (Paragraph 188)

65. The AtW policy is that no customer who needs and is eligible for support will be turned away. We monitor and forecast spend on the programme via quarterly reviews. Should these reviews indicate that budgetary provision is likely to be exceeded then we will aim to increase the available budget to meet the forecast need, as has happened in previous years. However, it is important to note that overall spending on AtW needs to be managed within departmental spending limits.
66. AtW advisers will always seek the most cost effective solution to meet a customer’s needs but there is no cap on the value of support that an individual can be awarded.

67. DWP have recently developed a new forecasting and planning model, which will enable the programme to be more closely monitored. This will lead to better management of spend, and ensure that the programme continues to fund support for those who need it.

29. We believe that where the Department is contracting out services to help disabled people into work, there is a case for devolving funding for Access to Work to those providers. We call on DWP to look at the merits of such a proposal. (Paragraph 189)

68. As part of the AtW process DWP has contracts in place for the delivery of assessments for customers which are carried out externally by DWP contractors. The rest of the programme is however highly individualised and customer-focused, with customers having a great deal of freedom to enter arrangements with whichever organisations can meet their assessed needs. Jobcentre Plus has a role in helping customers to choose provision that meets their assessed needs, and to ensure that it meets quality standards. To devolve funding to external contractors would either create an additional layer of complexity or reduce customer choice, and we therefore have no plans to go down this route at the present time.

69. AtW funding is provided to people in work. AtW is claimed by customers and their in work support needs will be funded regardless of who may have helped them to find that work.

70. AtW is developing a new approach to making payments allowing customers an increased right to control how they receive and use AtW funding for their travel and support needs. The new flexibility will be evaluated with customers in one region this summer.

71. DWP is introducing a new Specialist Disability Employment programme in October 2010, to replace the WORKSTEP, Workprep and Job Introduction Scheme programmes. DWP is currently looking at ways of improving the links between the new programme and AtW as people make the move from supported to unsupported employment.

30. We recommend that the Government reviews the research findings from the study on the impact of withdrawal of Access to Work funding from central Government Departments. However, care needs to be taken in drawing conclusions about the implications for the wider public sector from the impact of withdrawal of Access to Work on high profile and well-resourced central Government Departments. (Paragraph 197)

72. DWP commissioned an independent qualitative evaluation of AtW from the Institute of Employment Studies, and field work took place in 2007/08. One of the evaluation strands will focus on the impact the October 2006 funding changes had on the employment prospects of disabled people working in Ministerial Government Departments. The evaluation will partly inform further advice to Ministers on any decision, in line with the Prime Minister’s Strategy Unit Report Improving the Life Chances
of Disabled People, to extend these changes by requiring Central Government Departments – and possibly other public sector employers – to fund the disability adjustments of all their directly employed staff.

73. The fieldwork, involving interviews with HR leads, line managers, disabled staff and trade unions working in Ministerial Government Departments, was completed in 2008. The evaluation is currently in the final drafting stages, and is expected to be published this summer.

74. No policy recommendations have been made with regard to AtW funding and the wider public sector. Recommendations will be made with consideration to both the published evaluation and the responses to the Public Consultation on Helping people achieve their full potential: Improving Specialist Disability Employment Services, and the Green Paper No one written off: reforming welfare to reward responsibility. DWP notes the point that caution should be used in making inferences from the results of the report to the wider public sector.

31. We agree with the principle that the public sector should be leading by example in employment policy and practice for disabled people. Although we believe that the concerns raised during our inquiry and the implications of the Murphy ruling need to be addressed as a matter of urgency by DWP, we believe that limited Access to Work resources should be allocated as a matter of priority in the private and the third sectors. We would expect the proportion of Access to Work funding used in the public sector to decline over time with the improved implementation and increased effectiveness of the Public Sector Duty. (Paragraph 198)

75. DWP agrees with the principle that public sector employers should be exemplars in their employment and support of disabled people. This principle, supported by the Prime Minister’s Strategy Unit Report Improving the Life Chances of Disabled People, informed the decision to require Ministerial Government Departments to directly fund their own employees’ in-work support.

76. Officials are developing ways to increase take-up of the programme by small and medium enterprises, whether within the private or third sectors, by a combination of targeted marketing, work with stakeholder groups, and where necessary policy changes.

The public sector equality duty

32. We welcome the Government’s intention to introduce an integrated equality duty (covering race, sex, disability, sexual orientation, religion or belief and age) on all public authorities. We also recommend that in line with our recommendation on a separate equality strand for carers, this duty should be extended to cover carers. (Paragraph 213)

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12 No one written off: reforming welfare to reward responsibility (Cm 7363), July 2008
77. In addition the Duty will require public authorities to consider how to promote equality of opportunity on the grounds of, amongst other things, disability, gender and age. Given that a large number of carers are women and are relatively old (over 1.5 million carers are over the age of 60, according to Carers UK), the Duty should encourage public authorities to take their needs into account as well, when designing and delivering services.

78. Public authorities subject to the Equality Duty will, amongst other things, need to have due regard to the need to eliminate discrimination and other prohibited conduct, including the new extended prohibition on direct discrimination based on association with a disabled person or someone of a particular age, which will provide greater protection for carers, among others.

33. We strongly believe that any attempt to harmonise the public sector duties should not dilute the attention that is given to disability discrimination. We recommend that the key elements of the Disability Equality Duty, particularly the requirement of more favourable treatment, need to be preserved. (Paragraph 214)

79. All the principles of the disability duty are being carried forward to the new Equality Duty, including signalling to public authorities that sometimes equality of opportunity may involve treating some people more favourably than others.

34. Well designed equality schemes can be a useful tool for public authorities to assess their progress in equality outcomes. However, we have heard concerns that currently they are not as effective as they could be and merely represent a tick box exercise. If they are to be more than just a tick-box exercise they must focus more on outcomes than the scheme process itself. We recommend that equality schemes should include a combination of prioritisation and action planning. We endorse the set of tools for public authorities, proposed by the Equality and Human Rights Commission, to help design equality schemes to achieve greater equality outcomes. (Paragraph 217)

80. The Government published a consultation on specific duties Equality Bill: Making it work - policy proposals for specific duties\(^\text{13}\) on 11 June with a closing date of 30 September 2009. The objective is to create a set of specific duties which are light-touch, flexible and proportionate and at the same time which help public bodies focus on the delivery of equality outcomes. Prioritisation and action planning will be key aspects of the new duties.

35. We would like to see the single duty in the public sector working well and achieving its equality objectives. To succeed, it needs improved monitoring and enforcement mechanisms. Enforcement can not rely on private enforcement by judicial review alone. We were told of procedural obstacles to this process which we call on the Department to examine. (Paragraph 224)

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\(^{13}\) Equality Bill: Making it work: Policy proposals for specific duties A consultation, June 2009.  
81. The current enforcement mechanism for the general public sector duties is not confined to private enforcement through judicial review. The Equality and Human Rights Commission has the power to issue compliance notices and to seek a court order to enforce them. The Commission may also assist individuals in legal proceedings and may itself instigate or intervene in judicial review or other legal proceedings. The Equality Bill does not change this arrangement.

36. We call for a specific duty, on the part of public authorities, to publish full information about initial screening and equality impact assessments undertaken. This would improve transparency and allow for effective assessment of the implementation and quality of the schemes. We strongly believe that public sector equality duties lack credibility if the Government doesn’t address these concerns. (Paragraph 225)

82. The Government published its consultation on proposals on 11 June. Transparency is one of the four principles on which the duties will be founded.

37. We also call on the Government to conduct thorough research into the quality of equality schemes in the public sector, the effectiveness of their implementation, the administrative burden they impose and particularly the impact of this process on equality outcomes. (Paragraph 226)

83. The Government commissioned independent research to assess the quality and cost effectiveness of the current specific public sector duties. The results of this research have been set out in the consultation on new specific duties, published on 11 June 2009.

38. We believe that procurement can be an effective lever to promote equality objectives, but clarity about the requirements placed on contractors is essential. We agree with the CBI that these requirements should be related to contract delivery not procedures. This approach would ensure that smaller firms stand an equal chance in meeting the requirements, as it would benefit most those that can deliver the required outcomes, rather than those with the most administrative resources. (Paragraph 233)

84. The Government shares the Committee’s view that public procurement can be an effective lever to promote equality objectives. The Equality Bill makes this clear by including a power to place specific duties on public bodies in relation to public procurement. The consultation published on 11 June on specific duties includes (for bodies classed as contracting authorities for the purpose of EU procurement rules) proposals for specific duties on procurement. The Government is keen that these should focus on delivering improvements in equality without being bureaucratic, so that firms of all sizes are able to bid equally for public contracts.

14 Equality Bill: Making it work: Policy proposals for specific duties A consultation, June 2009. This can be found at: http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf

15 Ibid.

16 Ibid.
39. As more and more public functions are contracted out to private and third sector organisations, there is a concern that the equality duties will become of ever diminishing practical significance. We believe that there is a need for clarification in the forthcoming Bill that private and third sector organisations carrying out public functions need to fulfil the same requirements as public sector organisations in terms of promoting equality and equality outcomes. Any person or body acting on behalf of a public body should be deemed to be exercising a public function. We also recommend that the Bill should make it explicit that the equality duty must be exercised in relation to procurement. (Paragraph 240)

85. Under the Equality Bill, the public sector Equality Duty will apply to public functions whoever performs them, including private companies or third sector organisations. As indicated above, the Bill makes specific provision in relation to public procurement.

40. We note the Government’s stated intention not to extend the duty on the public sector to the private sector. We have to build on the experience with the current duties first to make them work better in the public sector before extending them to the private sector. However, we believe that a duty on the private sector should be maintained as an option if a voluntary standard proves ineffective. We recommend that the Government keeps its policy under review, while considering the outcomes of its assessment of the impact of the public sector equality duty. (Paragraph 248)

86. The Government notes the Committee’s recommendation and will keep these matters under review.

**Equality in Goods, Facilities and Services**

41. We have heard that the provisions of the DDA in goods, facilities and services lack teeth. We believe that local authorities have the necessary outreach potential and leverage through existing inspection functions to promote fuller compliance with the provisions in facilities and services and should take a more proactive role in ensuring compliance. This should come from their requirement to comply with the public sector Disability Equality Duty. (Paragraph 253)

87. Local authorities and all other public sector organisations have the duty to comply with the Disability Equality Duty, and to consider the impact of their work on disabled people. The Equality and Human Rights Commission has responsibility for enforcing the Disability Equality Duty.

88. Central government also has a role in ensuring compliance with the DDA and inspections are in place to ensure that local authorities comply and carry out their functions as effectively as possible. Such inspections are conducted by the Inspectorates (related to the Audit Commission) on the various functions that local authorities carry out.

42. There is a lack of data on the number of DDA cases on goods, facilities and services in the county courts, although a number of witnesses presume the numbers
to be very small. We recommend that the Government monitors the trends in the number of cases taken and their outcomes. (Paragraph 264)

89. The Government will consider introducing changes to the county court IT system when there is an opportunity to do so. Until then, courts will be asked to manually gather information on DDA cases involving goods, facilities and services.

43. A number of submissions highlighted the complexity of county court rules and potential liability for significant costs as barriers to those seeking to pursue goods, facilities and services claims through county courts. We welcome the Government’s pledge that all judges will go through training in discrimination law over the next three years. However, we do not think this alone will address the reasons why so few goods, facilities and services cases are brought to court. We recommend that the Government introduces an equality tribunal with the single Equality Act, empowered to hear all types of discrimination claims, but with the ability to transfer certain types of case – such as housing or actions against the police – to other courts where appropriate. (Paragraph 265)

90. The creation of the suggested Equality Tribunal would create significant jurisdictional problems:

- firstly, where claims of discrimination are combined with other civil claims that still need to be heard in county courts; and

- secondly, where claims of discrimination are combined with other claims (for example unfair dismissal) which can only be determined by an employment tribunal.

91. The Government considers that Employment Tribunals are generally best placed to deal with claims concerning employment.

92. The Government is conscious of the need to enhance discrimination expertise in the county courts, to ensure that cases are handled as efficiently and effectively as possible. The Government is therefore using the Equality Bill to extend the use of expert lay assessors in civil court discrimination cases to all protected grounds; and inviting the Lord Chief Justice and the Judicial Studies Board to consider making available additional training on discrimination law as part of judges’ on-going training.

44. In any event, relying upon individuals to bring about systemic change through individual litigation places a heavy burden upon disabled people. We believe that there is a role for the Equality and Human Rights Commission in proactively undertaking formal investigations and bringing strategic cases to improve enforcement. The Equality and Human Rights Commission should also take a strategic role in monitoring and researching enforcement. We also recommend that the Government introduces the provision for class/representative actions in goods, facilities and services cases. (Paragraph 266)
93. It is for the Equality and Human Rights Commission to decide upon the cases it supports and instigates and the inquiries and investigations it undertakes.

94. The Government’s position on representative actions has been set out above in paragraph 40.

45. We strongly welcome the draft EU Directive, as it will harmonise legislation across Europe and ensure a minimum standard of rights for people across all protected discrimination strands. This sends out a clear message that there is no hierarchy of inequalities. However, we do believe that the Directive must clarify the definition of disability and we recommend that the social model should be used. The Directive should also extend to cover multiple discrimination. (Paragraph 272)

95. The Government is pleased to hear that the Committee welcomes the draft EU Directive. A consultation document seeking views to inform the further consideration of the proposed Directive was published on 5 May and the closing date for responses is 28 July 2009. Details of the consultation are available on the GEO website at http://www.equalities.gov.uk/.

46. We have heard concerns from some parts of the business community that the draft EU Directive puts too great a burden on businesses. Without diminishing any of the existing obligations on business, we recommend that the Government considers these concerns in its negotiations on the draft Directive. We would not want to see disproportionate burdens being imposed on business. (Paragraph 273)

96. The Government is aware of the pressures faced by businesses in the current economic climate but is also conscious of the need to ensure that the Directive clearly sets out the requirements on businesses to provide access to goods and services for the people it is designed to protect. The consultation referred to above will provide an opportunity for the whole range of stakeholders to express their views and concerns about what is included in the Directive.

47. We recommend that the Government should anticipate the implications of the draft EU Directive for domestic legislation in the Equality Bill. The Bill should be drafted with an understanding of the potential impact of new EU legislation. Given the likely timescale to agree the draft EU Directive, it would not be acceptable to delay the Equality Bill while the Directive is finalised. (Paragraph 282)

97. The Government agrees that so far as it is possible the Equality Bill should anticipate the impact of the EU anti-discrimination Directive. However, negotiations on the Directive have been slow and there is much work to be done before agreement is reached. In view of this the Government agrees that it would not be acceptable to delay the Equality Bill.

48. The Malcolm judgment has had its most direct effect in limiting disabled tenants’ rights of redress in the face of discrimination. We recommend that the Government...

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takes steps to reverse the effects of the Malcolm judgment in the Equality Bill. As the duty to make adjustments is much more restrictive in premises, there are not the same options for mitigating the effects of Malcolm as there are in employment, goods and services and education. (Paragraph 290)

98. As explained in response to Recommendation 2, the Government has included a new provision in the Equality Bill to again make it easier for a disabled person to challenge discrimination that arises from their disability.

49. In the interests of consistency and in order to make the provisions as effective as possible, the premises duties to make reasonable adjustments should be made anticipatory in nature. Given that the steps to be taken are limited in any event by what is ‘reasonable’ this should not impose an undue burden upon landlords and would result in more effective removal of barriers for disabled people. Having similar duties in this area to those in goods, facilities and services would make the law easier to apply and for premises providers to understand. In addition we recommend that harassment of disabled people in the housing context be explicitly prohibited. (Paragraph 291)

50. Research shows clearly the difference in awareness and practice between local authorities/housing associations on the one hand and private landlords on the other. We believe that unless the Equality Bill introduces an anticipatory duty in housing, we can expect that as the public sector duty becomes more widely embedded, the difference between social housing providers and private sector providers in this respect is likely to get even wider than was observed in the research. (Paragraph 292)

99. The Government has no plans to make the premises duties to make reasonable adjustments anticipatory. Generally the relationship between a disabled tenant and landlord is less transitory than that between a disabled customer and a service provider and this is reflected in the legislation. The Government considers that it is more appropriate for the duty to make reasonable adjustments to be made subject to a request by the disabled person. This is because it enables any adjustment to be better tailored to the need of the individual disabled person. If the landlord were required to make anticipatory adjustments, this could result in adjustments that were not suitable for the particular disabled tenant or occupier.

100. The Government has extended protection from harassment based on disability in the Equality Bill so that it now extends to areas beyond employment, including the disposal and management of premises.