**DDPO Legal Network Meeting**

**13 September 2017**

**Disabled People’s Housing Rights**

**SVETLANA KOTOVA:** Okay, yeah, it works!! Hello everyone, welcome to our legal network meeting. Many of you know my name is Svetlana, I'm a disability justice co‑ordinator at Inclusion London we run this regular meeting to bring together disabled people from disabled people organisations and lawyers to discuss some of the most important themes and think how we can use the law to advance the rights of disabled people.

Today's theme is housing, disabled people's rights to housing, we decided to do this legal network meeting about housing because Inclusion London had many queries from DDPOs about cases where disabled people were either stuck in the very inaccessible, inappropriate accommodation and could not get themselves re-housed, or where disabled people are homeless and couldn't get help from local authorities where disabled people couldn't get adaptations made to their homes. So, we saw that there is a problem and we also saw that maybe we don't know housing legal framework as well as we know, for example, social care. So, we have great experts for you today.

       We are going to start with Diane Astin, she's a solicitor at Deighton Pierce Glynn, our favourite legal firm, I have to say, our partner in Disability justice project. Diane is a housing lawyer, she is written Housing Law Handbook for Legal Action Groups, which is really a Bible for advisers who advise on housing. Diane is going to go through housing, legal kind of framework related to housing, homelessness and housing allocation.

**DIANE ASTIN:** Thank you very much. Can you hear? I was asked to talk about housing generally, the homelessness allocations Disabled Facilities Grant and the social care Act and I felt it was really too much, so I'm afraid I've narrowed it slightly. What I want to do is explain the framework of the law in relation to homelessness and in relation to the allegation of social housing, with a particular focus on the problems that I've come across, which I think are specifically problems for disabled people, with a view to thinking of ways that we might be able to challenge what are very, very common practices, that local authorities operate that probably some of you will be familiar with.

       My first slide and the second slide in fact, was to try and put this in the context of the housing crisis that we are in the middle of. There is a massive shortage of affordable social housing for everyone and it's because we're not building enough affordable dwellings.

These are just statistics to give the contextual, we need to be building lots and lots of units every year and that's not happening. If I haven't had to prepare the slides in advance, I would have also focused on the national audit office report that was published yesterday on homelessness, because what that has established is something that we have all known, which is that the Welfare Reform Act and the various welfare reform changes has increased homelessness massively, so if you look at that report, which is online, what it shows is that the number of people being made homeless has increased since 2010, the number of people being put in temporary accommodation by local authorities has increased since 2010, the number of rough sleepers has increased since 2010 and many of the problems I'm going to highlight are really much worse now than they were because of welfare reform, how rents in the private sector and caps on benefit and the local housing allowance, which means that now the single, the single biggest cause of homeless applications is people losing their private sector accommodation because they can't afford it because the local housing allowance has capped the amount of housing benefit that will be paid.

       It was entirely predictable that this would happen, this is what everyone said would happen and it's what would happen. Just to put it in contextual, we are in the middle of really serious housing crisis and it's obviously having an impact on local authorities and the way they operate their services both for homeless people and in allocating social housing.

       So yeah, I just wanted to try and explain the framework of Part 6 and Part 7 of the Housing Act, which Part 7 deals with homelessness and the idea now is that if you apply as homeless and you are successful, you will be given temporary accommodation only, your long‑term housing needs will be ceased with everyone else's via the Allocation Scheme, i.e. the waiting list.

       So, that's how it operates, I want to talk first about how Part 7 of the Housing Act works. You may all be familiar with this, just for those that aren't, it's worth spelling out. If you apply as homeless you have to pass number of tests, in order to establish that the local authorities need to help you. These are, they have to be satisfied that they are homeless, you have to be eligible, it's an immigration test, I'm not going to talk about that, some people are excluded entirely because of their emigration status, the local authority have to be satisfied you are in priority need and not intentionally homeless. At that point if you have past all the tests the local authority will owe a housing duty of some sort. Only at that point should they consider whether you have a local connection with their authority and if you don't, they may be able to refer to you to another authority to satisfy the housing duty.

**FROM THE FLOOR:** How do you define homelessness?

**DIANE ASTIN:** We are going to come on to that.

**FROM THE FLOOR:** Okay, okay.

**DIANE ASTIN:** So, just highlighting where the problems arise, it should be easy to apply as homeless because the Act is designed because if the local authority have only reason to believe that you maybe homeless and eligible, they should start making enquiries, if they also have a reason to believe that you maybe in priority need they should provide suitable interim accommodation until a decision is made.

Gatekeeping is local authorities trying to prevent or discourage people from making homeless applications. It can be legitimate for local authorities to try to prevent homelessness by keeping people in their accommodation, orphan ding alternative accommodation, but often it's incredibly crude ways of just preventing people from actually just applying so it's people who are literally street homeless being told they can have an appointment in a few weeks’ time, people told there is no point in applying because they will be found intentionally homeless or they have no local connection and they have to apply elsewhere, all of that is unlawful. It can be very hard to challenge because it's very determined. That's the first point at which you often have a problem, is for something the local authorities to accept that you have made a homeless application and that they should provide interim accommodation.

    . The reason it's so difficult is the interim accommodation issue, the local authority once they have taken an application, if they have reason to believe that you might be homeless, eligible in priority need they should provide suitable accommodation available to the applicant and their family members who normally live with them or anyone who might reasonable Libby expected to live with them, that could clearly include a carer.

       The problem is that they don't take steps in advance to try to find suitable interim accommodation. The law says that they should treat people as being homeless if it's not reasonable to continue to live where they are and also there is a code of guidance which says if someone is facing homelessness and it's inevitable they are going to be evicted, say from a short hold tenancy, local authorities should consider that they are homeless already, it's not reasonable to make them stay to the bitter end.

       Local authorities tend ‑‑ sorry can we go back ‑‑ local authorities tend to, instead, just tell people, "Just come back on the day you are evicted, we are not going to even record your application." Obviously what that means is that the local authorities are then trying to find suitable interim accommodation within hours and it's very, very hard for them to find suitable interim accommodation.

       I think this is just something that would be good to think about in the discussion, that we'll be having, if someone presents on the day and the authority are offering something that is unsuitable, it's quite hard to challenge, because it's challenged by way of judicial review, it's not impossible to do quickly, but a judge will often think, well it's really hard for local authorities to find suitable interim accommodation at short notice, so even though it's not suitable, it's not ideal, you will have to put up with it for a short period. So, I think what we need to do is think in terms of making a local authority aware at an early stage that someone is going to back home less, what their needs are and what kind of accommodation will be suitable, then they will have less x cues for not being able to find it, I'm not saying it will be easy but it has to be done in advance of the day at the someone presents.

**FROM THE FLOOR:** Maybe this is something we need to talk about in discussion, but we have strategies for how you get the local authority to actually not take the application on the day, because it's very difficult, even if you have a really good relationship with the housing options to get them to actually take it an advance.

**DIANE ASTIN:** Yeah.

**FROM THE FLOOR:** So I don't know if anyone has any experience of that whatever.

**DIANE ASTIN:** I think that would be good in the discussion for people to share what they find works with local authorities.

       I think it's probably if you have an organisation within a certain local authority or a Law Centre, it's often good to be talking to the local authority earlier as an organisation, rather than just on behalf of individuals to try to get them to improve their practice.

       I'll just flag this up again, really for discussion, there was a case which is in the note pack which is called Nzolameso, where Westminster were accommodating a woman and five children 50 miles away near Milton Keynes, the Supreme Court round that was unlawful. They didn't say it was always unlawful to always accommodate a long way away but the local authority hadn't really thought about how they could accommodate her nearer, it was really about children and the local authority hadn't really considered the need of the children and disruption to their education, what was said in the Supreme Court is that local authorities have to have policies to procure accommodation in the borough and policies about who really needs to be accommodated in the borough. I think it's something worth thinking about in terms of asking your local authority, what are they doing to find interim accommodation that's accessible and that's likely to be suitable for disabled people, what steps are they taking.

       This might be something that can be challenged on a higher level than just one individual case, but something to discuss in the groups I think.

       Time is limited but I wanted to highlight each test, what does it mean to be homeless, this is not the full legal definition, you are homeless if there is nowhere you are acloud or permitted to live, in the world. Also, if it's not reasonable for you to live in the accommodation you are in then you may also be classed as homeless. There is two ways of it being not reasonable, if you ‑‑ if violence would be probable if you continually living in the accommodation, that is not reasonable you are homeless, that's just a factual enquiry, is violence probable if you stay where you are. You could also be considered homeless because it's not reasonable for other reasons.

The code of guidance sets out the factors whether it's reasonable for you to remain in your accommodation, affordability, physical characteristics, the type of accommodation it is, if you are fleeing harassment, if you are subject to harassment where you are, the fact that you have been given notice. Any argument as to why it's not reasonable would be relevant.

**FROM THE FLOOR:** Can I just ask, I'm supporting somebody in a psychiatric hospital and we have care treatment, definitely want to get something like this raised, I don't know if she was, whether she ‑‑ because we're planning for discharge and we wanted to know if she's technically homeless and whether we can raise that as an issue.

**DIANE ASTIN:** It's going to be, is there somewhere at the someone can go to, if the argument is.

**FROM THE FLOOR:** I'm asking, would currently be in a psychiatric hospital, currently be considered as ‑‑ what's it called... I don't know, I'm just asking.

**DIANE ASTIN:** Is the question: is being in hospital accommodation?

**FROM THE FLOOR:** It's not.

**FROM THE FLOOR:** I'm asking.

**DIANE ASTIN:** I'm just trying to clarify the question.

**FROM THE FLOOR:** The social workers if they had her assessed as, by mental health professionals, if they assessed her there and she's in a place of safety, that's not accommodation, it's a place of safety.

**DIANE ASTIN:** I think that's absolutely without doubt, that's not accommodation, Southwark tried to argue a prison cell was accommodation so they wouldn't accommodate on release, prison cell is not accommodation.

**FROM THE FLOOR:** So technically speaking then, anybody who is in a psychiatric hospital waiting for charge is technically homeless, they have no other accommodation.

**DIANE ASTIN:** Certainly a hospital is not accommodation.

**FROM THE FLOOR:** They have to find them somewhere to live they can't discharge her by law without someone to go, she can't get care continued on, she has to have a home for the professionals to go to, she can't have home treatment without no home, she can't be in hospital for accommodation.

**FROM THE FLOOR:** I understand that, that's very helpful.

**DIANE ASTIN:** Can we just move on to ‑‑ just the next test, just because time is short and we will have time for discussion. It's small, but it's a big list, priority need basically there is a list of people who have priority need and only people with priority need will get accommodated. Someone who is pregnant, someone with whom dependent children live or might reasonable Libby expected to, someone who is vulnerable as a result of old age, mental illness or handicap or physical disability, it's the language of the 1977 homeless persons Act I should say.

**FROM THE FLOOR:** Why are we still using the word, "Handicapped."

**DIANE ASTIN:** I can't answer that, the legislation was drafted in 1977, it's hardly changed, I agree it's the wrong language, but that's what the Act says.

       I'm going to come to what the test of vulnerability is, because that's quite tricky.

       Very briefly, there are additional categories of priority need since 2002, people who are a vulnerable because of institutions, but also 16 and 17‑year olds and care leavers were added in 2002. It's in the main body of the notes as well as the slides, so if we can just move on, only because I want to highlight what the issues are for the discussion, so that obviously Catherine can tell us about how the Equality Act may help.

       With vulnerability, the important thing is that someone is not in priority need because of old age, mental illness *et cetera*, it's only if the local authorities accept that they are vulnerable because of that. Another key thing is that if someone resides with someone who is vulnerable for one of these reasons they also have priority need and they can apply in their own name. Then the next slide.

       There is a very important case recently, relatively recently Hotel Johnson and Kanu, the Supreme Court considered three appeals together. The first issue was, if you are deciding is someone vulnerable, do you need someone not vulnerable to compare it to, or does vulnerability just stand‑alone? I can tell you that the Court answered that and said, "You do need a comparator." So, it's someone, the ordinary person who becomes homeless. This was to counter an argument that the local authority raised which was, most homeless, a lot of homeless people have a lot of problems like drug addiction, mental health problems *et cetera*, therefore that's the group that you compare a person to who is trying to argue they are vulnerability, so you compare them to the ordinary person who becomes homeless but they have to be significantly more vulnerable, it's very tricky, local authorities take a very hard line on this.

       For our purposes the other question the court asked, when deciding if someone is vulnerable can you take account of the support that might be available to them from family and friends? So, Mr Hotak was a man with a learning disabilities and depression and suffered from Post‑Traumatic Stress Disorder, he was cared for by his brother, but his brother, because of his immigration status couldn't apply himself as homeless. The local authority decided that Mr Hotak was not vulnerable because his brother would continue to support him if he's homeless.

**FROM THE FLOOR:** Gosh!!

**DIANE ASTIN:** I know it's shocking, he would continue to support him and he wouldn't be vulnerable, without the brother's support he was vulnerable, but with the brother's support he wasn't. Also, the case in Kanu, being supported by the family. The other question was the role that the public-sector equality duty played in homelessness decision making. If we can have the next slide, there is more detail in the notes but it's an awful lot to cover, I know. The Supreme Court said the local authorities can take ‑‑ it doesn't have to be support from statutory services it could be support from family and friends. They also said that the equality duty is complimentary to the process of assessing vulnerability, I'm going to come back to that if we've time. What the Court seem to be saying is that in homelessness assessing the needs of disabled people is central to the process of deciding on vulnerability. Therefore, the Equality Duty doesn't really change that, or add very much, it's more of a focus. So, if we just have the next slide please.

       Neuberger said it requires the decision‑maker to focus on whether the person is disabled, the extent of the dipped the likely effect of the dipped and whether they are vulnerability. It's what local authorities too when they make these decisions, many of you have seen letters where the local authority list, you know, 20 medical problems and, serious medical problems and then dismiss each one by saying, "It's not very serious", or, "You are taking medication."

"You are not vulnerable." There is a value judgment in this and these decisions are quite hard to challenge, but we can share, this is going to be a very depressing ‑‑ things are tough out there.

       I want to say something again a recent case, this is about mental capacity and making a homeless application. Back in 1993, a case against Tower Hamlets, the House of Lords said if a person doesn't have the capacity to understand what making an application is about or what it would mean to hold a tenancy, they can't be a homeless applicant.

**FROM THE FLOOR:** What!?

**DIANE ASTIN:** That's what the House of Lords said. Well, what that House of Lords said, is that is something that is the responsibility of Social Services to provide accommodation and someone who lacks capacity. Recently that was confirmed in a case against Oxford MT, by his litigation friend GT in that case they tried to argue it was discrimination, the Court held it wasn't discrimination for the local authorities to say that a person without capacity could not make an application.

**SVETLANA KOTOVA:** So people that like capacity, the only route for them to be housed is to go to Social Services.

**DIANE ASTIN:** Not necessarily, because a person who lives with someone who lacks capacity has a priority need because they reside with someone. The idea is that they should apply as homeless and they will have priority need because of the person without capacity who lives with them.

**FROM THE FLOOR:** Say that...

**FROM THE FLOOR:** An example of that is someone with Alzheimer's, let's say you were living with an elderly parent with Alzheimer's they would not have the capacity to go to a housing application but you do, they don't have to give you power of attorney, they're not leaving you anything in the will, but what they can do is appoint you as a type of guardian, you go through the process, the Social Services would work with you, not your mum, if your mum has Alzheimer's she can't fill informs.

**FROM THE FLOOR:** What about the person...?

**DIANE ASTIN:** Can I just... can I just explain the background to these cases, I think it might shed some light on it. In Begum, the parents of the woman had been found intentionally homeless they could not apply in their own name. If they could apply they would have priority need because they were caring for their daughter. In MT the father, his son was living with him in his home and being cared for by the father, but the father wanted his son to be accommodated independently and would continue to provide care, but wanted his son to be in his own home. The Court said no, following Begum the son did not have the capacity to make the application in his name.

**FROM THE FLOOR:** Yeah in his own name.

**DIANE ASTIN:** These cases have been about the person caring for the incapacitated person not being able to apply for some reason.

**FROM THE FLOOR:** We work with a whole number of people who have got fluctuating capacity, or capacity ‑‑ capacity is not a fixed thing, it's about a lot of things. Somebody might not have the capacity for example to manage their own care but they have got the capacity to manage tenancy with support, how would that work, we have people who are bounced back and forward between Social Services and housing, where Social Services are saying, "We are not taking rejects from housing", which is really a good thing to say wasn't it, but where they won't house them because the person has got involved in antisocial behaviour, when they are ticket targeted for harassment.

**DIANE ASTIN:** Yes, that's a different situation, capacity is decision specific, if someone can understand what it is to apply as homeless or understand what it is to have a tenancy, then they have capacity. These cases, I think there was no doubt that the individuals who were being put forward as the applicant didn't have the capacity to make the application, but I think not just with fluctuating capacity, but under the mental capacity Act if someone can understand something with help, then they have capacity. So, I think that would be very challengeable if a local authority was saying, "You can't apply we have decided you don't have capacity", then you would challenge that with expert evidence about capacity, but I agree it's a problem.

Intentional homelessness, if a person has made themselves homeless through a deliberate omission, then the local authority will find them intentionally homeless and then the duty is limited, it will be very temporary accommodation and a reasonable period for them to find their own accommodation. So, that's the legal test.

**FROM THE FLOOR:** If their benefits have been sanctioned and therefore they have no money, so they haven't paid the rent because they have no money because the state has taken their money away, are they intentionally homeless because they failed to pay their rent?

**DIANE ASTIN:** That's a really good question, what the local authority will be doing is looking at what was the deliberate right Act. What they often get wrong is, let's say, saying you didn't pay your rent therefore you are intentionally homeless if someone could not pay their rent for some reason, but I have to say that they would, as a matter of law be entitled to go back and say, let's say you deliberately failed to attend an appointment and that led to the sanction and that led to your inability to pay the rent, you are going to be looking really at what, was deliberate what they did that led to the inability to pay the rent.

**FROM THE FLOOR:** Surely there is the new homelessness act, with the duty to prevent someone from becoming homeless in the first place.

**DIANE ASTIN:** That's not in force yet and it's beyond my remit today.

**FROM THE FLOOR:** It's coming into force soon, homeless prevention.

**DIANE ASTIN:** Yes.

**FROM THE FLOOR:** What matters if you are made homeless but not through unscrupulous landlords that make your lives a misery and you have no choice but to move out and make yourself homeless in that respect.

**DIANE ASTIN:** That's a really good question, then you would be arguing it was not reasonable for me to continue to occupy. I haven't put the full definition on the slide, but I order to be intentionally homeless you have to have lost accommodation that it would be have been reasonable to‑‑‑

**FROM THE FLOOR:** I'm talking about if the landlord doesn't make the house liveable.

**DIANE ASTIN:** Yeah.

**FROM THE FLOOR:** And you think to yourself, why am I living here, he's not going to do anything.

**DIANE ASTIN:** You would be arguing it was not reasonable for me to continue in occupation.

**FROM THE FLOOR:** Okay.

**DIANE ASTIN:** But, I know this sounds negative, I've dealt with a lot of negative decisions, the local authority would say you should have stayed and taken action to force your landlord to do repairs, you should have reported it to environmental health.

**FROM THE FLOOR:** Sometimes a lot of people don't know how to go through those channels.

**DIANE ASTIN:** I agree with you, but your argument would be it's not reasonable for me to stay, but the local authority would come back with reasons it would have been.

**SVETLANA KOTOVA:** What is the level of evidence, is it balance of probability, how... how is it?

**DIANE ASTIN:** It's not really about evidence, it's, well.

**SVETLANA KOTOVA:** What if one person says one thing, I have a case currently where social workers told her to leave on the phone, now they're denying this, there is a witness who saw this, so there is conflicting of evidence, on the balance of probability...

**DIANE ASTIN:** Because this is a public law type arena, what a Court will be looking at is was the local authority entitled to reach the conclusion that they did, rather than looking at it as if it was in a court and the level of evidence, but one important thing there, because it's about public law, what local authorities would do is get from the social worker who says, "I didn't say that", for from the landlord who says, "It's a lovely house, there is no problem", they get that information and put it to the applicant and get the applicant to comment and they often fail to do that, that would be a very good ground to reach a decision, breach of natural justice they didn't put the adverse information to the applicant for comment, it's more like judicial review type arguments.

       When you are challenging homelessness decisions you are trying to find something that the local authority have got wrong and it is like judicial review in that you might succeed in having a decision cancelled because the local authority got it wrong, but the local authority can then go off and get it right and reach the same conclusion, that's the problem.

       If we can just move on, a bit of hope fullness, a case called Petretti, heard a few years ago about intentional homelessness. In this case the Court of Appeal held that the public sector equality duty applied not just when your local authorities were making policies, but when they were making decisions on individual applications. So, in this case it was, they have made the local authority have found a couple to be intentionally homeless and the decision was cancelled by the court because the local authority hard not had any regard to the public sector equality duty. There was information on the application form that suggested disabilities and they didn't make any enquiries. So, it is something that local authorities should now be more focused on when making individual homelessness decisions.

Yeah, this is a really big deal I think. Since the localism Act 2011 came into force in 2012 and it's the biggest change in homelessness law ever, really. What they... they changed the law so that local authorities can bring their homelessness accommodation duty to an end, by making a private sector offer. A private sector offer has to comply with certain rules, which is that it has to be a 12 month, at least a 12 assured short hold tenancy and it has to be suitable. I think that's a real problem for disabled people, most landlords offering that kind of accommodation will not allow you to put in handrails, any fixtures, certainly not major adaptations. So, I think it's a very good reason for arguing it will be unsuitable, I increasingly find local authorities trying to use private sector offers all the time, before you would definitely be in temporary accommodation whilst you pursued your application for long‑term social housing. Can we have the next slide and the next one please.

**FROM THE FLOOR:** So that is really something you really want to ‑‑ when you say, "Private sector", are we talking about private being 'private' or are we talking about possibly in, in a charity sector.

**DIANE ASTIN:** No private landlords market rents, but it can't be suitable if it's not affordable. So, if housing benefit and the local housing allowance mean you can't pay the rent, then it can't be suitable.

**FROM THE FLOOR:** So wouldn't include charities like dementia...

**DIANE ASTIN:** No this is arrangements that local authorities make with private landlord?

**FROM THE FLOOR:** I can imagine it's very difficult, private landlords are interested in making in gum they would happily charge market rent, if someone is on benefits, obviously they won't, because it’s so it means there are very few private landlords willing to work with the council.

**FROM THE FLOOR:** Not necessarily, sometimes it's the opposite, actually landlords are creaming it through social tenants, they're where the big money is they can get five‑year tenancy.

**DIANE ASTIN:** That's a slightly different one, but I think private landlords are interested in this.

**FROM THE FLOOR:** Are **they!?**

**DIANE ASTIN:** What I've seen is that they're creating tiny, tiny, tiny properties that the rent will be low enough to be covered by housing benefit. I've got one at the moment where we are arguing about the size of the bedroom, my client says she actually can't fit into it and you know, her head hits the lightbulb and there is no space between the bed and the wall, they're tiny landlords are carving it out like student accommodation to make money.

**FROM THE FLOOR:** So they can still make money.

**DIANE ASTIN:** Yeah, but that's what they are in the business of. One thing that I think is a really big problem, it's something again that I've seen a lot of recently, there is a case some time ago when the Court of Appeal said that it was not in breach of the unfair contract terms law, to make a homeless person sign for a tenancy before they had seen it. It wasn't a breach of unfair contract terms what they said is, "Well, if it's not suitable you can challenge it by review and the local authority will have to review it." It's now common for local authorities to not only not let YouView it but they simply give the keys, no sorry not the keys, they give the landlord's contact details, address whatever and the person is expected to travel a long way to find the landlord and then is required to sign before they even get the keys, then they look at the property and they say it's awful, not suitable and then the local authority says to me, you signed for it, your client signed for it, she's agreed it's suitable *et cetera*, then you have an argument about suitable, I think it's really right, I hope you will talk about this Catherine, for looking at reasonable adjustments, it's really much harder if you are disabled to get to your landlord and you don't have any time to discuss it with anyone.

**FROM THE FLOOR:** What's the thinking, sorry, am I being a bit, what's the thinking behind that, if it was anybody else wouldn't anybody else go and view, like car, I don't... am I having a bit, can you give us some rationale behind it.

**DIANE ASTIN:** The Court of Appeal said it was not an unfair contract term to make someone sign for it, I think it's a wrong decision but we are stuck with it.

**FROM THE FLOOR:** There is another aspect to this, but it's not just ‑‑ just getting to the landlord could be an issue, but disabilities come in many shapes and sizes, in fact we're all unique, so adaptations I might need might be different to the adaptations another disabled person might need, or a slightly different disability, only I really know what I need, until I can actually see the property, until I'm there and I'm in it, I don't know if it's going to be suitable, I can't possibly say.

**FROM THE FLOOR:** Can I? Object and say, if you were in hospital and you had an accident say and then you came up with *x* injuries when you are being this charged home, your OT, occupational therapist and physio should do a joint home visit with Social Services to be able to say this is actually what you need, you need a wider doorway to get your Chair through, that's what is supposed to happen, it should happen when you are in hospital if you back home less because you back home less, the system is very difficult and they take short cuts, lots of short cuts.

**FROM THE FLOOR:** And also Tower Hamlets for example, recently someone I know there, they were told, "Well you can't have any, we won't give you any disabled facilities Act grant, because we only do it for people with very obvious Vic disabilities, you have autism so piss off", part of the problem is she doesn't have any legal aid to challenge it anymore and they have allocated her the one and only thing that was single glazed in the area, she actually needs additional, you know, things, because of sensitivities.

**DIANE ASTIN:** The legal aid point there.

**FROM THE FLOOR:** She's was a Pakistani woman in a predominantly Bangladeshi area from the Midlands having converted to Buddhism.

**FROM THE FLOOR:** Does she have a social worker, this person.

**FROM THE FLOOR:** She doesn't.

**DIANE ASTIN:** One thing here, legal aid, it's important that a lot of people, there is a lot of legal aid still available for homelessness, for housing cases, so you can have legal aid to challenge homelessness decisions, you can have legal aid when possession proceedings are in issue and for judicial review, so a decision about a Disabled Facilities Grant that was unlawful can be‑‑‑

**FROM THE FLOOR:** Can I just.

**SVETLANA KOTOVA:** Can we let Diane finish and then we'll have questions?

**FROM THE FLOOR:** I'm finding it hard to follow across conversations and it's not helping.

**DIANE ASTIN:** This anyway is one area that we can think about and talk about in the groups, this issue of how accommodation is offered and the fact that people are given no time to think about it or view in advance. Can we have the next slide please. This is a bit dense, I am not going to read through that, there is a recent case on suitable, when the court of appeal again, considered the public sector equality duty. I'll leave you to read this in your own time, but what the Court was saying really is, yes it does apply and yes, they have to genuinely engage and focus on the equality duty, but as, I can read the last bit, "The allocation of scarce resources among those in need calls for tough and on occasion heart breaking decision making, having to say no to those deserving of sympathy, by no means betokens a failure to comply with the P said."

       In this case they said that the council complied with the equality duty and their reasoning was okay and they decided that what we would probably agree wasn't suitable, was suitable for this person they considered the extent of disability and how it might be mitigated and they hadn't breached the equality duty.

       I'm going to skip some of this, I'm conscious that time is running on. Challenging decisions is by way of asking for an internal review and then there is a County Court appeal on a point of law. There is a problem with this, I think, because the internal review allows the local authority to correct a bad decision, I think since the internal review was introduced, which is 20 years ago now, it means the first, the decisions that the officers made were worse than before, the local authority knows they have a chance to correct it, most people will not ask for a review or can't find any advice about it they get away I think with some really appalling decision making, but I'll just stress, legal aid is available for help to challenge a decision, by way of seeking a review and a County Court appeal.

**SVETLANA KOTOVA:** Can I just ask, so will they still have duty to provide temporary accommodation?

**DIANE ASTIN:** They have a discretion and they can, depending on certain criteria the courts set out, how bad the decision is whether there is any new information, but it's discretionary. The only way to challenge a refusal is by judicial review.

       Okay. That was homelessness, we're now going to look very quickly ‑‑ you can see why I couldn't also talk about the care Act and Disabled Facilities Grant.

       Allocations, this is dealt with under Part 6 of the Housing Act. Basically it's, it sets the rules for local authorities in operating their waiting lists. Operating who can go on the waiting list and how priorities are given to individual applicants. It doesn't, it applies to new grants of social housing not transfers, unless it's the person who is asking for a transfer on the grounds, for example, of over‑crowding or unsuitability, in which case it's dealt with according to the general rules on allocations.

       Can we have the next slide, this is also a bit small, it is for me, it's not for you. Reasonable preference. Local authorities have to give reasonable preference to certain classes of people. People who are homeless. People who are owed homelessness duties, which is not necessarily the same, you could be homeless but not actually be accommodated or helped as a homeless person by the authority. People who are in insanity or over‑crowded housing or otherwise living in unsatisfactory housing conditions. People with a need to move on medical or of welfare grounds, or people that need to move to a particular locality where there would be hardship if they couldn't move.

       I should say reasonable preference doesn't mean app absolutely preference the courts have said, you could have reasonable preference and never, ever get an offer, it just means you have to give some preference to people in those groups.

       The other issue about, as well as how you give priorities to who can go on the list there is an eligibility test as well, an immigration test, also the localism Act gave local authorities more power to decide who qualifies for their particular schemes. Most of the local authorities have changed their Allocation Scheme since then to make them more restrictive.

       One important thing is that, it used to be that anyone could go on the scheme unless they were specifically excluded, but what the local authorities can now say, if you are not in housing need particularly or as we see it, you can't go on our list in the past local authorities might have three bands, less say, high housing need, medium housing need no housing need. Most of them how now taken out the bottom band. If you see statistics that show waiting lists have come down in numbers, it's only because they have taken lots of people off the list. It's true.

       Can we have the next slide please.

       The criteria that some local authorities have tried to impose and can lawfully do this, qualification factors based on local connection, how many years you have lived in the borough. Economic and financial criteria, which will usual be to exclude people on high wages. Past conduct. Rent arrears, antisocial behaviour, usually to exclude people. Some local authorities try to give high priority to people who make a community contribution, that's a little contentious. Can we have the next slide.

       Briefly, how you challenge allocation decisions. It's a bit less challengeable than homeless decisions. There is a right of review of some decisions but no County Court appeal. The only way really is to write a review and judicial review.

       Thanks. So, you can have an internal review of a decision that you can't go on the list because you are not eligible for immigration reasons, or you don't qualify under this local authority's particular scheme. You can also challenge a decision about the facts of the case if the authority is getting the facts of your situation wrong. What you can't really challenge is, I haven't been given enough points or I haven't been given another priority or I've been waiting for years and none of my bids have been successful.

       The next one.

       A case called, sorry this isn't very uplifting, but the courts have not been very helpful on these issues in recent years. A case called Ahmad, the House of Lords really said it's for location to decide how to operate their Allocation Schemes and we will only interfere in extreme cases where they are acting unlawfully not because we think they could have a better Allocation Scheme or this is an Allocation Scheme we haven't really come across before.

       There are some recent challenges, these two, Jakmaviciute and Hammersmith & Fulham. They had a policy that said, if you are housed as a homeless person or a homeless family and we are housing you, you can't go on the list because you are already housed the Court said, well that's unlawful because being homeless is a class that should have reasonable preference. It's unlawful to exclude a whole class of people on the reasonable preference list. But it doesn't mean that you can't exclude an individual who would otherwise have reasonable preference, for example, if they had a history of rent arrears or antisocial behaviour or suspend their application for a period of time.

       HA vs Ealing, was a good gaze, a woman fleeing domestic violence when to another borough where she would be safe, but the borough decided that she couldn't go on their waiting list because she hadn't lived in the area for five years, not surprisingly the Court found it unlawful, it's discriminating against women who are fleeing domestic violence.

       I'm afraid the last case is not so good. H vs Ealing, a case where they allocated 20% of dock to working households moaned dell tenants, (stock), that was challenged, in the High Court they were successful, the Court held it was discriminatory and not justifiable, but I'm afraid in the Court of Appeal, the Court of Appeal said you have to look at the allegation policy as a whole and women and disabled people get relatively high priority for 80%, the fact that there is 20% for working households, over all is not discriminatory, you can't just look at that part of the policy, you have to look at the whole allocation policy.

       There was also an equality duty challenge, the court said, yes, the local authority did breach the public sector equality duty when they devised their policy but they decided not to give, not to make any order about that, the local authority was already in the middle of reviewing their policy.

**SVETLANA KOTOVA:** I couldn't find the policy on the website?

**DIANE ASTIN:** They are reviewing it they should have an interim one. **FROM THE FLOOR:** Would it be possible to have an e copy of the slide?

**SVETLANA KOTOVA:** We will put everything on the website, definitely.

**FROM THE FLOOR:** If you can email them to me or something. Thank you.

**SVETLANA KOTOVA:** Okay, just we'll pass on to Catherine, Catherine Rayner, a barrister at 7 Bedford Row chambers, she has wide expertise in discrimination and regulatory law and she also is Chair of Discrimination Law Association and she's going to talk about how we could use the Equality Act to challenge some of the things that Diane was talking about and also how we could use Equality Act to get some adaptations made to existing rules.

**CATHERINE RAYNER:** Hello, I'm going to be talking about quite a lot of fairly technical law and although I'm very grateful for the introduction, the reality is that I have to go through a lot of detail and then I want to, I hope this is the beginning of a conversation about how to use the Equality Act to challenge. One of the things that is quite interesting, talking to Diane, talking to Svetlana, talking to some other people who work around issues in housing and inequality, there doesn't seem to have been a great deal of use of the Equality Act as a free‑standing set of rights and duties in the housing context. I'm not really quite sure why that is.

       I suspect a lot of it has got to do with there being a real reduction in people who are available to give advice, the Law Centre I used to work with over there, south Islington, that's been shut for many years, many of the other CABs have had their funding cut you all know this, and the cuts to legal aid have made it very difficult to develop those areas of law. I really think we are at a starting point, ironically in 2017.

       I mean I've been listening to Diane, one of the things that strikes me, I focus on employment law now, but I did housing law for many years, when I worked in south Islington Law Centre in the nineties, what strikes me instead of going forward there is a concerted attack on the rights of everybody who relies on public sector housing but particularly those who are vulnerable in the housing sector. This is not a chance thing, this is a result of a very particular public philosophy and it seems to me that our challenges through the courts often come up against difficulties because many of the people who are sitting in judgment are being given a set of rules to interpret that are simply not fit for purpose, I think a comment was made earlier about the language, to be honest I think that's the least of our problems, it's a problem and it's quite right to raise it the laws themselves are just not reflecting what we all need and people who you are working with and for need the laws to reflect, I think that's really something to reflect about.

       I want to start off by taking you thorough what the Equality Act says, some of this will be very familiar, I apologise to those of you who know it, bear with us.

       The starting point is that in today be covered by the Equality Act I'm only foe a sing on protected characteristics remember, if you are person with a disability you have to come within the technical definition in the Equality Act for what is a disability and it has a very particular meaning which I'll go on to.

       It also covers people who are associated with a person disabled under the Act, that means people who are carers for example, parents of a disabled child might be covered because they are a carer, if you are a partner of a disabled people or if you are somebody who has responsibility or who is dependent upon a disabled people you may also be covered because of your association if there is then discrimination. The Equality Act is concerned with discrimination, that is what we are talking about.

       The Act also covers people who are disabled who are using or seeking to use a public service or people who are disabled who are seeking to use or access private accommodation and they are a very, there are very specific provisions that apply to each of those sections.

       The parts that apply to the use of accommodation, sorry the accessible accommodation, are relatively new. The Equality Act came into force in 2010 and was the bringing together of a number of other bits of legislation and to be honest there are glitches and it hasn't all been smooth sailing.

       So, who is going to be disabled within the Act? The question and I think I say this on a later slide, but the question is a functional question it's not supposed to be a medical question you say why I say that in slightly hesitant terms, if a person is disabled in the meaning of the Equality Act if they have a mental or physical impairment and that impairment as a substantial and long‑term effect on their ability to carry out normal day‑to‑day activities. So, there are number of sort of stages in the test and it's about looking at what somebody can and cannot do as a result of their disabilities.

       So, how does the disability impact on somebody's ability to do normal day‑to‑day activities.

       So, long‑term in this context means has lasted or is likely to last 12 months, so somebody who has a skiing accident which is a classic example and is unable to walk for six months is not disabled, they will be able to, depending on the level of the accident, they might be able to walk again, they might not, if it's a completely disabling condition, but there is a predictive element there, that's the point at which the first question of the medical expertise will come in because you may well, if you are dealing with somebody who has a particular aspect, depression is a classic one, where it can come and go and sometimes develop it might get better, maybe it won't, you have to have a predictive analysis to see, this is before you even start to advise people of their rights on the housing act, are you disabled is this a way in.

       So, likely to last for the rest of a person's life is also the test.

       In practice, there is two elements, there must be an impairment that can be described, it doesn't have to be medically well‑recognised now, in previous legislation there were different requirements, now it's simply an impairment that can be described and which as the effect, it can be number of things that don't necessarily have a medical name to them. So, depression, limited ability to walk, I've put some questions there for example, I've put a question mark after Asperger’s, there is quite a discussion about some of the autism spectrum conditions and about whether or not they are disabling impairments or whether they are something else, there is quite a lot of discussion. It does very much depend on the, how the condition impacts. The same with dyslexia, so I've represented and I specialise in dyslexia as a condition and I'm quite interested in how that impacts on people's abilities. Sometimes people can manage very easily with very few adjustments, for other people it is a very limiting condition unless there are significant adjustments made, so that's going to be the difference. Next please.

       Secondly the impairment must have the long‑term and adverse effect, so as I say usually 12 months, I'll come back to that.

       You will have possibly heard the discussion about obesity, it can be a tilt if it has a serious limiting effect, it's quite a good example to think about if you are trying to explain to other people, obesity can be a condition which has no adverse impact on a person's life at all, or it can be a condition that has a significant adverse impact on their ability to do normal day‑to‑day activities.

       So, it really does depend on the individual person in front of you. I think the gentleman here said something about disabilities having different impacts, that's absolutely right. One of the things the Equality Act does actually is recognise that different people with the same disabilities will have differing impacts. So, they will suffer in a different way or experience it in a different way, so the legislation uses this test to determine whether or not you are considered to be disabled or not.

       So, depression as I say may or may not be a disability, depending on the effect and length of test, but it's functional test not a medical test, the fact at the somebody has a medical certificate saying I've got a particular condition, is of itself not going to be enough, it's about how the condition impacts on a person's life and how it prevents them or affects them doing certain things.

**FROM THE FLOOR:** Sorry just meant to ask, I've had contact with housing workers before that have said, "We normally, people in wheelchairs we normally house them in *x* way." If I say this person has MS or multiple a trophy, or actually, the person will say, I don't know what they say if they're in a wheelchair, we usually do x, y and z, are they in breach of the Equality Act.

**CATHERINE RAYNER:** We can come back to that, I will answer it later, hold that thought it's a really good question, continuing to think about it. Can we have the next slide please. Sometimes conditions come and go or the impact of the condition is evident sometimes than other times, if it has a substantial and adverse effect but it's likely to recur then it will be considered to have the required impact and disability, severe disfigurement is one of the things that is treated as having substantial adverse effect. Really important is the substantial adverse effect, that is the limit on someone's ability to do normal day‑to‑day activities are to be judged without, without the effect of medical treatment or any other measures taken to correct, that includes the use of a prosthesis but excludes spectacles or contact lens. If you consider somebody with diabetes taking insulin, for example, they might be living an ordinary existence without difficulty, but you judge the disability by saying what happens if you take the insulin away in those circumstances they are likely to be disabled, someone with a helper, if you take that away they are much less able to do things on a day‑to‑day basis. Medication for disability, medication for disabilities such as depression or managing psychosis, for example, take those away and somebody will have a very different experience of life. You have to look at the things that the people our using.

       Can include talking therapies, doesn't have to just be medication, regular forms and group therapy you look at all the things that have an impact on assisting a person to live or to function on a day‑to‑day basis.

       Next one please. Sorry, somebody wanted to ask a question just then.

**FROM THE FLOOR:** It's all right.

**CATHERINE RAYNER:** You are all right, okay, thank you. Some conditions are automatically considered to be disabilities, if you have a client or you are advising somebody with cancer, HIV or MS, they are automatically considered to have the disability, sorry, excuse me.

       Progressive conditions will be treated, they will be treated as having an impairment if it's likely to result in hem having such an impairment sometime in the future. Usually that will be a medical prediction, so somebody has got a condition, some of them we know are deteriorating conditions, some are less well‑known but it's about looking at where somebody is likely to be and are they likely to have an effect in the future.

**FROM THE FLOOR:** Yeah, hi. I'm Simone, from changing perspectives, I know one of the big bear bugs I have about the Equality Act, is the exclusion of people whose behaviour is deemed to be violent and the issue around that, you might have to make reasonable adjustment to avoid people's behaviour, about association with violence, can you just elaborate on this, we did, where I work, we made a submission to the Equality Act review on this issue around people with particular types of behaviour and not making an application where behaviour might be associated with their impairment, like autism.

**CATHERINE RAYNER:** As I understand it, there are a number of exclusions, one is a tendency to set fires and another one, there is issues around violence and violent behaviour, if the root cause of someone having a particular behaviour is they have an impairment and it can be managed in some way that Hans impact, it seems to me that somebody is likely to have a disability anyway, if somebody has a tendency to violence that is not a result of the impairment, the mere fact that they have a tendency to violence‑‑‑

**FROM THE FLOOR:** That's not what...

**CATHERINE RAYNER:** I'm not going to go down that particular route, I've got too much to go through, but one of the things I would say is that there are still a lot of discussions you will see I'll come to it in a moment, about how the courts are dealing with, certainly issues of discrimination arising from disability, it may come back to the points that you are making.

       So, I just want to run through the different types of discrimination. I think it's really useful to understand that there are these different types of discrimination, because when you start then looking at the issues that arise in housing, you may then be able to marry them up with some of these concepts and causes of action, see perhaps where we go.

       Direct discrimination is possibly what most people think of when they think of somebody being discriminated against, this is less favourable treatment because of a disability or another protected characteristic. The technical wording is one person who we call A, discriminates against another person, B, if because of a protected characteristic, that is a protected characteristic is disability, it's also race or gender or sexuality or faith, but here we're looking at disability. So, because of, because of disability one person treats another person less favourably than they would treat others.

       So, there is a number of ideas there, direct discrimination is about comparison of treatment about different and adverse treatment because of a disability and it's unlawful, but it's about comparing. So, it's about saying, how do you treat other people and are you treating this person less favourably than that person. If you are, is the reason or the cause of that, is it because of disability. As I say it doesn't have to be because of the person's disability, it can be because they're associated with somebody with a disability, a classic case is the carer who was treated very badly by her workplace because she needed flexible working because she had a disabled child to look, after her colleague who had a child to look after who wasn't disabled, was granted flexible working no trouble and she wasn't. Fairly hideous abuse by her rather unpleasant employees.

       So, next. Direct discrimination. S it's about prejudice, very often. But it's not always about prejudice, sometimes it's about people simply not understanding, I imagine many of you will have across these it can be unknowing, you know we just didn't know we are doing it, it can be unconscious. Lots of people treat others less favourably, but they don't do it with a conscious determination to do so. It's a sort of subconscious unfavourableness, sometimes that's based on a prejudice that's deep‑seated sometimes it's paced on prejudice that isn't it can also be based on assumptions about disabled people, your point there, we treat everybody in a wheelchair in the same way, that's making the assumption at the everybody is the same because they look the same or whatever, so it's about assumptions.

       Sometimes, particularly this arises particularly in the context of disability, people will say, we were just trying to do are best, we thought it was the best thing to do and they were treating people less favourably, even though they were trying to do the right thing, none of that matters, it doesn't remove the fact it's discrimination, it can also arise because of associations with somebody.

       Direct discrimination can be the result of a positive act, so I am going to, I'm going to do something positive for you or not do something positive for you, also an omission, a failure to do something for those that don't share the disability. So, for example, offering accommodation or providing a service is a positive act, but doing something which would not be done to the person who doesn't share the disability, such as for example the housing context, asking for a higher deposit on a property because there is a concern that the person's disability might mean we have got to make adjustments or, you know, the chair will damage our paint work or the dog will be a nuisance or whatever. Issuing a shorter tenancy, we'll see how it works out, we'll not keep you for long. Only offering properties on the ground floor, going back to your point over there, this is what we tend to do, for some people that's great for other people that isn't great. There are things about how people make decisions assumptions, all about direct discrimination. If it's less favourably treatment than others it's a comparative exercise for which you need evidence, it's unlawful.

       So, let's go on. That's direct discrimination. Examples, umm... yes, sorry, it can't be justified or excused, there is no, there isn't a defence to it, if it happens then it's unlawful, say we didn't mean to, we've never had to deal with this before, it's no excuse, it's still unlawful discrimination. So, refusal to provide a service to somebody with a disability by not doing something, refusing to register somebody, not offering accommodation, failing to make them aware of the possibility of ‑‑ all those things will be examples of potential, unfair direct discrimination, okay.

       Now, discrimination arising from disability is in the Equality Act, because there is a particular ‑‑ it's particular to disability and it is because many people who have a disability have needs which are associated or arise from ‑‑ a classic example is if you are somebody who needs assistance either in the form of an assistant dog or if you have a carer or somebody that comes with you to assist you. That's the classic example at the everybody can visualise and think about.

       If a restaurant or a bus, or a taxi says, "We don't allow dogs or, we're not letting you, we don't have room in the boot for any chairs, we can't fold it down." Then you are being treated differently to any other person, because of your disability and because your disability there is something arising from it, that's the need to use a chair, the need to have your dog with you, the need to have somebody assisting you. All right. So, the idea is that it's the other thing, the other, the other thing that arises as a consequence of your disability that leads to you being treated less favourably. Now prior to the Equality Act there was a case called Malcolm, a housing case in which the tenant had been evicted because he had failed to pay his rent. He failed to pay his rent because he had a psychiatric illness and he, he got muddled and confused about his medication and this had led to him becoming confused about his rent, that's a very over simplification of the story you will be familiar with, with a range of disabilities, particular forms of disabilities are less able to manage things from time to time and those things have consequences.

       Now under the old legislation that wasn't covered so the protection for people who have a disability to discrimination because of things arising from it is very particular. I think it's something that is right for use in the housing context, I think there are lots of situations where there is a misunderstanding of people's disabilities and how it impacts and a misunderstanding of the additional things that people need as a result, so I think there is a lot to think about.

       So, I put some examples there, I suspect that you will be able to, you know, inform me of many other examples and I'm sort of collecting examples at the moment, because it is an area that is being looked at in case law, but it tends to only be looked at in the context at the moment of employment, for very good reasons, employment tribunals are now free again ‑‑ hooray ‑‑ yeah, absolutely, hooray. Also, because there is also very little legal aid and there is not a huge amount of knowledge about the context, so we are building up a picture very much of this.

I just want to look at this one because, sorry, I'm getting a bit out of sync, over excited!! [*Laughter*] The test is unfavourable treatment by A, this person A, something arising from B, and their disability. There is a justification in this instance, the justification is the similar, same justification that we're going to find in the context of indirect discrimination. So, if A cannot show it to be a proportionate means of achieving legitimate aim. One is knowledge, they have to know you have a disability and secondly, they can justify it if it's a proportionate means of achieving a legitimate aim. In the context of housing, you might have allocations and policies, you may have a local authority or a private landlord, I just didn't know they had a disability why would I know, nobody told me, I just thought they were behaving really badly, back toy sues about behavioural problems or perhaps issues around, around use of the premises, I just didn't understand.

       One of the things that raises a particular problem I think for disabled tenants and their advisers at what point do you disclose a hidden disability. So, if you have a very obvious disability that is obvious when people look at you, if you use a chair for example or a guide dog it's very obvious, but it's not obvious if you have serious depression, for example, necessarily. So, you may have to make a decision about making sure that people know about it, because you have a concern about future less favourable treatment, I think that's quite difficult.

       The second thing it can be justified by a provider if there is proportionate means of achieving a legitimate aim this means the person, the local authority or the landlord or whoever it is, taxi driver whatever has to have a legitimate aim they have to be able to say, well the reason we are doing this is because, because we can't, we can't vary or change our premises, they have to come up with an argument and it has to be proportionate, if they are a big local authorities they are less able to justify discriminatory policy than a local landlord. We'll come back to that.

       Yes, personality traits, coming back to some of the things that have been site. There have been cases where personality traits have been used to justify discriminatory treatment, so there has been number of cases where people with disabilities have behaviour in unaccepted ways, everybody agrees that, within a workplace and either it's not known that they have a disability that led to this happening or there has been prejudice and a lack of under, but in many cases, I'm afraid, what has happened is that after the event, when it's become a, realised that somebody perhaps has a disability, it's too late they have been dismissed, they have lost the job and the employee is then saying, well I was justified in behaving in that way because of the nature of the behaviour, the abusive swearing, threats of violence, whatever. I think that's really very difficult. These tend to be workplace cases again, but in the context of housing if you are dealing with people who have a disability where, for example, some people with some of the Tourette's Syndrome conditions can be challenging to people who don't understand it and can if it's not explored and explained and, you know, dealt with as a disability can lead to some real problems, that can be one of the examples of disability behaviour discrimination for something arising from a disability, it can be those sorts of manifestations, so just be aware of that.

**FROM THE FLOOR:** You mention employment, many employees have medical tests for people seeking employment with them and will reject people who fail the medical test, they may fail the medical test because of a disability, but that as I understand it, is, they are allowed to do that, same goes for insurance companies who charge a higher premium.

**CATHERINE RAYNER:** I'm not going to go into insurance premiums, it's all right, I'll just say, there are some clear restrictions on asking questions about disability in recruitment, that's likely to be unfair, but it's way beyond the remit of what we are talking about, I'm sorry about that. How long have I got.

**SVETLANA KOTOVA:** Maybe ten minutes and we have 20 minutes for discussion.

**CATHERINE RAYNER:** Okay, so knowledge, I put knowledge there is important, I want to get on. Let's just flip forward several to next one, indirect discrimination, just let me describe what this is, direct discrimination is less favourable treatment of people, indirect discrimination is about treating people in the same way, but having a different outcome. So, this is about looking at the outcomes, this where you look at policies and procedures. So, for example, an allocation policy that has an adverse impact on a group of people who share a disability. This is about saying we need to look at all the rules and practices and provisions and see whether or not they have an adverse impact on a group of people, so it's a 'group' discrimination. So, for example, if we're reading the small print if the print is so small that people with a visual disability can't read it, then that's a policy or practice that has an adverse impact and arguably it should be changed.

**FROM THE FLOOR:** Or if dyslexics can't read it.

**CATHERINE RAYNER:** Exactly those sorts of things, how it impacts on people with shared ‑‑ it's about, it's about people sharing a disability compared to others, it's not about comparing with people who are not disabled, it's about how it impacts on a particular disability. So, it is very much saying as you say, how it would impact on people with dyslexia and people without dyslexia, how it would impact on people who are wheelchair users, people who are not, how it would impact on people who have depression, for example and people who do not. That's what you are doing with indirect discrimination.

       One of the things is looking at Allocation Schemes for example, it was raised this issue of who gets the DVG, I think that's probably an area ripe for challenge, to be honest. DFG.

       I've set out the detail, I won't go into the next one ‑‑ next one please, and the next one.

       So, service provisions. So, there are these different types of discrimination, victimisation is another one, I've not gone into that one, harassment, victimisation and harassment we'll have to leave for another day.

       There are particular provisions with the Equality Act which describe the circumstances in which there will be discrimination, so for a service provider they must not discriminate by any of those forms I've just talked about in the terms in which they provide the service, by terminating a service or by subjecting somebody to a detriment. So, can we move on to the next one.

       This includes the provision of goods and facilities and provision of a service in the exercise of a public function and that means to the public or to a section of the public. So, again there are a number of tests you have to get through for the services provision, but this covers housing, the allegation of public housing is a public service being provided to the public and therefore it is likely to cover all of these areas, including in one instance the level of Council Tax. Next one please.

       Yes. The test is the human rights test. So, service provider might be discriminating by not providing a person with a service at all or not providing a service of the same quality, or in the same manner or on the same terms. So, again, it's about making a comparison, it might be about any of all of those things and it's about comparing what they usually do. So, it's about them differing from the norm. It can also be, in the context of direct discrimination simply about the prejudicial and it might be about the lack of understanding or harassment or victimisation. So, next please.

       Premises. This is a separate, a separate section and concerns premises. So, the service is about public provision about local authority housing, the premises section covers the private premises, any premises, whether business, private services, wherever, banks, housing whatever.

       The person who has the right to dispose of premises must not harass the person occupying or the person a replying to occupy must not discrimination another. If you are disposing of premises, renting premises out you mustn't discriminate against others, the exception is hotel, B and B accommodation for the purposes of holidays and recreation for example. It's about the terms on which you dispose of the premises, the regional agreement, by not renting it, saying am not going to rent it to somebody with a disability, or by how you treat somebody in respect of things done by persons ‑‑ it's about how you deal with people when they come to the agency, when they ask about it.

       Next one. Yeah. So, you mustn't discriminate in making use of the facilities or by evicting somebody or subjecting them to a detriment.

**FROM THE FLOOR:** Is that race as well?

**CATHERINE RAYNER:** This is race as well as disability?

**FROM THE FLOOR:** It should be right for rent policy should come in to that.

**CATHERINE RAYNER:** I don't know what that is I'm sorry. Next one. Next. So, I haven't talked much about the duty to make reasonable adjustment, but the duty to make reasonable adjustments is the last picture, last bit of the jigsaw the duty to make adjustments is a duty to take such steps that are reasonable in order to avoid people having a big dang by either policy, criterion on practice so written terms for example, the regional agreement, by the physical premises, that can be the lack of handrails, the lack of a ramp for example, or the need for an auxiliary aid, the fact at the somebody might need, they might need to have things read to them or they might need something better. So, go on again please. And again. So the duty is to adjust policies and procedures, the duty covers premises and it covers allocations but it also covers the physical premises and it applies where somebody is placed at a disadvantage, again the comparison of somebody disabled being placed insubstantial disadvantage compared to others and then the duty arises the person or the organisation of the duty must make the adjustments and they must also make alterations to building or premises to remove physical barriers to access, that can include temporary ramps, wider doorways, they must provide aids such as better light switches and handrails, neck one please. Particular issues in schedule 4 about the duties to make reasonable adjustment that covers somebody who let's or controls the premises and in such circumstances, they must vary any agreement to allow a tenant to make reasonable alterations to fixtures or fittings although not physical features in the property.

**SVETLANA KOTOVA:** Sorry, can I just ask, so what does it‑‑‑

**CATHERINE RAYNER:** So physical features does not include furniture or furnishings.

**FROM THE FLOOR:** Does lights and things?

**CATHERINE RAYNER:** It does include, just wait, I know it's so exciting, it does include signs, notices, tabs and door handles, entry systems and doorbells, walls, door surfaces and colours. Not, I don't think it does include light switches, it includes light switches, but schedule 4 doesn't say so far as I'm aware about lights. It is quite specific, but what it is, there are some very specific things that you must do, so adjustments should always be allowed to those things, but it's not, that's not the only thing, so it's one of those bits of legislation that says these are a must, you must always allow changes be made to these things and you must consider adjustments being made to other things.

**FROM THE FLOOR:** So lights include particular colours of lights.

**CATHERINE RAYNER:** If the physical feature puts a disabled people at a substantial disadvantage then you can say, you can argue that that puts them at a disadvantage, you can say there is a duty to adjust and then you can say therefore there ought to be something. So, that's the test.

       So, I can't say to you, yes that's included, it depends on the individual having a disability, it depends on the impact of the disabled person and it depends on them satisfying this test so the duty applies, so there is number of stages to go through, but in principle those things should be considered, should be looked at.

**FROM THE FLOOR:** Electro‑magnetic pollution.

**CATHERINE RAYNER:** There may be a duty to the individual, if there are things that you think have an impact, this is your test, all right, you look at this, you look at this test, does it put the disabled person at a substantial disadvantage, is it a physical feature that puts a person at a substantial disadvantage, so that's your test.

       Okay, so I'm going to stop there, that's a whistle‑stop tour through the Equality Act and hand back to Svetlana to ask.

**SVETLANA KOTOVA:** Can I just ask we do need to end, but we are already, I promised that we would have a break, we can stop, so you can stop typing we can do group work or thinking because.

E.

(Short Break)

**SVETLANA KOTOVA:** I'm interrupting your discussions, but let's just look at what you have written here and what our speakers have to say, we do have to finish in one minute, but I'm not, I'm joking but we do have to finish. So, I'm going to ask Ellen to read.

**NEW SPEAKER:** Okay, as long as everyone can hear me, this is a question from Kevin, does anyone know of any good practice examples of local authorities proactively engaging with deaf and disabled people's organisations on a local disability housing strategy? Because there is a potential to do that in Hammersmith & Fulham and Kevin is of course, looking for lawyers who might want to get involved in this piece of work.

       This one says, I worked in local authority supporting people with visual impairment, they complained if they were temporarily housed they were being moved frequently, after three months, what's reasonable, it's disorientating for people. Barking and Dagenham, planning permission is granted for adaptable properties not properties fully adapted for wheelchair users it means that no fully wheelchair accessible properties are being built and we are unable to assist our wheelchair users from the waiting list.

       This one says, supported living question mark, younger people not meeting criteria.

       Tenancy lengths two years, what does this say Simone?

**FROM THE FLOOR:** I'm still trying to find out what it is.

**NEW SPEAKER:** It's a question about tenancy length.

**FROM THE FLOOR:** Whether it's one year, two years, five years.

**NEW SPEAKER:** Okay. What's this one, Inclusion London legal network struggling to get questions around disabled people detained under Mental Health Act, that's a general point for the legal network.

       This is a problem, a disabled woman contacted us whose housing officer encouraged her to sign for a property before the family viewed it, then when they moved in damp, inaccessible, rights and cockroaches, the housing authority say they have nothing else and there is no access to advocacy in the borough, so they don't know what to do.

       Housing Act no longer fit for purpose.

       This one says it's a shortage of housing stock that's the problem, local authority makes bad decisions, because they like the stock it's political.

       This one says the right to have the colour of lighting changed dimmer, dimmer switches.

**FROM THE FLOOR:** Dimmer and increasing switches.

**NEW SPEAKER:** Do you want to read this.

**NEW SPEAKER:** Double envelope colour LED lights, sensory proof, in clue sing sensory overload.

**FROM THE FLOOR:** Can you speak louder please?

**NEW SPEAKER:** Sensory proofing and sensory overload as part of that, lights, smells *et cetera*.

**SVETLANA KOTOVA:** Are **you saying you want this in the property and it's not?**

**NEW SPEAKER:** What I want to know whether it's written into there, that it's something that you can automatically get done or not, because it's an absolute necessity for some people and linked to that, it can trigger fatal epileptic attacks and so on. Earlier case law, Monsanto case.

**FROM THE FLOOR:** Can you speak up?

**NEW SPEAKER:** Well this doesn't seem to be working?

**NEW SPEAKER:** I think earlier case law indicated autism automatically covered, has this been ruled back, what about using, e.g. Monsanto case, what about autism Act 2009 in combination if necessary with Equality Act 2010.

**NEW SPEAKER:** And EU Charter of Fundamental rights. Human Rights Act, common law and UN‑CRPD.

**NEW SPEAKER:** This one institutionalised housing big blocks and flats for people with learning disabilities, more villages for people.

**FROM THE FLOOR:** Can I say that practical legal challenge, increasingly that is what is happening, so there seems to be not only an increasing number of ATU for people with learning disabilities, but what is happening now is you are finding out there is more and more kind of concentrated areas where they're building flats, on site cafés, like little villages we need to be on the ball with that one, that could be deemed as being suitable accommodation.

**NEW SPEAKER:** Okay, Adrian do you want to summarise these too, then that's it.

**NEW SPEAKER:** Preventative duties e.g. epilepsy, Health and Safety where it can be a threat to someone's life. Torture, Northern Ireland white noise cases from the seven 0s and the Akrotiri air base case, 2005. Combining them in actions.

       The hierarchy of impairments. The...

**SVETLANA KOTOVA:** Okay, we need to give time.

**NEW SPEAKER:** [Inaudible] Article 26, rehabilitation.

**NEW SPEAKER:** Okay. Then this last one, how do tenants with autism and epilepsy maintain their tenancy when there is hate crime or no support.

**SVETLANA KOTOVA:** Yes, also I had some e‑mails and apologies for people who didn't come, so couldn't come today, so they put problems, tenancy agreements for people with learning disabilities and getting them in the right format to understand what you are signing, accommodation is suitable, especially for temporary accommodation, there are cases for people having to, not accessing toilet or bedroom and living in terrible situations where they can't really do basic necessities.

       The, also the way local authorities communicate with disabled people who go through application process and, as consequence they make wrong decisions or don't understand, fully understand what is going on and what kind of impact that has their future. So, do you guys want to, react to some of this, not everything, whatever we haven't covered today we will do, try to do, give as much information as possible.

**CATHERINE RAYNER:** Okay, so I'm real flattered by these questions, I'm flattered that you have asked them presuming the hope that we will be able to answer them, the reality is that many of them are imponderables that I can't answer, many of the things you are raising our things that can only be determined through legal challenge, that's really not satisfactory, I know that's not satisfactory, but the legal system that we have and the political system that we have, means that difficulties in the law are only resolved through political will or by serious challenges and I know the difficulties of that.

**FROM THE FLOOR:** What if you cannot find a lawyer with the expertise anywhere?

**CATHERINE RAYNER:** That's really, really important, I completely sympathise with it, that's why we are here trying to do something about that, the reality is of course, that there is a massive deficit of expertise for the reasons that we addressed. There used to be local law centres, I worked in one, that meant there was free advice available on demand, that's not the case.

**SVETLANA KOTOVA:** Sorry Adrian we have to finish in five minutes.

**CATHERINE RAYNER:** UN Convention does not help you get legal advice, one of the real realities there is nothing that provides the right to have legal d vice, maybe there should be, but there just isn't. There just isn't, at the moment dealing with practicalities of what we have, I think, as I think at the beginning, this is the beginning of the conversation and it seems to me that there are an enormous number of questions, some of which perhaps require a little bit of thought as a response in a private way, some of them require referrals, some are larger imponderables that require a political response, in terms of all the questions asked I'm not going to attempt at this time of night to try and provide an answer. Diane probably will! [*Laughter*] I really do think that this is sorry to say I think it's a fascinating topic, I think there is a huge amount of work to be done and I really do think this is the beginning of it, I've got expertise, you have expertise Diane has expertise perhaps this time next year we will be further on with some of these issues, that's where I am at the moment.

**SVETLANA KOTOVA:** Can we talk to Diane, then yeah.

**DIANE ASTIN:** Sorry, what.

**SVETLANA KOTOVA:** Have you anything to say?

**DIANE ASTIN:** There are a lot of disparate questions, I think, I do think at this time of night we're not going to do them justice, but if they are being collated, well I'm certainly happy to chit in and try and help with some of the general, with some of the answers to the questions that have been raised to circulate, but it just, it's a huge area of many problematic issues, housing is a real problem at the moment. I mean I'm interested in some of the examines that have been given, I think that some of them might be things worth thinking about, that would be a really good challenge, it's very specific. It's usually better to have to base a challenge around something that's quite a specific issue rather than trying to be too broad in the way we are challenging policies and law, I'd be very happy.

**SVETLANA KOTOVA:** Also just to remind sorry, we'll give Ruth and then just to remind you, there was a question about local engagement, if anyone has experience of good local engagement then also.

**FROM THE FLOOR:** I was just going to suggest that given that this is just a start, it's whether Inclusion London could hold a kind of forum, discussion meeting whatever for people who are working as advocates who could, you know, voluntary advocates as well, who could bring some cases and look at which ones would be worth taking up and also this is evidence to put forward to... the next round of UN stuff, whatever, all the people you are giving evidence to. There is also an issue about the Mayor's housing strategy, one of the things I've raised is the fact that there is no information across the London boroughs for people who are in temporary accommodation or need temporary accommodation about the access, most of their information is completely wrong and the officers don't understand the difference between an accessible toilet and a double‑decker bus ‑‑ [*Laughter*].

       Actually, trying to push the Mayor into taking some action on that, you know, he's got the powers, some powers on housing, he could actually have a couple of people sitting in an office at City Hall putting together all the information from temporary landlords, it might take more than two, putting that together and sending it out to the boroughs so they can find people suitable spaces that aren't the other side of London from where they need to be, I just think there is an issue of pushing the Mayor on this, London Councils, they can't agree on anything anyway, the Mayor has clout.

**CATHERINE RAYNER:** Can I just come back to that, as Chair of the Discrimination Law Society, with a slightly different hat on, there is room for joint working with this group, Svetlana was asking me about that earlier on, I think very much that there is, there are number of people who have different bits of expertise and what we are, what we are now realising we have got to do is join us all up together.

**FROM THE FLOOR:** Yeah.

**CATHERINE RAYNER:** So we can perhaps do something more with it, I'm very happy to work with Svetlana and this group to try and find a way of pushing that together.

**FROM THE FLOOR:** Why has there been so many cuts in legal aid!!

**SVETLANA KOTOVA:** Don't ask those questions here!!

**CATHERINE RAYNER:** The government wanted to save quite a lot of money question where is it all going? (One talking).

**SVETLANA KOTOVA:** Okay, everyone, the thing is we, we need to make sure we meet each other's access requirements, so we need to speak one at a time so Palantypist can type. But we need to finish now. I'm really sorry, I can't, we were supposed to finish at 8, so we really do need to leave.

**FROM THE FLOOR:** We can exercise squatter's right now. squatters have no rights anymore.

**SVETLANA KOTOVA:** We will try and answer the questions and send email them and also if you do have cases, I mean it's really hard to find housing lawyers, but there are some lawyers around, so we will try, also just to flag, so, you probably know this but the Equality and Human Rights Commission are now undertaking an inquiry into housing for disabled people and yes, they did evidence kind of collection stage which I think they did in sprint, they were supposed to come here today.

**NEW SPEAKER:** Svetlana can I give a quick update, Inclusion London had a focus group that fed in to that, I don't think anyone who was at that is here tonight, we gave a lot of evidence to that in I can r they are that stage where they have finished collecting evidence they are bringing out the draft findings and recommendations which incollusion London and members can comment on and feet into, at the focus group we held we invited the housing representatives from the GLA to come along to that, we thought it was important exactly for the reasons that Ruth mentioned that they take, that they were involved in and hear some of the recommendations from the EHRC so we'll keep you posted on that.

**FROM THE FLOOR:** Sorry, I also want to mention the forum regarding disabled housing I'm registered blind, I live in supported housing for people with sight impairment, we found it utterly irrelevant to the people with sight impairment, completely utterly irrelevant, so far as I know he was meant to give feedback, [Inaudible] there was nothing he found, if you have sight impairment.

**SVETLANA KOTOVA:** Are **you talking about the EHRC?**

**FROM THE FLOOR:** Yes, so he was sent a link to the form and ask him whether he had filled it in and he said he started but it was utterly irrelevant to our needs as people as sight impairment.

**SVETLANA KOTOVA:** We'll take a note of this.

**FROM THE FLOOR:** I told him to email back to John Owen, I don't know if he did, I wanted him to come to meeting today, I forwarded him the link and asked him to register and it seems he couldn't do it.

**NEW SPEAKER:** I think we've got finish up now.