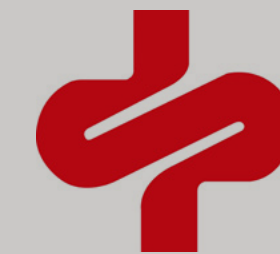


Ableism and the Labour Market

“Just dealing with the square peg in the round hole problem by making the peg round rather than actually thinking about the inclusive environment.”



Report for the

**Association
of Disabled
Professionals**

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1.

Executive Summary

In 2016, the All Party Parliamentary Group (APPG) on Disability commissioned a report that found up to 48,000 disabled people are managed out of their jobs every year. Although the 2010 Equality Act (the 'Equality Act') gives disabled workers the right to ask for reasonable adjustments and to challenge unfair dismissal before an employment tribunal, the managing out process continues. We set out to understand why this process of managing disabled people out of work occurs. We interviewed 38 experts on disability, including people from the private sector, government representatives, lawyers, third sector representatives, union officials, and disabled people with lived experience.

We found that the Equality Act is failing to live up to its potential. While many employers, in workplaces of all kinds, succeed in institutionalising disability rights into organisational culture, procedures, and routines, many other employers fail or struggle to do this, for a variety of reasons. There are significant misconceptions on the part of employers and line managers with reference to what disability means, how disabled people should be treated in the workplace, and the costs of reasonable adjustments. These problems tend to be exacerbated in sectors with precarious working conditions. Moreover, while Access to Work—the government programme that assists disabled workers with funding reasonable adjustments—can work well, it also generates complaints about its flexibility and timeliness in responding to enquiries and processing applications. These initial delays set employer/worker relations off on a bad footing due to the employee not obtaining the reasonable adjustments they need to be able to perform their role effectively. The result is that they are often managed out of their jobs.

Moreover, disabled workers who experience discrimination or are unfairly dismissed can seek redress before an employment tribunal. However, this process is far from ideal. Workers often need legal representation in order to navigate the system, but this is prohibitively expensive for most people. While there are pro bono legal services, they are not equally distributed throughout the country, and Legal Aid assistance has decreased, significantly reducing the level of financial assistance available to claimants. Finally, the experience of employment tribunals is frequently traumatising. Consequently, legal representatives nearly always advise settling disputes as quickly as possible. This reduces the potential trauma, but may also result in a smaller settlement and will have no impact on disability case law.

These significant problems are unlikely to be corrected in one solution. However, there are important steps that can be taken in order to make the aims of the Equality Act a reality. First, our research indicates that employer and line manager thinking about disability and reasonable adjustments is often extremely limited and sometimes precludes their efficient delivery. In these instances, we believe the correct approach is to change hearts and minds with information and education.

Third sector organisations play an important role in providing this information for employees and employers alike. The hotlines and information services provided by these groups serve to inform employees of their rights, while educating employers about the realities of disabled people in the workplace and how reasonable adjustments can be provided.

While avoiding employment tribunals may be better for people's mental well-being, it is essential to have this mechanism as a last resort. In order to make the process of obtaining justice fairer, tribunal panels should be more diverse, preferably with disabled representatives. Expanded funding, through Legal Aid or other routes, would enable more disabled workers to file claims when necessary.

Moving employers towards a disability-positive framework returns us to the issue of changing hearts and minds. Disability-positive employers act creatively to remove barriers and positively facilitate inclusive workplaces.

Genuinely disability-positive organisations do not distinguish between disabled and non-disabled people. Instead, they view all their employees as talent to be nurtured and subsequently are focused on ensuring that the work environment prioritises health and wellbeing for everyone. This includes offering 'workplace adjustments' to all employees, irrespective of whether or not they are disabled. These case studies were a cause for optimism and, in the authors' opinion, represent what an inclusive and healthy workplace should look like. With the advice and support of Third Sector organisations, especially Deaf and Disabled People's Organisations, and the leadership of particularly enlightened employers, we envisage a future in which disabled people can enjoy long, productive, and meaningful careers.

While we do not expect the disability employment gap to disappear overnight, we do believe that changing the frame of reference around disability may go some way towards making workplaces more inclusive.

2.

Recommendations

On the basis of the responses to our interviews, we recommend the following measures to acknowledge the work disabled people do as part of the workforce, to increase trust between employers and disabled workers, and to decrease the incidence of disabled people being managed out of the labour market*:

- Employers develop inclusive, accessible and disability-positive cultures to increase trust, disclosure rates and create safe spaces for conversations about disability and the provision and costs of Reasonable Adjustments.
- Whole organisations embrace inclusion and embed it in their policies, procedures and routines.
- Organisations centralise requests and budgets for Reasonable Adjustments or move to the concept of ‘workplace adjustments’ as is best practice by leading disability-positive employers.
- Employers and Unions provide training about disability, the myths about disabled workers, the Equality Act, and the social model. This will develop the confidence and open mindedness of disabled and non-disabled people.
- Human Resources professionals to take mandatory training on the Equality Act 2010 and Reasonable Adjustments. Universities and Chartered Institute of Personnel and Development (CIPD) curricula should also include this.
- Unions increase support for their representatives and case workers to negotiate reasonable adjustments for disabled workers.

- A ‘One Stop Shop’ funded by government managed by experts by knowledge and experience, for disabled workers and employers to get advice, accessible high-quality research, and best practice case studies.
- Department for Work and Pensions increase awareness of Access to Work (AtW), their responsiveness to disabled people and employers, and provide more clarity about how they can support individuals. AtW provide a step-by-step guide outlining the process, timescales and responsibilities, and named contacts for clients. There should be reduced time for upfront payments and reimbursements, and the cap on funding should be removed.
- Disability Confident organisational members should be required to complete more of the tasks to succeed to Levels 2 and 3 from Level 1. Furthermore, verification of the completion of these tasks should be by independent and diverse groups, rather than other Disability Confident organisations.
- Funding should be provided for legal representation for disabled workers.
- Disabled workers should be present on employment tribunal panels, thus ensuring greater panel diversity.
- Employment law judges to be given additional training regarding the Equality Act and the administration of reasonable adjustments in the workplace.

* While these are our recommendations, we note that several similar recommendations have been made by earlier studies including the Centre for Social Justice¹, IFF², and Disability Rights UK & Reed³.

1 Centre for Social Justice (2021)

2 IFF (2013)

3 Disability Rights UK & REED (2017)

3.

Foreword

According to the 2019–2020 Family Resources Survey, 22% of the UK population is disabled, and this figure has grown by 3% in the last decade.

Disability encompasses a wide spectrum of conditions including physical, sensory, and cognitive impairments, visible and invisible, temporary and permanent, fluctuating and situational. It can affect any of us at some point in our lives, although women are more likely to be disabled than men (24% and 19% respectively). Moreover, Scope reports that disabled people are almost twice as likely to be unemployed as non-disabled people, and are significantly more likely to live in poverty (27% versus 19%). The employment gap between non-disabled and disabled people remains persistently high at approximately 30% and has barely changed in three decades. Furthermore, Scope notes that one in three people think that disabled people are less productive than non-disabled people. However, this is not borne out by research⁴ which finds that not only are disabled employees as productive as non-disabled colleagues, but in certain spheres, according to 68% of employers surveyed, they significantly out-perform non-disabled peers. This shows just how widespread prejudice is. The Association of Disabled Professionals (ADP), led and managed by disabled people for disabled people, have, since 1971, assisted disabled people, people with long term health conditions and their supporters with employment and self-employment issues. Through analysis of ADP's helpline enquiries, it has become increasingly clear that many enquiries are about disabled people encountering difficulties in their jobs, resulting in some being dismissed.

As there has been little or no research into why disabled people are being dismissed, ADP both welcomed and funded this research proposal which set out to understand the reasons why 48,000 disabled people per annum are being managed out of work. This project entitled 'Ableism and the labour market' is led by Dr. Sarabajaya Kumar and Dr. Colin Provost from UCL's Political Science Department. They are to be congratulated for succeeding in addressing this very important question, and with their very difficult, and sometimes very emotional, research. We hope that this research brings greater awareness and that it helps to continue a broader conversation about how to create more inclusive workplaces in which disabled people can perform and thrive, free of barriers.

Jane Hunt OBE

Chair, Association of Disabled Professionals

⁴ Smith, K., Webber, L., Graffam, J. and Wilson, C. (2004) Employer satisfaction with employees with a disability. *Journal of Vocational Rehabilitation*: 21 2, 61–69
Disability Rights UK & REED (2017) Disability and Employment (<https://www.disabilityrightsuk.org/sites/default/files/pdf/Disability%20and%20Employment%20V7.pdf>)

4.

Introduction

(a) Background to the study

According to the Office for National Statistics (ONS), 22% of the working population is disabled⁵, which translates to approximately one in five working adults. Millions of disabled people are employed in the labour market, yet, despite their important contributions, the retention of disabled workers is a significant issue, as (pre-pandemic) up to 48,000 people per year were being ‘managed out’ of their jobs⁶. This has an impact on the effectiveness of the entire workforce.

Moreover, as the disability employment gap between disabled and non-disabled people, at approximately 30%, has remained persistently high for several years, Wass notes that once account is taken of the increasing disability prevalence rate, “There has been no improvement in total employment disadvantage [...] for disabled people since 2013.”⁷

While at first glance it may appear that there has been an increase in the employment of disabled people since 2017, according to Wass, a member of the [Disability@Work](#) group of researchers, this has been due to “the level of overall employment, which is determined by the economic cycle, and the number of people who report a disability.”⁸ Increasingly, people are working and will continue to work past the age of 65. Since “the majority of long-term health conditions [are]

acquired in adulthood [...] inclusive workplaces are imperative.”⁹

The Equality Act protects disabled people, among others, from discrimination or disadvantage in relation to education, work or service provision. The law also requires employers to make reasonable adjustments in order to accommodate the needs of disabled workers.¹⁰

Despite this legislation, research commissioned by the All Parliamentary Party Group (APPG) for Disability found that disabled workers lose their jobs because employers (i) fail to put in place the ‘reasonable adjustments’ disabled employees require to enable them to continue to work; and (ii) subsequently, actively ‘manage’ them ‘out’ of employment.¹¹

The focus of this study is on trying to understand the reasons why reasonable adjustments are not being put in place, and why disabled people are not being retained in their roles. Specifically, it addresses the question: ‘Why are up to 48,000 disabled people per year being managed out of employment?’

This project was born out of our intellectual curiosity and interest in accountability and regulation, but also from Dr. Kumar’s lived experience of being ‘managed out’ of a role by a former employer when her invisible impairments became visible.

5 ONS (2022)

6 Connolly P, Bacon N, Wass V, et al. (2016) Ahead of the Arc – a Contribution to Halving the Disability Employment Gap. Report produced by the All Party Parliamentary Group on Disability, UK, 6 December. Available at: <https://www.disabilityatwork.co.uk/wp-content/uploads/2016/11/All-Party-Parliamentary-Group-on-Disability-Ahead-of-the-Arc-Report.pdf> (accessed 26 April 2022)

7 Wass V, Cardiff Business School (May 2022) One-million more disabled people are in employment: What is being celebrated? (<https://www.disabilityatwork.co.uk/wp-content/uploads/2022/05/Disability@Work-briefing-on-1-million-target.pdf>): 2

8 Wass (2022)

9 DWP and DoH (2017): 3

10 Disability Rights UK (2021) Understanding the Equality Act: Information for Disabled Students. Available at: <https://www.disabilityrightsuk.org/understanding-equality-act-information-disabled-students> (accessed 26 April 2022)

11 Connolly et al., 2016

As an individual who acquired impairments during her working life, as indeed is the case for most disabled people of working age, she found her employer's response to her disability disclosure and request for reasonable adjustments shocking. This was especially so, given the size of the employer and the legislation in place to protect disabled workers.

Rather than retain her expertise, experience, and skills by making inexpensive and easily implemented adjustments, the employer preferred instead to not make the reasonable adjustment(s) and manage Dr. Kumar out of employment—a decision that she found baffling. She was keen to understand their decision to dismiss and wondered whether the experience was unique to her.

Through her initial research, she found that her experience was, in fact, not exceptional. The APPG-commissioned study found that despite the legislation, significant numbers of disabled people are being managed out of the workplace. At one level, making this discovery was somewhat of a relief, in that she was not the only one to experience this type of discrimination. However, at another level, it was most disheartening, in that there were so many disabled people, who for no obvious reason, were going through a very stressful managing out process.

Dr. Provost undertook this project due to his substantive interests in regulatory enforcement and compliance. Several important studies in socio-legal studies and law were influential in spurring his interest in this research.

First, the work of Jeb Barnes and Thomas Burke has been fundamental in helping to understand the highly variable implementation of the Americans with Disabilities Act (ADA) in the United States¹². The authors reveal that some organisations incorporate the priorities of disabled customers and employees into their routines, which creates ADA compliance, but organisations that fail to do so

find it more challenging to be in compliance. Such research raised clear questions about the extent to which organisations in the UK took the Equality Act seriously.

Second, Lauren Edelman's research reveals how organisations frequently develop policies that create the outward appearance of compliance with anti-discrimination laws, which is often sufficient for judges presiding over workplace discrimination cases¹³. However, these policies often function as means by which organisations can manage discrimination claims without changing underlying practices. This research also raises questions regarding the policies and procedures created by UK organisations in order to demonstrate compliance with the Equality Act.

Finally, the Equality Act is ultimately enforced by individuals bringing their own claims of discrimination to employment tribunals, failing resolution prior to that point. While this may sound like a fair opportunity for disabled workers to secure their rights, Marc Galanter's famous study on how "the haves come out ahead" in court suggests otherwise¹⁴. In his seminal study, Galanter showed that "repeat players" in court tended to be well-resourced organisations who knew the system and judicial procedure better than the "one shot" individuals against whom they were battling in court. Consequently, individuals pursuing claims one time in court tended to be less successful, especially if they were against repeat players, such as corporations or other large organisations. Given that UK employment tribunals frequently feature individuals against corporations or large businesses, similar questions are raised regarding an individual's probability of success in such a setting.

This research is supported by the Association of Disabled Professionals (ADP), a small membership charity, which provides "free confidential information and advice so that disabled people and people with long term health conditions, employers, and

12 Barnes J and Burke T (2006) The Diffusion of Rights: from Law on the Books to Organizational Rights Practices. *Law and Society Review* 40 (3): 493-524

Barnes J and Burke T (2012) Making Way: Legal Mobilization, Organizational Response, and Wheelchair Access *Law and Society Review* 46 (1): 167-198

13 Edelman L (2016) *Working Law: Courts, Corporations, and Symbolic Civil Rights*. Chicago: University of Chicago Press

14 Galanter M (1974) Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review* 9 (1): 95-160

advisors, can make informed decisions about impairment related work issues.”¹⁵

ADP have found through their work with numerous talented disabled professionals that employers often dismiss—rather than retain—them in the workforce. As a result of the APPG study and ADP’s own experience, they generously agreed to fund this important project, for which we are incredibly grateful.

When thousands of disabled workers are managed out of the workplace every year, two key questions are raised. First, to what extent are employers complying with the “reasonable adjustment” clause of the Equality Act and with the Act more broadly? Secondly, are disabled workers aware of their rights under the Act, and are they able to exercise them?

To answer these questions, we examined through our interviews how employers understand and view their compliance duties under the Equality Act as well as whether and how disabled workers enforce their legal rights under the Equality Act. In this report, we chose to amplify the voices of our respondents, and as such the evidence is illustrated through quotes taken verbatim from the interviews.

Dr. Sarabajaya Kumar and Dr. Colin Provost, with their synergistic intellectual interests, subsequently joined forces, and this report is the outcome of their research.

(b) Methodology

This research employed a qualitative approach. Once ethical approval had been granted by UCL, 38 in-depth, semi-structured interviews were undertaken via MS Teams. In order for us to get a complete understanding of why disabled people are managed out of the labour market, we interviewed purposively selected key stakeholders from different parts of the labour market ecosystem, including respondents with knowledge and expertise (lived and learned) of the Equality Act and its implementation.

Selection of interviewees was on the basis of the actor’s ability to address the research question from their particular perspective. Specifically, respondents included representatives from the following categories: employers; people with lived experience of being managed out of their roles; voluntary organisations representing disabled people and people with long term health conditions; members of the legal profession, such as legal scholars, solicitors, members of the Bar and judiciary with experience of disability discrimination cases; unions; leading disability rights advocates; and organisations with significant knowledge of the Equality Act.

Interviews lasted approximately one hour, although in some instances they were up to ninety minutes. They were audio- and video-recorded and auto-transcribed. Auto-transcriptions were subsequently edited both for accuracy and to ensure interviews were anonymised, prior to analysis and coding, using NVivo software. Finally, both authors coded the interview data separately in order to draw out the common themes of the research.

All fieldwork was conducted between July and November 2021.

(c) Research Questions

In summary, our primary research question is:

Why are 48,000 disabled workers managed out of employment every year?

In answering this broad and overarching question, we have sought to answer a number of other research questions:

How do employers perceive disabled workers and the contributions they make to the organisation?

How are employer perceptions of disabled workers affected by organisational culture, business model and sector of work?

What are the barriers to obtaining reasonable adjustments for disabled workers in the workplace?

How effective are government programmes, like Access to Work, in getting reasonable adjustments to disabled workers?

How effective are programmes, such as Disability Confident, in getting more disabled people into sustainable work?

How do the voluntary sector and labour unions support disabled workers?

Are employment tribunals an effective means by which disabled workers can seek legal recourse under the Equality Act?

Is there sufficient help for disabled workers to get legal representation before employment tribunals, should they seek it?

How has working life for disabled workers changed since the onset of COVID-19?

5.

The Problem

The Equality Act is, among other things, supposed to level the playing field for disabled people in the workplace. The law expressly gives disabled workers the right to seek ‘reasonable adjustments’ from their employer, in order to perform their roles free from barriers. Employers need to provide these adjustments, and should disagreements arise from this process, disabled workers then have the right to seek legal recourse through the employment tribunal system.

If this process worked well, the majority of disabled workers would be allowed their reasonable adjustments and there would be a dramatic decline in the disability employment gap. Instead, tens of thousands of disabled workers lose their jobs, which indicates that the processes embedded in the Equality Act are falling short. Indeed, a report by the APPG for Disability revealed that up to 48,000 disabled workers have been “managed” out of their jobs every year¹⁶. That said, some of our interviewees were confident that this number is almost certainly much higher.

Moreover, according to a 2020 report published by the Department for Work and Pensions and the Department for Health and Social Care “[D]isabled workers moved out of work at around twice the rate (9 per cent) of non-disabled workers (5 per cent) [whilst] workless disabled people moved into work at around one-third of the rate (10 per cent) of workless non-disabled people (27 per cent).”¹⁷.

We undertook this research in order to understand how and why workers are “managed” out of their jobs, given the protections afforded by the Equality Act. Readers will rightly wonder what it is to be “managed out” of a job. This process

refers to the consequences of organisations failing to embed disability equality into their culture, processes and routines. If employers and line managers do not take seriously the needs of disabled workers, reasonable adjustments may either not be implemented or may be significantly delayed. The disabled worker is prevented from doing their job properly which consequently leads to a perception of poor performance in comparison to their non-disabled peers. This in turn exacerbates workplace relationships which can make for a hostile environment. Ultimately, the employee wants to leave, or the employer feels justified in firing the worker.

Our research has revealed that while there are numerous examples of organisations taking disability equality very seriously, just as many if not more fail to prioritise it, and it is often these organisations that manage out disabled workers.

We interviewed experts who provided us with a window into this process, across a range of different types of organisations, and helped us understand the process of legal recourse for disabled workers under the Equality Act. The Act, after all, does not contain a regulatory element per se, in which a “disability regulator” inspects organisations to make sure that workplaces are providing reasonable adjustments. Rather, it is contingent on the employee to bring a claim before an employment tribunal.

Our research is guided by a significant body of scholarly literature on regulatory compliance and the mobilisation of legal rights. In relation to organisational

¹⁶ Connolly et al., 2016.

¹⁷ Department for Work and Pensions and Department of Health, 2020: 4.

compliance with the Equality Act, it is important to understand that there is a wide range of potential responses to the requirements of the law. This is partly borne of the fact that “legal texts are notoriously indeterminate” and there is often significant conflict over their meaning¹⁸. The requirement that employers make ‘reasonable adjustments’ is imprecise and vague, partly so that specific organisational circumstances can be accommodated. However, the combination of accommodating legal text and specific organisational circumstances produce a wide range of compliance responses.

Another key reason for this wide range of compliance responses is that no matter what procedures or rules an organisation has in place, human beings are responsible for implementing them. As Huising and Silbey argue, “Training programs, manuals, inspections checklists, standard operating procedures, and databases cannot by themselves create compliance”¹⁹. As a result, some organisations endeavour to fully internalise the law’s requirements and go ‘beyond compliance’²⁰, while for other organisations, compliance is merely symbolic and without substance. In these organisations, good policies and procedures may be in place, but the staff simply are not working to implement them.

For organisations that do struggle with Equality Act compliance, the extant literature suggests this may happen for a number of different possible reasons. First, compliance officials within organisations may fail to evince detailed understanding of the law, which can then create room for rival interpretations of the law within and across organisations²¹. Second, business pressures or

other priorities may cause organisational inertia with respect to the provision of reasonable adjustments, and organisations may in turn fail to link disability equality to other routines and procedures within the organisation²². At the street level of an organisation, the relationships between employers/line managers and disabled employees can also be enormously important in shaping the provision of reasonable adjustments. Huising and Silbey describe what they call “relational regulation”, situations in which inspectors and compliance officers work together and reach pragmatic solutions, “keeping the organisation’s activities close to compliant”²³. In the world of disability in the workplace, there may be factors that work against relational regulation, however. Dorfman finds that a significant majority of Americans with disabilities feel as though their disabilities are questioned, as if they are part of a “disability con”²⁴.

There are additional factors working against disabled people in the workplace. Fevre et al.²⁵ show that in the UK, disabled workers are more likely to suffer mistreatment in the workplace than non-disabled workers. Disabled workers also have lower earnings trajectories over time than non-disabled workers, with this pattern being especially pernicious for disabled women²⁶. Schur et al. paint an equally negative picture for disabled workers, as they find that “disability is linked to lower average pay, job security, training and participation in decisions...”²⁷. This body of research raises clear questions regarding whether the needs of disabled workers are accommodated. Previous research can also guide us in understanding the potential effectiveness of the Equality Act enforcement mechanisms. The Equality Act allows for individuals to bring legal claims before employment

18 Barnes J and Burke T (2006) The Diffusion of Rights: from Law on the Books to Organizational Rights Practices. *Law and Society Review* 40 (3): 495

19 Huising, R and Silbey S (2011) Governing the Gap: Forging Safe Science through Relational Regulation. *Regulation and Governance*, 5: 15

20 Gunningham N, Kagan R, Thornton D (2003). *Shades of Green: Business, Regulation and Environment*. Stanford: Stanford University Press

21 Barnes and Burke (2006)

22 Barnes J and Burke T (2012) Making Way: Legal Mobilization, Organizational Response, and Wheelchair Access *Law and Society Review* 46 (1): 167-198

Cunningham I, James P and Dibben P (2004) Bridging the Gap Between Rhetoric and Reality: Line Managers and the Protection of Job Security for Ill Workers in the Modern Workplace *British Journal of Management* 15: 273-90

23 Huising and Silbey (2011): 15

24 Dorfman, D (2019) Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse *Law and Society Review* 53 (4): 1053

25 Fevre, R, Robinson A, Lewis D and Jones T (2013) The Ill Treatment of Employees with Disabilities in British Workplaces *Work, Employment and Society* 27 (2): 288-307

26 Rigg J (2005) Labour market disadvantage amongst disabled people: a longitudinal perspective. CASE Discussion Paper 103. London: Centre for Analysis of Social Exclusion

27 Schur L, Kruse D, Blasi J and Blanck P (2009) Is Disability Disabling in All Workplaces? Workplace Disparities and Corporate Culture. *Industrial Relations*, 48 (3): 381

tribunals when they are not provided with reasonable adjustments. This raises important questions about whether the Act facilitates legal mobilisation and the successful claiming of individual rights. In the academic literature, there is lively debate about the conditions under which legal mobilisation is effective²⁸, but much of this literature applies to organised interests and strategic litigation tactics. In the case of the Equality Act, individuals often find themselves aligned against organisations—frequently their employers, or ex-employers. The expertise and resources in such an instance are more likely to lie with the organisation, replicating Marc Galanter’s phenomenon of “the haves coming out ahead”²⁹, as discussed earlier. Another goal of this research is to understand the opportunities and constraints faced by disabled individuals who seek justice under the Equality Act.

28 e.g. Epp, C (1998) *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective*, Chicago: University of Chicago Press

Rosenberg G (1991) *The Hollow Hope*. Chicago: University of Chicago Press

29 Galanter, M (1974) Why the ‘Haves’ Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review* 9 (1): 95-160

6.

Research Evidence – the Reality of Disabled People in the Workplace

In this chapter, we consider the lived experiences of disabled people in the workplace. This includes: the diversity of disability; the reasons disabled people do not feel comfortable disclosing their disability, and the impact of this; the medical and social models of disability; and the challenges of requesting and implementing ‘reasonable adjustments’.

(a) The Diversity of Disability

Many respondents noted that the disabled community is not a homogenous group, given the very different conditions and impairments that disabled people have or acquire later in life. These disabilities can be visible, invisible, physical, sensory, mental, situational, fluctuating, and/or involve learning differences. Given this diversity, it is difficult for the disabled community to advocate with one voice, as even people with the same condition can have varying experiences that present in very different ways. Therefore, when it comes to accessibility and adjustments, one size does not fit all.

“It’s hard to have a community around disability because [...] condition[s] [...] could be so wide-ranging; he was like, ‘I can’t relate to someone that is in a wheelchair’. [...] Even with autism, you know there’s a spectrum of how it affects you. So even if you are a person that has the same condition, it can impact your life so differently that it’s hard to still be able to relate to as a wider community.” (Interviewee 35)

“It’s in line with our ambition to recruit and train and equip diverse talent, ‘cause if we all recruited the same people, you know our creativity and innovation would be stifled because we recruit people in our own image.

Part of the culture is recognising that there’s a billion people worldwide with different disabilities, [...] that’s a significant proportion of society, as well as likely of our employee landscape.” (Interviewee 36)

“You should argue your case and sell yourself and the unique ability that you have, and the diversity of your lived experience is that uniqueness, and that’s valuable to business.” (Interviewee 03)

Some respondents observed that if the individual is born with or acquires their impairment early on in life, they might lack confidence in comparison to individuals who acquired their disability later on in life. This lack of confidence appears to result from negative stereotyping, which is pervasive in society, and it is very likely to impact the individual’s life chances. Finally, if a disabled worker acquired their disability during their working life, it would be likely to affect their career.

“Part of the problem is that we, as disabled people, often lack confidence [...]. Because we haven’t been brought up from a young age to have that confidence [...] And often you saw this massive difference between disabled people who were disabled from birth and disabled people [...] who acquired an impairment later on in life. You could just see what a difference it made, and you know that’s not true for everybody, but I could see it was a distinct difference in self-belief.” (Interviewee 03)

“If you’re one of the 70% who acquire their disability during their working lives, you almost certainly got a career break. So therefore, whatever your capabilities are, you are never going to get to that board level. Even if you would have done from the start because [...] you lost your career.”

(Interviewee 02)

That said, disability diversity leads to high levels of creativity and innovation, as disabled people face obstacles and barriers in their day-to-day lives. Rather than seeing the differences within the community as problematic, hiring disabled talent with a wealth of different experiences and expertise can enhance an organisation. In order to do so, however, employers need to be aware of the full extent of their disabled workforce.

(b) Disclosure Rates

Several respondents noted that disability disclosure rates are low in most organisations. Consequently, employers do not know the actual size of their disabled workforce, and are unaware that there are probably a large number of disabled workers who are not receiving the support they require. Disabled workers may not disclose their disability for a number of reasons. The disabled person may not identify as disabled, particularly if they have a hidden condition or a learning difference, for instance. Our interviews revealed that when workers identified as disabled, their concerns about ‘disclosure’ revolved specifically around whether or not:

- they would be invited to interviews;
- their careers would progress;
- they would be treated unfavourably;
- they would be on the receiving end of prejudice and negative attitudes about their ability and capability;
- they would be dismissed.

“Do I tell them when I go into the interview, risk not getting the interview? Or do I get the interview and then say by the way I need [reasonable adjustments]?” (Interviewee 32)

“I think our recent research found that [...] there’s a group of disabled workers who do not tell their employer they are disabled, [...] because they’re worried

about [what] the employer will think. They think it will prevent them from getting a promotion or progression or, at worst, the employer would think they were incapable of doing their jobs [...] and it’s because the employer has created an environment of fear and distrust.” (Interviewee 09)

“Because people are not disclosing and I don’t know what the answer to that question is, because you need the disclosure to happen. But in order to do that, you need to create the environments for disclosure to be something that people feel safe to do. So, something like 77% of people who responded said they were worried about being treated unfavourably if they disclosed a disability at work [...] only two in five agreed that telling their workplace had led to improved support and [...] 46% said that their colleagues have been supportive since they disclosed their disability status [... W]e have [...] the same problems with disclosure rates and people being uncomfortable or frightened to discuss their disability status, even with us as their union.” (Interviewee 01)

“I think the reason most disabled people don’t disclose their impairment is because they don’t want to rock the boat. [...] They don’t want to be singled out in any way, so you [...] keep your head down and do the best that you can; and you probably go beyond what you really should ... for your own health, just to fit in and not be seen.” (Interviewee 03)

“I would say it’s a mixture of people not wanting to disclose because they don’t personally identify, or there is possibly also that fear of will I lose my job?” (Interviewee 35)

Another problem that arises from a culture that discourages disclosure is that disabled workers are unable to request reasonable adjustments or are perceived as dishonest when they later disclose their disability. As the reasonable adjustment process is already onerous and marked by tension, not having disclosed a disability at the start of their role is likely to have a negative effect on the relationship the disabled worker has with their line manager.

“I think it’s certainly problematic because the employer will say for example, if I don’t disclose [...and] if at a later stage you mention adjustments, then [...] they think that you’re somehow being dishonest or in the job in false pretences.” (Interviewee 21)

“It is difficult for line managers when an employee discloses disability in the context of what appears to be kind of underperformance [...] It’s gonna be a less positive conversation than if somebody maybe just joined the organisation and they say, ‘Look I’m enjoying getting started here, but also I have these mental health difficulties, and these are the things that help me’.”

(Interviewee 38)

In order to improve disclosure rates, employers would need to create inclusive environments in which disabled workers felt comfortable and able to trust their employers. All workers need a clear signal that disclosing disability or a long-term condition will have no negative consequences. From a research perspective, low disclosure rates also raise the issue of how accurate the disability statistics are.

(c) Medical Model vs. Social Model

From the perspective of disabled workers, the prevalent attitudes of society to disability can make their working lives, and so disclosing their disability, problematic. For disabled people the social model is less inimical, as it lowers the barriers to their acceptance and so makes disclosure easier and being managed out less likely. The focus of the medical model of disability is on the individual and their impairment(s), whereas the social model focuses on the disabling barriers in society. The social model distinguishes between the person with the impairment and the world designed by non-disabled people (i.e., those without impairments)³⁰. The idea of a social model was initially put forward by the Union of the Physically Impaired Against Segregation (UPIAS) in 1976:

“In our view it is society which disables [...]. Disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from full participation in society. Disabled people are therefore an oppressed group in society. It follows from this analysis that having low incomes, for example, is only one aspect of our oppression. It is a consequence of our isolation and segregation in every area of life, such as education, work, mobility, housing, etc.”³¹.

While UPIAS was an early advocate of the social model, there were others who also “argue[d] that the social consequences and social context of impairment were as much or more of a problem than the impairment itself.”³²

The benefits of organisations viewing disability through the lens of the social model were highlighted by many respondents, who argued that ‘inclusive policies’ and ‘universal design’ are an investment that everyone profits from in the longer term. Putting in reasonable adjustments for each individual is a false economy, time consuming, and leads to much unnecessary distress for disabled people. Disability-positive employers were keen advocates of the social model.

“The impairment almost is, kind of, almost irrelevant; it’s the barriers that people experience. Your job as a manager is to remove those barriers so they can be the best that they can be, and so it’s educating people and removing that fear and showing them a different way of looking at the problem that they perceive. And hence rooted in the social model.” (Interviewee 03)

“I’ll tweak the individual because I think they’re daunted by the scale of the challenge of changing an environment. [...] That’s completely a false economy though [...] because if you keep having to tweak every individual [...] you’ll be doing it forever, and each one of those individuals is going to have to go through a [...] profound amount of pain and distress. [...] Whereas if people move to a social model more and looked at inclusive policies, and universal design, the initial investment might feel like it’s daunting, but then you do

³⁰ Thomas, C (2004) Rescuing a social relational understanding of disability. *Scandinavian Journal of Disability Research* 6(1): 22–36.

³¹ UPIAS (1976) *Fundamental Principles of Disability*. London: Union of the Physically Impaired Against Segregation: 14

³² Shakespeare T (2004) Social models of disability and other life strategies. *Scandinavian Journal of Disability Research* 6(1): 9

that once and it works for everybody, and you don't need to keep doing this again over and over and over with each individual. [...]t's an investment [...] essentially." (Interviewee 01)

(d) Reasonable Adjustments

(i) Lack of knowledge and information

Managers, and sometimes disabled workers, lack knowledge and accessible information about what reasonable adjustments are available. While each party cannot be expected to know everything, due to the diversity of disabilities, managers need to have disability equality training and be equipped to have conversations with disabled employees. Often, the adjustments required are very minimal and can make an enormous difference to levelling the playing field. However, without the necessary knowledge, managers sometimes suggest reasonable adjustments based on stereotypical assumptions about conditions, which are factually inaccurate.

"Employers find reasonable adjustments difficult because it's not a standardized thing and nobody can give them a straight answer. And my sense is that one of the things that employers really hate is uncertainty." (Interviewee 11)

"There are so many different disabilities that I think for a manager to understand [...] is quite hard." (Interviewee 35)

"A lot of time people don't know what adjustments they need. Not just what's on offer, but like they don't even know what it is." (Interviewee 35)

"Where is the information in a consistent, concise way for people who are facing these huge life changing situations?" (Interviewee 02)

"It's really quite minor stuff and that can make a huge difference."

(Interviewee 28)

"You have this condition; therefore this is the adjustment that you need without any real consideration [...] often based on [...] some quite factually inaccurate stereotypical assumptions of what it means to have a particular condition." (Interviewee 01)

(ii) Avoidance of difficult conversations

Respondents observed that many non-disabled managers could be uncomfortable with discussing the topic of disability. Fearing the consequences of raising the issue of reasonable adjustments, the disabled worker might also lack the confidence to approach their managers. Approaching these conversations with compassion and understanding of each other's perspectives could go some considerable way to make the process easier.

"A lot of managers, [...] or a lot of people who aren't disabled, are quite uncomfortable discussing these issues, so therefore it's sort of [...] the avoidance of a difficult conversation. It's like OK, we've had that conversation now, but we don't want to keep having that conversation because this is an uncomfortable space for us." (Interviewee 01)

"The disabled community doesn't have the confidence, or wasn't given the confidence, to ask for reasonable adjustments as well." (Interviewee 17)

"I think the humanness gets lost there sometimes [...] we need to have a lot more compassion in these conversations." (Interviewee 06)

(iii) Low cost and cost-neutral

Most adjustments either cost very little or are cost-neutral, contrary to widely held perceptions. For the minority of disabled workers with high support needs, the government programme which we discuss later in the report, Access to Work, would probably finance the majority of their reasonable adjustments.

“96% of disabled people did not need a reasonable adjustment that cost anything. 4% did and Access to Work would probably fund most of that.”

(Interviewee 02)

“They cost nothing, or they cost a little to implement, and a lot of them are actually about thinking about doing things in a different way, moving people away from light, changing their start and end times. You know a lot of them have no cost associated with them at all.” (Interviewee 09)

(iv) Reasonable adjustments are processes not just equipment

There is a tendency for managers to think of reasonable adjustments as items of equipment and built infrastructure (i.e., ramps and lifts) rather than policies, procedures and processes. Whilst equipment can be helpful to people with certain impairments, managers need to consider other factors that affect work experience, such as flexible schedules, the adjustment of absence procedures, the sharing of particular tasks, or the physical organisation of the work environment.

“People think reasonable adjustments are related to stuff like equipment rather than policies.” (Interviewee 12)

“Having to explain to employers that reasonable adjustments aren’t just, which employers tend to think, [...] bricks and mortar [...]. Reasonable adjustments can be [...] not taking into account all of [...] somebody’s sick leave for the purposes of the trigger mechanism in a sickness absence procedure. It [...] can be starting work a little bit later. It can be changes to policies and procedures.” (Interviewee 23)

“The reasonable adjustment is actually you stack the paper on a table instead of on the floor. So if somebody’s got a bad back they don’t have to pick it up, it’s as simple as that.” (Interviewee 02)

“The likes of [...] maybe changing an office layout slightly so that the person isn’t with their back facing [...] the rest of the colleagues.” (Interviewee 25)

“Job carving is where you have your job and you may acquire a disability, so they take that part of the job that may cause you problems, like carrying heavy objects, and they take that away and replace it. Give that task to someone else, take something off that other person and give that to you.”

(Interviewee 32)

(v) Invisible and fluctuating disability

Some respondents suggested that employers find it difficult to understand the needs of disabled workers with invisible and fluctuating conditions. This has a particular impact on people with mental health and/or energy-limiting conditions, which can be debilitating one day and not the next. Such changing scenarios can make it challenging to both request and receive appropriate reasonable adjustments.

“Any adjustment related to something that’s an invisible symptom is much harder for people to get in place than something that’s for a physical one [...] it’s the invisible and hidden and fluctuating elements [...] that cause the issues when it comes to understanding what reasonable adjustments are needed.” (Interviewee 15)

“It also depends on impairment. [...] There is much more [...] acceptance [...] for [...] people who just need physical access, [...] who use a wheelchair. It is much harder for people with sensory impairments [...] And obviously when we [...] move in mental health space, it’s also very, very difficult and there is very little support.” (Interviewee 29)

“I made the point that you don’t have to have permanent reasonable adjustments. They could be that they change throughout the year. You might have a bad day where you might need to amend your hours.” (Interviewee 33)

(vi) Different mindsets

Interviewees mentioned a difference in approach to the reasonable adjustment conversation. Employers are concerned about legal risk and compliance, whilst disabled workers are coming into the conversation to remove barriers.

“Employers are thinking about compliance, [...] trying not to get things wrong. So how do we bridge that gap between complying with the law but getting people to actually just think more positively and creatively about what they can do?” (Interviewee 11)

“It feels very clinical [...] You [have] an employer who needs to do this quickly and is trying to tick boxes on a process; and is scared of legal risk. They have that in their mind.” (Interviewee 06)

(vii) An onerous process

Given the power imbalance between employer and disabled employee the process of requesting reasonable adjustments is onerous. The disabled worker needs to reveal highly personal and confidential information to justify themselves and request what others might perceive as ‘a favour’. The struggles to initiate these conversations alongside informing and educating their line managers, can lead to ill health, anxiety and ultimately despondency. Disabled workers, like their non-disabled colleagues, simply want to enjoy their work life instead of feeling that they constantly have to fight battles.

“Structurally it’s always very problematic where you’re saying to the individual you’ve got to go to your employer, tell them a lot of information and make a request for a particular kind of treatment. Because given the inequality of power in the relationship, that’s a really difficult dynamic for people.”

(Interviewee 11)

“[It feels like] you’re almost asking for a favour or something over and above everybody else. So I think the narrative is all wrong.” (Interviewee 03)

“People are having a horrible time, where they’re having to fight for [reasonable adjustments]. And often the process [is] leaving people ill, stressed, anxious, close to [...] quitting, [...] because it’s [...] so difficult. [...] rather than enjoying your work, what you feel is the battle, because you’re having to not only talk about things that are difficult and very personal to you, you’re at the same time having to educate and try [to] inform.” (Interviewee 03)

(viii) Time delays

Delays in the implementation of reasonable adjustments can lead to the disabled worker having to ‘make do’ or not work at all. The time taken to put in place reasonable adjustments can range from ‘10 minutes’ to several years. Having reasonable adjustments in place as soon as possible, especially within the disabled worker’s probationary period, can be critical to establishing a positive relationship with non-disabled colleagues as well as ensuring they settle well into their role.

“Sometimes it takes weeks, sometimes it can take 10 minutes. The worst I ever heard was somebody waited two years for a mouse. They were put on gardening leave for two years ‘cause they were waiting for a type of mouse.”

(Interviewee 32)

“One of the people in the survey said they’ve been waiting three years for adjustments, and these are often [...] changes that would be minimal cost, if any, but just takes [sic] a little bit of thought and a little bit of effort.”

(Interviewee 01)

“They just haven’t signed [the request for reasonable adjustments] [...] it’s been on that desk for the best part of three years.” (Interviewee 05)

“[When] disabled workers [are] not getting the adjustments they need, particularly in that first six-month period, which sets the tone for how their entire work life will go [...] because that is obviously a probation period, and a lot of disabled workers are left waiting for longer than a year to get the adjustments they need.” (Interviewee 09)

“The first couple of weeks if they are lucky, couple of [...] months on average, and much longer if they’re unlucky, they’re working without the reasonable adjustment and then you can’t get off to the start you’d like to with your new team.” (Interviewee 37)

(ix) Failure to implement or partial implementation of reasonable adjustments

Respondents who had conducted their own research, reported that a significant percentage of disabled people either did not get the reasonable adjustments they required, or only received some of them. In surveys undertaken by our interviewees, they found that between 40–75% of disabled workers did not receive any reasonable adjustments.

“We found that 75% of the people who responded to the survey said they needed adjustments, and of those [...] 50% said that they got what they thought they needed.” (Interviewee 01)

“Our research [...] shows that two in five disabled workers don’t get the reasonable adjustments they need [...] they either don’t get any or they don’t get all of them, so that’s a massive group of disabled workers who aren’t getting what they need to do their job.” (Interviewee 09)

“You have to have a good employer and even then [...] you probably don’t get all the reasonable adjustments that you would ask for.” (Interviewee 15)

“Two-thirds of people didn’t get the reasonable adjustments that they needed, and 23% of people say that even where the reasonable adjustments were agreed, they waited for a year or more for those adjustments to be put in place.” (Interviewee 23)

(x) Lack of ongoing conversation and temporality

Several respondents noted the need for an ongoing conversation between the manager and the disabled worker, to ensure that the reasonable adjustments provided are ‘the right fit’. Keeping lines of communication open could also reassure the disabled employee that their reasonable adjustments would not suddenly be removed should circumstances change.

“There’s very little follow up [...] there doesn’t seem to be a lot of ongoing communication [...] What is it that you need? [...] Let’s try this. Does this work?”

Yes? No? OK, this isn’t working. Let’s try something else.” (Interviewee 01)

“The best way of working out whether something is going to work is by discussing it [...] there’s no one size fits all regarding this at all.” (Interviewee 28)

“Employees said they are living in constant fear that any day circumstances can change and they will lose their adjustments. [...] There’s this sense of temporality. This could be taken away at any time.” (Interviewee 06)

(xi) Disabled workers stuck in their role

Disabled workers can become stuck in their roles for a number of reasons. Having negotiated some or all of their reasonable adjustments, they would rather avoid having to repeat the onerous process elsewhere, either in the same organisation or a different one. This is especially so, when their reasonable adjustments include equipment (hardware or software), which they are not allowed to take with them. A disabled worker who has a supportive line manager would be reluctant to lose this relationship through a role change. Moreover, a change might precipitate the need for reasonable adjustments, which workers do not need in their current roles.

“There is the issue of career progression and how people tend to stay in the same job for a long period of time because they’re concerned about not getting any reasonable adjustments or support if they move. Even if the support that they get now is quite poor. [...] there’s always [...] the potential that it could be worse wherever they go.” (Interviewee 15)

“Trying to take equipment, which your business bought, [...] for a particular job in a particular business to another employer has been tricky.”

(Interviewee 10)

“I could be disabled, but what I do doesn’t require me to do anything different, so I don’t need to tell you I’m disabled. But as soon as you change my role, [...] that [...] requires me to do things differently and my disability stops it.”

(Interviewee 27)

(xii) Reasonable adjustment passports

There were mixed views about Reasonable Adjustment passports, which have been developed to enable disabled employees to take their reasonable adjustments with them to any role within the organisation. This could facilitate a positive onboarding experience. However, there were concerns raised by respondents that RA passports could replace ongoing discussions with line managers, or raise expectations that employees can take all of their existing reasonable adjustments with them. Reasonable Adjustment passports could be helpful, as long as they are used to start a conversation rather than replacing it.

“There’s been some work to look at passporting [...] I have mixed views on it because I think [...] it needs to be done really well [...] it doesn’t take into account that sort of ongoing need for [...] continual communication, an ongoing process of making adjustments.” (Interviewee 01)

“The civil service have been using passports for years. Civil servants have a poor experience of them generally. [...] The issue with passports is that it sets the employee false expectations. [...] from now on, you’re going to be able to take your adjustments with you wherever you go. Well, I’m sorry but [you] won’t [...] And this passport is at risk of taking [...] the humanness out and put in a document.” (Interviewee 06)

(xiii) No or partial reasonable adjustments means ‘muddling through’ or exiting

The absence, or incomplete implementation, of reasonable adjustments leads to disabled workers ‘making do’ and ‘muddling through’, often to their detriment. To ensure they manage their workload whilst not having reasonable adjustments in place, some work additional hours. This can impact on their physical and mental wellbeing. Some disabled workers end up reducing their hours, taking long-term sick leave which may lead to capability procedures and/or dismissal, or eventually retiring early on medical grounds. This has consequences both in terms of pay and pensions. Rejecting or not fully implementing reasonable adjustments is poor practice, and potentially leads to disabled workers being ‘managed out’ and excluded from the labour market.

“If an individual doesn’t receive the adjustments that they need [...] they sort of make do [...] but [they] obviously experience difficulties [...]. Some individuals would end up [...] on longer term sick leave, and [...] I’ve seen people [...] retire early or take medical retirement.” (Interviewee 26)

“They either get on with their work without adjustments and sometimes they’re able to do it. But putting themselves at kind of huge difficulties and stress and so on like [...] doing work out of hours.” (Interviewee 29)

“We have people who kind of muddle through for as long as they can. But [...] they are likely to be [...] further damaging both their physical and mental health by working in these ways. [...]A] lot of people go less than full time, which obviously has financial consequences, both in terms of their pay and [...] pensions. I think it probably contributes to the gender pay gap.” (Interviewee 01)

“[Disabled employees], not being given the tools to do the job [...], will express their frustration and sometimes [...] the employer [perceives] a breakdown in the relationship or behavioural challenges from the individual. And that’s the basis on which they’re managed out and so the disability isn’t mentioned.” (Interviewee 08)

“Disabled workers being targeted for redundancy, being unfairly dismissed [...] It’s a large number [who] aren’t getting their reasonable adjustments. Some of that is wilful, some of that is ignorant, and all of it is very bad employer practice.” (Interviewee 09)

“Most common thing that happens is capability procedures with people being managed out of roles, which ties into a lack of reasonable adjustments.” (Interviewee 13)

“People just don’t want long drawn out [...] conflict. So, a lot of them just quietly disappear. They take long term absenteeism and gradually they just retire, and they just not get back into [...] work again. I’ve seen so many of them, and sometimes for some ridiculous reason.” (Interviewee 27)

Summary

In sum, barriers to discussing and implementing reasonable adjustments include: a lack of knowledge and information on the part of managers and disabled people; the assumption that reasonable adjustments are solely about equipment; and that they will be expensive. The reality is that most reasonable adjustments are either low cost or cost-neutral, and most require a creative, solution-focused approach to their implementation.

Other factors that affect the implementation of reasonable adjustments are the different mindsets with which managers and disabled workers approach the topic, as well as the discomfort of non-disabled people when discussing disability. This can lead to managers avoiding what they perceive to be probable 'difficult conversations', and disabled workers becoming frustrated with feeling that they have to fight for their reasonable adjustments. This process becomes even more onerous when the disability is invisible, or a fluctuating condition, as there seems to be even less understanding of these issues.

Disabled workers often experience significant time delays in implementation, and/or only receive part of their reasonable adjustments, or none at all. This can have a negative impact on their performance, which in turn can affect their physical and mental wellbeing, and ultimately their career.

Once reasonable adjustments are implemented, given that managers would rather avoid these conversations in the first place, there is often no follow-up and an apparent reluctance to monitor and evaluate the effectiveness of the reasonable adjustments. The lack of communication is also a cause of stress and anxiety for disabled workers, as they already fear losing what reasonable adjustments they have.

Similarly, once disabled employees have support, either from their line managers and/or in the form of reasonable adjustments, they 'become stuck', as they are

often reluctant to start the process all over again, should they need to switch roles within the organisation. They do not change roles for fear of not having another understanding manager or of receiving less support than they currently have. Some respondents mentioned that reasonable adjustment passports could address this issue, however, they also had reservations about them. Whilst reasonable adjustment passports can be helpful as a tool to start conversations with new line managers, they are not an end in themselves.

Both managers and disabled workers would benefit from clear and accessible information regarding reasonable adjustments as well as support to manage the process. Currently, most managers do not appear to have the confidence, time, resources or knowledge, to feel comfortable approaching the topic of disability and reasonable adjustments. However, in our research we identified organisations who are disability-positive employers and leading in this area. We will discuss their approaches later in the report.

7.

Research Evidence – Organisational Culture and Workplace Relations, Attitudes and Inclusion

In this chapter we consider organisational culture and attitudes to inclusion. We discuss the drivers and barriers to the inclusion of disabled people in the workplace. We analyse attitudes and assumptions about disability and disabled people, and the roles of Human Resources (HR), Occupational Health (OH), and Equality, Diversity and Inclusion (EDI).

(a) Drivers of Inclusion and Implementation

(i) Compliance/fear of litigation

The Equality Act protects disabled people from discrimination and puts the employer under a legal obligation to make reasonable adjustments. However, some respondents noted that fear of litigation means that some organisations and line managers may only put in reasonable adjustments to avoid legal challenge and tribunal claims. Thus, rather than being actively supportive of their disabled employees, their fear provides the context for their organisational culture, which is one of being minimally compliant.

“In general, they regard it as something that they have to do because they’re legally forced to do certain things in certain areas [...] I suspect it’s more about avoiding [...] tribunal claims rather than being necessarily supportive.”

(Interviewee 28)

“I still think it’s a compliance culture largely.” (Interviewee 08)

(ii) Business case for reasonable adjustments

Other respondents said that some organisations recognise there is a strong business case for inclusion and implementing reasonable adjustments. They experience higher productivity, retain good employees and have more harmonious working relationships and environments, which positively impacts all employees. It also ensures that everyone can perform to the best of their abilities.

Certain sectors also already recognise the unique talents, creativity and value that some disabled workers bring to the workplace, as a result of which they actively encourage and support these employees.

“Making these adjustments it’s good business sense. It’s good for them. You will perform to the best of your abilities, which is why you’re there.”

(Interviewee 03)

“Right, and I think the private sector in technology. Uh, you know. Software companies and hardware companies, because they’re [...] problem solvers [they] have become curious about the value of people with disability and how they can make a contribution. [...] What they’ve learned is [...] people with some [...] characteristics are incredibly capable for solving particular [...] problems. [...] And then they’ve sought to institutionalise that into their processes so that they [...] actively support and encourage people to apply.”

(Interviewee 07)

Furthermore, some businesses consider that an inclusive culture is good for their ‘brand’ and therefore sales. One respondent told us about a cost-benefit analysis of reasonable adjustments they were commissioned to undertake by a large

employer. They found that for every £1 invested in supporting disabled workers, the business gained £6.

“Some of those consumer-led brands [...] are better than others where they know [...] it’s good for their brand and good for their business.”
(Interviewee 17)

“It’s good for my business. I can get more productivity, more retention, less recruitment problems, less conflict, less litigation. All that put together, the cost is a fraction of the gains.” (Interviewee 27)

(iii) Genuine inclusivity

Some respondents observed that there are organisations and line managers who are enlightened and are genuinely invested in creating an inclusive culture, which goes beyond compliance. Their focus is on reducing the barriers to working for people with a disability, and in the case of Microsoft (which was mentioned on a number of occasions), they view both their disabled customers and employees as contributors to the economy, rather than a burden on it.

“There’s the [...] enlightened ones who say, [...] we need to be inclusive. We need to do this right. And [...] what’s the point of actually trying to cut corners? Let’s do it properly. And those enlightened ones are the ones who really do care about inclusion rather than just compliance.” (Interviewee 27)

“It is not just about understanding what the equality obligations are, but also creating an environment that [...] brings those barriers down.” (Interviewee 25)

“See a link between the customer base and their employment practice. [...] Take [...] Microsoft, whatever you think of them, they are on record as saying we [...] want to reach 2 billion disabled people worldwide. We want to increase and constantly improve our accessibility features, and this is all about the customers. But in doing so, [...] they’re making the employment easier and they’re shifting the culture [...] to seeing disabled people, not as [...] poor people to be looked after, but as people who can contribute economically.” (Interviewee 04)

(b) Barriers to Inclusion and Implementation

(i) Imagination

Several respondents observed that the reasons line managers often gave for not implementing reasonable adjustments amounted to a lack of creative thinking and trust on their part. Some were even suspicious of the motivations of their disabled employees, whilst other line managers, who might be more sympathetic, could feel constrained and disempowered, either by their own line managers or the leadership in their organisations. This leads to a collective failure of imagination both at an organisational level and in society.

“It’s not thinking creatively and [...] having a distrust of the motivations of some disabled people.” (Interviewee 13)

“As a manager who’s hiring somebody who’s disabled, you’re only able to be as flexible and creative, and up for adaptation, and willing to not know and figure things out, as you feel empowered to be [...] by] who’s managing you and the rest of the organisation.” (Interviewee 38)

“I think that this is a collective social failure of imagination.” (Interviewee 01)

(ii) Personal experience

Another issue mentioned by respondents was the lack of personal experience of line managers and leaders meeting, knowing or working with disabled people – a phenomenon one respondent characterised as ‘disability apartheid’. As leaders and managers do not necessarily have access to people with lived experience or know someone with whom they can discuss their concerns, this means they lack the necessary knowledge and empathy to approach the conversation.

“They cannot begin to imagine, unless they have personal experience of this [...] or [...] they might have a child or a sister [...]. And that empathy, I think, brings a lot to the conversation. But [...] disability apartheid has lent itself to [...] this [...] ‘one people, two systems’ kind of thing. And I think employers [...] are utterly clueless.” (Interviewee 08)

“It comes down to the fact that we don’t have a very diverse workforce in this industry and [...] people don’t necessarily have [...] access to that lived experience, or don’t have someone close enough to be able to talk about it. Therefore, they don’t know how to react in the situation or how to handle it.”

(Interviewee 35)

However, even when they are empathetic towards disabled people, they may not have the time required to be inclusive.

“There are those that have the emotional intelligence and empathy; they just don’t have the capacity to even stop and think.” (Interviewee 35)

(iii) Defensiveness and fear of wrongdoing

Several respondents noted that in general employers and line managers would not consider themselves as discriminatory against disabled workers, whilst their actions might reflect the opposite. This mismatch between self-perception and practice can be extremely problematic when issues are being raised with line managers, who may become rather defensive. The line managers’ fear of possible legal consequences, embarrassment, doing the wrong thing, or failing to do the right thing all appear to be constraining when it comes to addressing disability inequality in the workplace.

“With regard to employers and [...] line managers, [the issue] is openness to the idea as a possibility you might have done something wrong. [...] Having to deal with people who think of themselves as being lovely and very woke [...] and trying to persuade them that [...] what they’ve done is disability discrimination offends them in a way.” (Interviewee 12)

“Quite a lot of people would be shocked to [...] find out that they’re being discriminatory, and you always get someone who says ‘Well, my sister’s in a wheelchair, of course I’m not discriminating!’ whereas the actions say differently. [...] It’s awful and sometimes excruciating, because people do wheel out an example of a family member who has a disability in the middle

of meetings. It’s completely inappropriate, but it does happen.” (Interviewee 13)

“We’re talking about a legal situation here? Am I in trouble?’ [...] And sometimes people would become quite defensive or just less willing to engage. I guess them thinking that I was out to catch them out [...] it does frighten some managers.” (Interviewee 26)

“You cannot underestimate the level of fear amongst employers. And it is fear of embarrassing themselves, of embarrassing their employees, embarrassing their customers, getting things wrong, being patronising, just looking stupid. An enormous amount of this is at that emotional level.”

(Interviewee 02)

(iv) Reasonable adjustment costs

As previously discussed, the costs of reasonable adjustments are often cited as a barrier to implementation. Whilst the actual costs of reasonable adjustments are often far lower than managers think they will be, and Access to Work can cover most of the costs regardless, departmental budgets can be restrictive when it comes to putting in reasonable adjustments. This can make both disabled employees and line managers reluctant to discuss and agree reasonable adjustments, and especially those with any cost implications. Rather than seeking approval from a higher authority to have costs approved from a different budget, some line managers refuse reasonable adjustments so they don’t have to justify exceeding their budget to their line manager or finance director; they would rather manage disabled employees out of the organisation.

“23% [of the interviewee’s research sample] said the employer used cost as the reason to refuse the adjustment.” (Interviewee 23)

“I think the main problem [...] with reasonable adjustments is that we don’t have a central budget for reasonable adjustments, so it’s [...] line manager by line manager [making] that decision.” (Interviewee 33)

“It comes out of their own [...] departmental budget, and they have a problem with that. They don’t want to justify these things because it comes back to that empowerment. They have to go to their boss, who then has to go to their boss, who then has to go to the finance director to explain why this department has been over budget.” (Interviewee 14)

“The [...] line manager [...] is [...] desperately trying to meet targets and meet budgets and just [...] does the quickest and simplest thing, which may be [...] offering somebody a way out of the organisation rather than really exploring how to keep them.” (Interviewee 04)

(v) Health and Safety

Some respondents noted that concerns about health and safety in the workplace were often cited as reasons for not implementing reasonable adjustments or for not employing or retaining disabled workers. Employers were described as risk averse and concerned about escalating insurance costs. These issues seemed to be writ large for people in practical roles in sectors such as transport and construction.

“Some employers [...] will respond based on things like health and safety[;...] they might say [...] ‘This person isn’t fit to work in this particular place, because they can’t hear the fire alarm, or they can’t hear [...] some kind of alert.’ [...] We’ll see a lot of things [...] where [...] this [...] health and safety type reason or rationale comes in.” (Interviewee 26)

“For example, it wouldn’t be good for the safety of everybody else to have the visually impaired person in the room, because in the event of a fire, we’d be slowed up, ‘cause we’d all be able to get out, and then we’d go, oh, we’ve got to go back. [...] I mean, that is an appalling reason that they think is a legitimate objective justification.” (Interviewee 24)

“I’ve not heard of any kind of reports [...] where someone has actually had a seizure and injured themselves really seriously in the workplace in a role like that. [...] Again, it is [...] risk averse [...] And it is that projected fear of managers and [...] their own stigma and their own lack of understanding and awareness that kind of projects that. [...] Insurance cost is one of the big things that our research is pointing out. Employers are [...] concerned that their insurance costs are going to increase.” (Interviewee 29)

“Anything that’s [...] more kind of practical, hands-on job, the excuse is always, ‘Well, we don’t think it’s safe for you to be doing this role.’” (Interviewee 29)

“A lot of the time people will say that [...] we can’t give them a reasonable adjustment because they’d be unsafe in that role, and I think that’s the tricky thing. [...] I think because of the safety aspects [...] sometimes people will use that argument that if somebody who’s got mental health problems, [...] should they be on the track if they’re mentally unwell?” (Interviewee 33)

“In construction, the association or assumption of what a disability means is that it [...] was unsafe to have someone with a disability because people would assume a disability was, for example, if you are hard of hearing [...] on a construction site you need to hear if someone shouts [...] people have this old notion [...] of what having a disability is and linking it to health and safety issues.” (Interviewee 35)

(vi) The futility of individual efforts and paper policies

Respondents highlighted that whilst most organisations probably had some ‘disability-positive’ line managers with fantastic attitudes towards their disabled colleagues, individual actions to support disabled workers were not enough by themselves to change workplace culture. Rather, to do so requires a co-ordinated effort by the whole organisation. Similarly, interviewees mentioned that engaged leaders and inclusive policies were only effective if they were enacted at every level of the organisation.

“Within employers themselves [...] their managers have varying levels of awareness. [...] You can have an amazing manager who’s doing everything that they could possibly do, and it’s best practice, next to a manager who’s doing nothing, or worse, actually holding disabled people back.” (Interviewee 09)

“The biggest barrier to organisations is [...] finding the right pathway [...] to get them aligned to do this together. [...] It’s got to be coordinated. It’s not one person’s decision” (Interviewee 27).

“I’ve had meetings with [...] quite senior staff within organisations, and [...] they’ve been very engaged. They’ve been very willing to listen, [...] very knowledgeable about legislation and they’ve got [...] lovely policies and procedures. But [...] on the ground [I] see a line manager not understanding that or not applying that.” (Interviewee 26)

“I think that some of the bigger employers have great policies and some of them have great practices. I think ultimately [...] it depends on the individual manager [...] and what attitude they have. I think attitude is one of the biggest issues. [...] And you can have the best policy in the world, but if your manager [...] doesn’t understand it, then it’s not going to work.” (Interviewee 18)

(c) Patterns of Implementation

(i) Sector and size differences

Most respondents stated that they did not think that the sector or the size of an organisation had a significant impact on their inclusivity. While small organisations might lack resources, large companies with complex Human Resource (HR) or Occupational Health (OH) departments might not improve disabled workers’ experiences either.

Some noted that public sector organisations, due to their Public Sector Equality Duty, had more inclusive policies, but their implementation was lacking.

Furthermore, they seem to be more defensive when challenged on, or accused of, discriminatory behaviour.

“I wish I could say, for example, that the public sector was different. I don’t think it is. We deal with cases with big public sector employers, [...] also [...] with very kind of small, private employers or not-for-profit, and to be quite honest, I can’t say that they’re all that different.” (Interviewee 22)

“Evidence suggests that small companies are just as good at employing disabled people as large companies. [...] sometimes having complicated HR systems and occupational health is not helpful. [...] But most of the medium size organisations are not in that forefront [...] And when they’ve had to cut budgets, they certainly haven’t got equality and diversity people or anybody [...] focused on this issue.” (Interviewee 04)

“The public sector, [...] will have better policies [...], private sector will vary. [...] I think their paper policies are better [...] because [...] they have the public sector equality duty, [...] they know they have to have those policies and those processes in place. But there are still problems with their implementation. I think that’s where they fall down.” (Interviewee 18)

“The public sector are much worse to deal with in terms of trying to sort out problems than the private sector [...] often public sector [...] charities, universities, [...] will bring down the shutters immediately if you accuse them of something.” (Interviewee 12)

(ii) Precarious work

One area mentioned by several respondents as being poor in relation to disability, reasonable adjustments and inclusion, was precarious work. This includes workers on low pay, zero-hour contracts and in outsourced services. Workers in these organisations are seen as dispensable and, due to their vulnerable position, are less able to enforce their rights. Some interviewees noted that disabled workers are usually over-represented in precarious work and are even encouraged by the government to enter into it.

“If you’re working in a precarious situation, working zero hours, [...] it inherently becomes more difficult to enforce your legal rights [...] if you’re not very secure in your job, that is going to be a much more difficult conversation to have. [...] And for people working precariously the risk is always that the employer just doesn’t give them any more shifts.” (Interviewee 11)

“Outsourced firms [...] with zero-hour contracts, say for example security firms. These big organizations [...] don’t really engage with their employees. [Employees] are really a number, someone to be moved around and do maybe this shift, maybe that shift. [...] here’s a real lack of needing to understand this human resource, because there’s so many other employees. [...] There’s not the need to engage with them, because they are seen as much more dispensable.” (Interviewee 13)

“There are [...] patterns in industries where people are lower paid, less secure, and more vulnerable. Then [...] employers just think they can get away with things. [...] We do find it a challenge to kind of ensure that those workers get the reasonable adjustments that they need and we do find issues with those employers.” (Interviewee 23)

“There are sectors that are worse. And they tend to be the sectors where [...] workers [...] are in insecure work, zero-hour contracts, [...] those kinds of insecurity mean that disabled people and actually all workers are less able or empowered to ask for the things they need because they are incredibly vulnerable. [...] We’re talking retail, fast food, those kinds of lower paying jobs. Which, coincidentally, I feel, are the jobs that the government are forcing disabled people to take.” (Interviewee 09)

(d) General Attitudes and Assumptions about Disability

(i) Prejudice

Several respondents mentioned that there is both widespread prejudice and various assumptions about disability, which negatively affect disabled workers and can contribute to being managed out. Some employers have very outdated and narrow conceptions of what disability is and are unwilling to either employ or retain disabled people in their roles. Moreover, disabled workers can often be viewed pejoratively as lazy, troublemakers or even faking their impairment(s). Some managers have patronising attitudes and do not expect disabled workers to perform well, framing reasonable adjustments as allowances rather than levelling the playing field. Furthermore, even well-intentioned employers will have employees with prejudices, which are only reinforced by the general discourse labelling disabled people as ‘a burden’ on our society.

“There are some who’ll go: ‘Not doing it. I’m not employing a disabled person. [...] And if I’d known at the time you would never have been appointed.’ And they are horrible cases.” (Interviewee 24)

“There is the prejudice that disabled people should be in a home. [...] I had a meeting a couple years ago and after 15 minutes I just gave up of trying to persuade the guy that [...] you can be disabled and not be in a wheelchair. [...] As far as he was concerned, if you’re not in a wheelchair, you’re not disabled. [...] People have that kind of prejudice [...] If people are saying ‘I’m disabled’ and walking in and out of the office, [...] people think they are [...] faking it.” (Interviewee 32)

“They’re seen as troublemakers, or they are seen as lazy. [...] And they’re not treated with the respect that they might have, if they hadn’t [had] any absences and had had very high performance.” (Interviewee 13)

“Employers think making a reasonable adjustment means making an allowance [...] basically saying [disabled people are] not going to perform as

well as somebody who's not disabled, but it's sort of mean to expect it of them.” (Interviewee 38)

“I think there's widespread ignorance amongst employers, and there are varying degrees of attitude. The research shows that different disabilities are viewed in different ways, but broadly speaking, people will be empathetic and want to help. [...] But I think that disability prejudice is played out daily in the discriminatory practices.” (Interviewee 08)

“That is what society [thinks] [...] because it doesn't get shown anything different, and then [...] all the negativities [are] backed up by the media; [...] you hear about disabled people as a group of individuals who don't work, or a burden to society, the taxpayer, the amount of benefits [they] consume.” (Interviewee 03)

(ii) Chair envy and favouritism

Respondents observed that managers often perceive that the disabled worker's colleagues would be 'jealous' and feel unfairly treated, if reasonable adjustments were put in place for the disabled employee. Many managers are concerned that reasonable adjustments will 'set a precedent' resulting in everyone wanting the same adjustments. This was referred to as 'chair envy' and/or disabled workers 'playing the disability card' to avoid elements of their work that they do not like. Respondents also noted that some employers even believed that putting in reasonable adjustments would be 'discriminatory' towards non-disabled people and the impact on the team was the reason for refusing them. These attitudes seem to be based on employers' and managers' perceptions and assumptions, which may or may not be borne out in reality.

“They don't like the idea of setting a precedent [...] which is [...] nonsense because [...] reasonable adjustments aren't precedents. [...] But they say 'Oh, if you want it then everybody's gonna want it' or 'It's going to cause problems with other members of staff'.” (Interviewee 12)

“It would be dubbed as chair envy. I've got a nice chair, somebody else wants it as well.” (Interviewee 27)

“The idea that you would make an adjustment to a process for [...] a disability-related reason is too often [...] seen as people trying to get out of the bits of the job that nobody really likes: [...] that person doing less than a non-disabled colleague, even if actually they're working the same amount of hours and just as hard. [...] People sort of suggesting that people were playing the disability card.” (Interviewee 01)

“Other members of teams might be saying [...] 'Why are you getting the adjustments? [...] Why can you start at 10:00 o'clock?' And [...] you as an individual shouldn't have to explain. [...] that's about the organisational culture.” (Interviewee 03)

“There is continually this thing that employers seem to think it would be discriminatory towards non-disabled people to put reasonable adjustments in place for a disabled person. [...] Of the people who are refused adjustments, 32% said the employer said [...] the impact on team performance was the reason that they were turning them down. [...] It's going to be unfair on the rest of the people in the team.” (Interviewee 23)

“I know what a reasonable adjustment is, but I can't explain that to other people, and it's going to be too much of a problem for me, and they [...] will regard it as favouritism.” (Interviewee 28)

“It's usually kind of jealousy from other employees, that this person has been treated [...] preferentially or differently, despite the fact that it's just something to help them [...] work. [...] But that kind of level of jealousy, or perceived jealousy, is much smaller, [...] we found, than the supportive element.” (Interviewee 29)

(e) Bullying and Harassment

According to our interviewees, disabled people are subject to more bullying and harassment from their line managers, and sometimes co-workers, than their non-disabled colleagues. This discriminatory behaviour could be direct, while at other times it is more subtle, although intentional. Behaviours could include the disabled employee being: singled out for criticism; micro-managed; the subject of derogatory comments; patronised or ignored; harassed while on sick leave; mocked for their disability; expected to perform unreasonable tasks; or excluded from social events such as drinks after work or parties.

“35% of people who responded said that they had experienced bullying specifically related to their disability in their current or most recent place of work. [...] And if you asked for things, then you are seen as being a problem. [...] By disclosing [...] you were singling yourself out and [...] you were making yourself a potential target for [...] negative behaviours up to and including bullying.” (Interviewee 01)

“8% had experienced bullying or harassment and that included things like being ignored or excluded, [...] singled out for criticism or excessive monitoring at work. [...] That was like one in 12, which is huge, if you think of it that way.” (Interviewee 09)

“The bullying and harassment issues were much, much worse for colleagues with disabilities [...] The [...] overall rate bumps around [...] 5% or 6% [...] For colleagues with disabilities, you’re talking about [...] 12–15%.” (Interviewee 39)

“It seems to be common in organisations. If they do staff surveys, and if they have the data broken down by characteristics including disability, it seems often to come back that disabled people are more likely to report harassment.” (Interviewee 04)

“I certainly have seen instances of bullying-type behaviour [...] in terms of [...] colleague behaviour, sometimes it can be quite a sort of narrow line between something that is maybe seen as [...] ignorance and something that is inappropriate. [...] I certainly have seen [...] individuals being mocked [...] for using sign language.” (Interviewee 26)

“Sometimes it is [...] direct, like comments [...] but sometimes it’s excluding people and then pretending it wasn’t intentional, that happens a lot as well.” (Interviewee 31)

“When harassment happens, it’s often happening in terms of expecting people to do something they can’t do reasonably; not giving requests; pointing out people’s failings; harassing them when they were off sick. [...] Expecting them to attend disciplinary grievance procedures when they’re off sick is a very common problem. Or not allowing them to do it in writing.” (Interviewee 12)

Other respondents also noted that bullying can be used as a strategy by line managers to ‘manage out’ a disabled employee they do not want in their team.

“Line managers can be the biggest cause of [...] day-to-day discrimination or harassment [...] through either their interpretation of policies or through enforcing policies that are indirectly discriminatory.” (Interviewee 13)

“Bullying from line managers definitely, unfortunately, something we’ve seen fairly regularly. [...] I did have someone who had managed to get hold of internal emails from his company and some of the things they were saying about him – the line manager to his colleagues – was really shocking. [...] And then there was another case where [...] people were making quite derogatory comments to the individual, this is the line manager, not other employees. It does tend to be in my experience, a line manager making these kind of comments about people’s disability and [...] some of it was really, really horrible actually.” (Interviewee 29)

“I was bullied by one of my line managers [...] but he did it subversively [...] But [...] bullying in the office [...] doesn’t actually have to be things like punching someone or ignoring them. It’s comments, it’s the way you treat them, and it’s [...] leaving them out of stuff as well. You might [...] suddenly find that you’re not invited to the Christmas party. Or there’s a pub crawl and the pubs they’ve gone to haven’t got ramps.” (Interviewee 32)

“Especially bullying managers [...] know, and sometimes it serves their purpose, because the reason they might be bullying in the first place is that they want to manage out the employee.” (Interviewee 25)

“The bullying is really the effect of people not really understanding how to fix that problem, and they want somebody else to pay for it. ‘Not my fault, you gave me this guy who’s not perfect. You employed them. You want me to manage him. I want to get rid of him.’” (Interviewee 27)

Interviewees from the legal profession highlighted that there is no legal definition of bullying and that bringing a claim for harassment can be extremely difficult, and therefore happens rarely.

“There is no legal definition of bullying. [...] When employees [...] say they’re being bullied by their manager, we have to say there isn’t any claim that you can take [...] because it doesn’t exist, it only [could be a] breach of contract claim. [...] There’s [...] disability-related harassment and I’m not saying it doesn’t happen, but it’s very rare.” (Interviewee 22)

“Being interrupted [...] by the barrister [...] as well as [...] how the judge treated me, [...] it felt very patronising. [...] And it made me feel small. [...] It was witnessed by the support worker for my client, who said that she would make a statement, if necessary, because of how she saw it happen. [...] There was an element of judicial bullying [...] and how I was trying to say things and the judge was just was not letting me finish the sentences.” (Interviewee 21)

(f) The Role of Human Resources, Occupational Health and Equality, Diversity and Inclusion

(i) Human Resources and Occupational Health

Some of our respondents observed that Human Resource (HR) and Occupational Health (OH) departments represent a mixed bag. On the positive side, when both are good, they can be instrumental in ensuring that disabled workers have reasonable adjustments and can transition people back into work. However, employers and line managers can and frequently do ignore their advice.

Moreover, concerns were raised about HR and OH professional training as it appears that they can qualify without much knowledge of the legislation and its requirements. They are also not independent and are often acting in the interests of the line manager, who may, as we discussed earlier, wish to dismiss the disabled worker.

This lottery can lead to disabled people being ‘managed back in’ or ‘managed out’ of the labour market.

“In occupational health professional training, and certainly in HR professional training, you seem to be able to become a qualified HR professional without knowing anything at all about making reasonable adjustments, which seems to me to be entirely wrong. [...] Unless it’s changed, [...] the people who [...] come out qualified, are not in a position to advise line managers.”

(Interviewee 04)

“HR seemed to be either really good or really poor [...] and it’s the same with occupational health. [...] But there doesn’t seem to be any kind of middle ground. I mean, most of the people that I’ve come across in HR, to be honest, have been quite poor. [...] And they haven’t had a good grasp, even of their own policies. [...] they’re really pivotal [...] to reasonable adjustments,

and [...] someone's dismissal, because they say there aren't reasonable adjustments that can be made, and employers will often rely on this. [...] it's really important to get better training for Occupational Health and for HR."

(Interviewee 18)

"OTs [...] can serve a good purpose if done well. [...] But it can be difficult if the OT decides [...] you're really not fit for work."

(Interviewee 03)

"I've been told by an occupational health specialist [...] I should be able to get X, and then the employers are like, 'Well, you know, we don't agree with that.'"

(Interviewee 01)

"Occupational health is often very insufficient. They work for the company, their job is to try and get the people back into work or assist a capability management out. [...] That's some poor organisations. Some HR are fantastic and really do try and find out what the adjustments are."

(Interviewee 13)

(ii) Equality, Diversity and Inclusion Departments

Some respondents acknowledged the role of Equality, Diversity and Inclusion (EDI) Departments in larger organisations. However, they noted that their powers are limited and that it takes a co-ordinated effort and leadership from the top to bring about true inclusion.

"Large organisations [...] appoint somebody, or even a little team of people on equality and diversity, and that [...] includes disability. But they are [...] tucked away in HR somewhere. They don't really have much power in the organisation, so there may be great people trying to do great things, but they don't really influence what's happening."

(Interviewee 04)

"It's not [...] EDI saying we need to do it, or disability champions saying that [...]. It's the CEO saying it's good for business [...] [to] work together to make sure this is as smooth as possible, because the more co-ordinated it is, the cheaper it is, the quicker it is, and the more effective it is."

(Interviewee 27)

Summary

This chapter considered the attitude of organisational culture to disabled people, and workplace relations and their impact on disabled workers. Issues discussed included drivers and barriers to inclusion, such as fears and prejudices on the one hand, and enlightened attitudes that value difference, on the other.

In all types of organisations, line managers can have the biggest impact on disabled peoples' lives. Their attitudes can be shaped by positive experiences of disability as well as a fear of disabled people, which can lead to defensive and even discriminatory behaviour. Such attitudes can prevail regardless of the organisational size or sector. Furthermore, whilst people in precarious work tend to be viewed as dispensable, this has a particularly strong effect on disabled people's rights, as they are over-represented in precarious employment.

The role of HR and OH is critical in the implementation of reasonable adjustments and support for disabled workers. However, as these professionals often lack good information, are not independent of their employers and serve in an advisory role, disabled workers are left with weakened support pillars in the workplace.

In general, negative assumptions and perceptions prevail regarding disability and the capability of disabled people. In order to establish a disability-positive organisational culture, it is imperative that mindsets are changed, and that whole organisations embrace inclusion and embed it in their policies, procedures and routines.

8.

Research Evidence – Company Efforts to Change Thinking/Culture

(a) Inclusive Policies and Practices

In order to feel their skills are valued by their workplace, and be confident of retaining their jobs, disabled people need to work in an environment that includes them. In this chapter we discuss how the most inclusive companies create environments conducive to retaining their disabled workforce, and the management practices that effectively try to manage disabled workers out.

We were able to infer from the sum total of our interviews many of the good practices that companies employ in order to enable disabled people to work in an inclusive and supportive environment. At the same time, we were able to identify some practices that organisations ought to employ in order to create that inclusive setting.

It is important that employers and line managers offer reasonable adjustments when disabled workers request them. But in addition, it is also important that line managers listen, show support and think innovatively in the event that creative adjustments are necessary. In this regard, it is more about following the spirit of the Equality Act, if not the letter, by embedding disability equality into all of the organisation's practices.

“A lot of people feel that if reasonable adjustments were in place and employers actually listened to what they needed, then a lot more people would be able to stay in work for longer.” (Interviewee 15)

Consistent with this idea, line managers that follow the Social Model are generally perceived as having success in providing adjustments and fostering good working relationships with their disabled employees. As we articulated elsewhere in this

report, employers following the Social Model are concerned with removing the barriers that prevent disabled people from successfully performing their role. Focusing on the disability itself—the Medical Model—is less helpful, as it does not necessarily create solutions to removing barriers.

“The impairment almost is kind of almost irrelevant, it’s the barriers that people experience. Your job as a manager is to remove those barriers so they can be the best that they can be, and so it’s educating people and removing that fear and showing them a different way of looking at the problem that they perceive. And hence rooted in the social model.” (Interviewee 03)

“Doesn’t matter because I’m blind or deaf or dyslexia or got limbs missing. If I get the right tool, and there are tools available, I’ll deliver what you pay me for. And that’s the issue. And what I am talking about is universal inclusivity, which is actually an extension or follow-up from the social model of disability. Now it fits in, it chimes with the corporate enterprises mentality about how do I make my workforce more productive.” (Interviewee 27)

“And some of the themes from people with disabilities was sometimes it looked like people were trying to fix them, rather than finding ways to support them to do their job.” (Interviewee 35)

“Whether you’re disabled or not is not a lot different from, say, an employee that has caring responsibility, like new mothers, ‘cause all you’re asking your employer to do is see what you can provide, what you can give, what your strengths are, and accommodate your specific circumstances.” (Interviewee 14)

“If I know what I need, why on Earth would I need to sit in front of a medical practitioner to justify those circumstances? For a [...] a \$50 solution [...] the cost of putting someone through that medical qualification process [...] is far outweighed by [...] having a trust conversation with them, understanding their needs and just letting them have it [...] That conversation is about their work setting, barriers and then recommend solutions. And any recommendations from that non-medical assessment come through to my team to approve and go and purchase for the end user. [...] In our process, we don't actually ask [about their disability]. We focus on [...] what do people need? And getting it to them so that they can be productive and accessible at work.” (Interviewee 36)

Conversely, our interviewees reiterated the point, time and again, that policies and procedures that offer reasonable adjustments are not effective if employers and line managers do not implement them and/or take seriously the rights of disabled workers.

“Even organisations with very good policies don't necessarily follow those policies.” (Interviewee 12)

“You can have these lovely policies that are sitting on the website or on a shelf somewhere in head office. But actually you're dealing with this local manager who just refuses to give you the reasonable adjustments you need.” (Interviewee 23)

Consequently, some interviewees suggested that when line managers were not supportive of disabled worker rights, the best way to proceed might be to remove some of the reasonable adjustment responsibility from line managers and centralise the process with managers who have expertise in disability and reasonable adjustments. This approach would most likely generate less resistance to the need for reasonable adjustments and would be more effective in embedding the concerns of disabled workers throughout the organisation.

“And the other thing that we don't have in the way, if you like, is the line manager. [...] So again, with centralised approval and a centralised model, the employee, the end user, can come direct to us. They can be referred by their

line manager, but the approval for spend again doesn't go to the manager because that, we find, encourages the wrong kind of conversations. [...] ‘Oh, I need X and Y. It's going to cost \$2000.’ And the manager then said, ‘Why, what's wrong with you? Why do you need it? I'm sorry we can't afford it right now. Uh, you know budgets are a bit tight, you know, maybe next year.’ Removed all of that nonsense.” (Interviewee 36)

“I think what we need to do as a business and what we need to do as a community is to take the legwork and the responsibility away from the manager in terms of the barriers.” (Interviewee 40)

(b) Best Practice

(i) Workplace adjustments rather than reasonable adjustments

A number of interviewees emphasised that viewing reasonable adjustments as workplace adjustments could represent a positive shift among managers. For example, a line manager may see the installation of a lift as a costly reasonable adjustment. However, when the manager considers that all workers may benefit and work more efficiently as a result of the lift, it can change the cost-benefit calculus. The forward-thinking disability-positive organisations we interviewed saw all workers as their ‘talent’. They did not distinguish between disabled and non-disabled people and were more focused on creating a healthy work environment for all.

“And the thing that I suppose I haven't said, which I said all along, was the lift wasn't just for me. It was for the other person in the organisation who couldn't get above the ground floor. It was for the person taking the water canisters up to the water cooler. It was for the person taking the paper boxes up to the photocopier and printer who's got a dodgy back.” (Interviewee 05)

“A flexible working pattern or life isn’t just offered to a disabled person, but offered to all employees, so disabled people don’t feel singled out and they’re not then felt to be seen by other staff as ‘you’re disabled so you get let off’. You know you don’t have to do this sort of thing. You know everyone gets, like, more of a flexible choice and that suits the people we interviewed much better, actually,” (Interviewee 10)

“I think it varies hugely. Umm...we as an organisation work with really great employers that want to do the best by people. And really, for a lot of them that’s more around getting a good workplace for everyone. Rather than just specifically focusing on ‘OK, what is it we have to do for disabled people?’ It’s kind of ‘How do we make a good, healthy workplace for everyone?’.” (Interviewee 20)

“They’re not reasonable adjustments, they’re workplace modifications. They’re basically for people who aren’t disabled but have been off sick for a particular amount of time. And then in coming back they would be allowed to have these workplace modifications that would help them, you know, stay in employment and/or fall out of employment because of the sickness absence.” (Interviewee 23)

“I guess what I think is, if you have a kind of a management culture that assumes that every employee, whether they’re disabled or not, is going to work in different ways, be helped by different types of things, and just generally kind of find their way slightly differently, and that you want to help them do that, then adjustments to break down barriers associated with disability are just one part of a general approach that is kind of orientated towards broadly kind of like a goal of people succeeding and enjoying their work.” (Interviewee 38)

(ii) Disability champions

In many of our interviews, the subject of “disability champions” within organisations came up. Disability champions are individuals who support the cause of disabled workers in organisations, but, as we discovered, this role is very much conditioned by the resources and institutional scaffolding surrounding it. A single disability champion without support in an organisation that does not value diversity or disability equality will struggle to accomplish their objectives.

“It is really one of the things we’ve discovered in disability: you need senior leadership involvement. Best endeavours won’t work. A champion who does it because they have personal experience won’t work. Somebody with lots of money won’t work because you can spend money and then say, ‘OK, well we feel good.’ [...] Well, you need to have [it] be part of your board agenda that disabled people add value to our organization.” (Interviewee 27)

Additionally, multiple interviewees indicated that if there is insufficient institutional support, disability champions who leave will in effect take the organisation’s disability expertise and experience with them, leaving the organisation to start all over again.

“You have champions within the local businesses, which kind of delivers some great value. But if those champions are just champions and no one else takes on that responsibility, then you’d lose it as soon as champion walks out the door. [...] So it’s about having that group knowledge. It’s about having that corporate memory and having that resilience that when one person leaves, you don’t lose that huge amount of knowledge.” (Interviewee 40)

“Sometimes there are initiatives led by someone senior, for example. You know, executive team or board or someone that has an ambition to do something. And then those people move on and then the sustainability is kind of not there and therefore the initiative is sort of lost.” (Interviewee 10)

Some interviewees suggested that even in organisations where disability is a priority, there still may be a failure to make disability equality and inclusion enough of a priority to make a difference.

“Civil service actually have really good processes. They have good senior disability champions. [...D]isability inclusion is vocal, it’s visible, it’s an issue. It’s on the agenda. But that external sort of very visible voice is about voice. It’s not about in practice changing experiences, and you’ve got a lot of disgruntled civil servants, and from statistics you can also see disability discrimination claims going up in the civil service.” (Interviewee 06)

Summary

There are important ways that organisations, particularly businesses, can prioritise the cause of disability equality and inclusion. Changing the thought processes of employers and line managers to adopt the social model of barrier removal for disabled workers is an excellent step. This is easier said than done, given that such accommodation frequently runs headlong into human prejudice, delays in getting reasonable adjustments or business models, such as zero-hour contracts, which fail to account for the needs of disabled workers.

While changing the thinking of line managers is a goal to which we should aspire, there are company reorganisations that can help the cause of disabled workers. Requests for reasonable adjustments can be centralised in one department, to be dealt with more uniformly and efficiently, preferably by a diverse group of people, some with lived experience of disability. Such a role might be an important one for a disability champion in which they would have the ability to effect meaningful change.

9.

Research Evidence – Voluntary and Non-Profit Organisations

As well as employing disabled people, voluntary and non-profit organisations have a broader role to play in their interactions with disabled workers. This chapter explores the work of these organisations in the workplace in campaigning for disabled rights; keeping disability organisations and their clients informed; and the roles disabled workers play in the success or failure of their endeavours. While not for profit organisations play an important role in a variety of ways, the voluntary and non-profit sector as employer, however, is not immune to the problems and prejudice that beset other sectors in employing disabled people.

(a) Voluntary and Non-Profit Programme Assistance

(i) On being a DDPO

Our respondents observed that Deaf and Disabled People's Organisations (DDPOs) can play an important role in advising other sectors about how to become disability-positive employers. As user-led organisations, in striving for equality, they enact best practice and embody the change they are seeking to see both in legislation and in practice. They have both expertise by experience and by knowledge.

“So [we are] a London wide organisation that is run and controlled by disabled people. So by this we mean that disabled people [are] on our board of trustees, we're a charity. Disabled people are our senior staff [...] and we

[...] take positive action to employ disabled people as an employer. [...] [W]e [...] do best possible practice in this and we support other organisations that are run and controlled by disabled people.” (Interviewee 31)

“And as a DDPO ourselves, [it's] really important that everything we do both in terms of the kind of services and things that [we do] in setting of our strategy and theory of change, is driven by disabled people's voice[s] and lived experience. [...] Ultimately, [...] we exist to try and transform the landscape in the UK for a more equal society, one [where] disabled people have the rights that are not only enshrined in law, but the ones that we're fighting for.”

(Interviewee 3)

(ii) External campaigning on behalf of disabled people

Voluntary and non-profit organisations advocate and campaign on behalf of disabled people. Some identify issues through their helplines, whilst others consult their members about campaign points from their members. At the beginning of the pandemic, one DDPO identified Do Not Resuscitate (DNR) orders which were placed on disabled people's medical records without their knowledge, and successfully campaigned to challenge and change this practice. Others influence government to change the law and policy, and also work with employers to implement best practice.

“[A]s an organisation, we either identify the problems through the helpline if we can see that there's a lot of the same issues coming through [...], that's

something we [...] focus on. Or just through our [...] everyday work, we find an issue that perhaps we were unaware of before.” (Interviewee 29)

“We [...] write to ministers. So we lobbied very hard last year as a group on ‘Do Not Resuscitate Orders’, frailty index, lack of access to food, PPE, a whole range of things. [...] [O]ne [...] powerful example of that was when the ‘Do Not Resuscitate Orders’ issue [...] became known to us over one weekend, we had almost 3,000 signatories on an open letter to the NHS about the core principles of the NHS. [...] So [...] leveraging that power of collectiveness [...] of disabled people.” (Interviewee 3)

“[We] generally do quite a lot of work. [...] In my role, it’s more about what government can do better. Changes to the law [...] that makes employers do more for mental health [...]. Again elsewhere in the organisation, people work with government to encourage employers to [...] do better practice, whereas my work’s been more concerned with actually changing policy.” (Interviewee 20)

(iii) Information/service provision to/for disabled people

The voluntary and non profit sector provides a wide range of information and services to disabled people. These include helplines, online factsheets and guides, and advice on benefits, employment, housing, health and social care, amongst many other issues. Some use social media as a way to engage with their respective communities. A number of voluntary organisations with national and local branches also provide bespoke services and information specific to local needs. One charity’s highly successful programme matches disabled graduates to paid internships. This programme was mentioned by several respondents as positively impacting organisational behaviour towards greater inclusivity.

“Twitter, Facebook, [and] the social media front. So we’ve got very large [...] [e]ngagement through those platforms and we put out thought pieces. [...] We have an e-news[letter] that goes out to 30,000 disabled people and other interested allies [...]. And then our website gets about 1.2 million visitors every year, with a huge amount of downloads of our fact sheets. These fact sheets are produced and written by disabled people on a very wide range

of things. [...] Access to Work, [...] housing, transport, [...] employment rights, [...] welfare benefits, social care, health care, those kind of big issues are the ones [...] where we see the biggest downloads.” (Interviewee 3)

“We’ve got the [...] Programme [...] for disabled graduates. We match disabled graduates to paid internships with big companies [...] and medium sized companies. But part of that is also looking at their practices [...] in a day-to-day sense, to make sure they’re inclusive. [...] [W]e match their aspirations to the organisation where there’s a good fit.” (Interviewee 17)

“I work in the [...] the national [...] team, but there are also [...] local [ones] in England and Wales who provide services which vary [...] depending on [...] local need and funding. [...] And [...] they will [...] often provide [...] benefits advice and things like that. [P]eople can call up for information [...] and signposting to organisations who might be able to help them. We run a legal line [where p]eople can phone up to ask questions around [...] discrimination. And we provide information online.” (Interviewee 20)

“[J]ust regarding our helpline, it takes about 750,000 calls a year and that’s mainly from employees, but about 15% from employers and perhaps about 5% from third parties.” (Interviewee 28)

(iv) Information provision for other Third Sector/advice/legal organisations

A number of our voluntary and non profit sector respondents provide information and advice to organisations in other sectors. One focuses on second-level tier advice to other advisors because this increases their reach and impact. Others work closely with government to raise awareness about various conditions. Finally, some organisations work with the Equality and Human Rights Commission (EHRC) to assist in enforcing the Equality Act which is especially important given the EHRC’s resource constraints.

“And rather than advising individuals, our strategy is [...] we provide that second-level tier advice to other advisers. So Citizens Advice, local DDPOs and so on, and what our data shows is that for every one advisor we inform, they go on to [...] support between 15 and 25 individual disabled people.”

(Interviewee 03)

“Places like [...] the Benefits Office, [...] we’re trying to help them understand people with [this condition] so they can help people [...]. [W]e’ve done it with a number of police forces as well, provided [the] awareness training. [...] [W]e would do that [...] because they’re providing a service for people with [this condition].” (Interviewee 29)

“I work quite closely with the Equality and Human Rights Commission. They obviously have the enforcement role and have the power to intervene [...] but they don’t have the resources to carry out that enforcement. [...] So it doesn’t get addressed unless charities are challenging employers, or unless disabled employees are bringing claims.” (Interviewee 06)

(v) Specific programmes that help change company culture

Respondents mentioned a number of specific programmes that voluntary and non profit organisations offer to change company culture. They draw on their own quantitative and qualitative research, including longitudinal studies, to inform their work. This might include the provision of various services, policy reviews, advisory services, whole organisation audits, professional development events, and specific awareness training. They facilitate business to business working groups to share knowledge and best practice, and to ensure sustainable employment for retention. Moreover, they provide bespoke support for disabled workers and advocate that disabled employee networks are run by, and for, disabled people rather than HR departments. Some organisations advise multinationals about their inclusion agenda, as equality landscapes and language differ across context.

“We do [...] a longitudinal study where we’re following [...] disabled people through various points of transition in their life. [...] We’re doing a lot a lot more collecting [of] [...] quantitative information about the world of work, [...] the disability employment gap [...] and [...] the different factors that influence [it].” (Interviewee 10)

“So we have [...] the policy review service, the advice service, [and] training events. There can be [...] employment working groups with people in their sector. [...] Sometimes [...] global organisations [are] just setting up in the UK, so they have an inclusion agenda which is predominately gender focused [...]. But bringing a non-UK disability landscape into the UK [...] can be quite difficult for UK employees. [...] And the narrative is quite jarring sometimes. [...] They have an inclusion agenda, but not a disability inclusion agenda, and that’s what they want to work on. [...] [S]ometimes we do look at [...] HR and [the] trade press and [...] employment tribunals [...] if there’s a disability discrimination case which is [...] avoidable, [...] sometimes we’ll get in touch with them. [...] In the cases where we think we can help, we proactively [...] go to them and [...] try and give them a solution. [...] We have a whole organization audit. [...] We listen to how people are talking. That’s when you get [...] a 360 experience of what’s going on. And we do the desktop stuff as well, [...] look inside their intranets, [...] and use assistive tech with their internal IT system. A disabled person’s experience is not just their job. So we need to have a methodology like that.” (Interviewee 06)

[W]e worked with businesses to ensure that the employer [...] to employer [...] focused work [...] was] gearing [...] the employer to offer [...] reasonable adjustments [and] to have flexible [...] policies that can adapt to different people’s support needs. [...] I suppose it’s very similar to the disability confident scheme. [M]aybe a little bit more accountable, but [...] not as recognised. So this is a bit more involved where we get like-minded employers to talk to other employers. [...] So we’re about sustainable employment rather than just getting people into work. And we know that retention is a big issue for disabled people. [...] We also have a scheme [...] where you would commission [us] to [...] support a business. To [...] help them gear up their policies and [...] deliver [...] training.” (Interviewee 10)

“So the programme was [...] government-funded by the Department for Communities here in Northern Ireland. [H]ow it sort of worked in practice was that the programme was delivered by three different providers. One of

the providers was a consortium [...] of leading disability organisations locally, of which we were one. [...] We had anywhere between 15 to 30 participants in the programme [...] at any given time. [...] It was [...] 12 months of continuous support at different levels, and so individuals [...] or employers [...] might need some quite light-touch support. Others needed [...] more in-depth training, or [...] quite regular emotional support.” (Interviewee 26)

“As well as the helpline, we have [...] a team that goes out to organisations and provides awareness training. [...] Where we have provided that awareness training, it makes a huge, huge difference to that person’s experience and it’s something again that we [...] duplicate across our welfare work [...], providing awareness training to benefit advisors. [...] We provide or develop an employer toolkit which is kind of a website, [...] and there are videos [...] and [...] information that employers can go through quite quickly and easily [...] to understand a little bit more about the condition and how they can support employees.” (Interviewee 29)

“[T]here’s very active charities who are very [...] open or have lots of online resources about what adjustments can be made. [They] are incredibly useful because [...] you can literally print it out and send it to HR, [...] line management. ‘[T]his is what I need, this is what a well-respected charity is saying.’” (Interviewee 13)

“[W]e were assessed by the National Autistic Society [...] when we’re looking at our workspace. [W]e’ve had it all redone and we’ve been working with them and Business Disability Forum. [...] Leonard Cheshire’s been another one for us. And then, [...] the RNIB, [...] and Ambitious about Autism. At the moment, [...] Lexxic [...] do coaching and workplace adjustment recommendations for us. [...] [W]e have found the Business Disability Forum incredibly helpful. [...] [T]he other company that we do stuff with is Hidden Disabilities.”

(Interviewee 37)

Finally, one of our respondents noted that almost two-thirds of the UK population felt awkward speaking to a disabled person for fear of offending.

“Close to two-thirds of the UK felt awkward speaking to someone with a disability. [P]art of that is fear of offending [...]. [T]rying to get people comfortable with the language, but I’d say we’re [...] early days with that [...]. [I]t’s really important [that] the [employee] networks are not run [...] as an HR thing and [are] owned by [...] [disabled] people.” (Interviewee 35)

Summary

In this section, we reviewed the role of DDPOs in offering expertise and programme assistance. Voluntary and non profit organisations play an important role both in supporting individual disabled workers as well as campaigning and advocating on their behalf. Based on their research, these organisations also provide information and services to other sectors, and offer bespoke and specific programmes to help change organisational cultures.

Finally, given that two-thirds of the UK population feel awkward about speaking to a disabled person, it is critical to ensure that non-disabled people are comfortable with both disabled people and the language around disability.

10.

Research Evidence – Access to Work

(a) The Programme

According to the Department for Work and Pensions (DWP), Access to Work (AtW) “is a publicly funded employment support programme that aims to help more disabled people start or stay in work. It can provide practical and financial support for people who have a disability or long term physical or mental health condition. Support can be provided where someone needs help or adaptations beyond the reasonable adjustments that employers are required to make under the Equalities Act 2010. To get an AtW grant, you must have a disability or health condition that affects your ability to work, be 16 or over, and live in England, Scotland or Wales.”³³

An AtW grant can assist disabled people to start working; stay in work; become self-employed; or start their own business.³⁴

Between 2019 and 2020, the AtW programme supported 39,060 disabled people, through (a) assessments, or (b) approving what DWP refer to as ‘elements’, to reduce barriers for disabled people, either seeking, or in, employment. Of these elements, the four key areas of funding were for: special aids and equipment (44%); support workers (39%); mental health support services (20%); and travel to work (19%). AtW’s total expenditure was £141.7 million during this financial period.³⁵

(b) Programme Evaluation

While the DWP regularly publishes statistics about grant recipients, evidence about programme effectiveness i.e., how well the programme is actually working for disabled people, was collected in 2018. The evaluation of the AtW programme conducted by IFF Research revealed a mixed picture.

On the one hand, respondents agreed that the broad purpose of the programme was positive. Moreover, having an external assessment could also have a positive effect on some AtW clients, increasing their confidence in relation to seeking adjustments from their employers. However, the study also found that programme implementation was not working as well as it could, and would benefit from significant improvement.

Specific criticisms included: applicants’ and employers’ limited knowledge and understanding of AtW, a lack of clarity in relation to the whole process, uncertainty regarding deadlines, limited continuity, and a lack of clear communication within the programme, resulting in repetition of information already provided by clients. Other issues mentioned were long waiting times, confusing and onerous procedures, and a lack of required knowledge or expertise on the part of assessors.³⁶

33 Adams L, Tindle A, and Downing C et al. (2018) Access to Work: Qualitative research with applicants, employers and delivery staff. Report by IFF Research for Department for Work and Pensions, UK, 13 November. Available at: <https://www.gov.uk/government/publications/access-to-work-research-review/access-to-work-qualitative-research-with-applicants-employers-and-delivery-staff>

34 Department for Work and Pensions (2018) Access to Work: factsheet for customers. UK, 9 May. Available at: <https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers>

35 Department for Work and Pensions (2020) Access to Work Statistics: April 2007 to March 2020. Report, UK, 9 September. Available at: <https://www.gov.uk/government/statistics/access-to-work-statistics-april-2007-to-march-2020/access-to-work-statistics-april-2007-to-march-2020>

36 Adams et al. (2018).

(i) Interview evidence

Mirroring the findings of 2018 IFF Research’s evaluation, our interviewees agreed that AtW can be very beneficial to disabled workers, when it works. However, most of our interviewees which included employers, voluntary and non profit organisations and disabled people, raised concerns about the efficiency and the effectiveness of the AtW programme. Some respondents suggested that AtW is in urgent need of reform and presents an additional barrier to disabled people. Alarming, disabled people actually lose their jobs because of the poor level of service. As can be seen in the following quotes, some respondents expressed very strong and highly critical views.

“Access to Work is a disgrace.” (Interviewee 2)

“[I]t’s a very inefficient programme at the moment, and there is [...] time and money wasted.” (Interviewee 31)

“Because quite frankly, it’s not easy, it’s difficult, and it’s a barrier.” (Interviewee 17)

“I think Access to Work is useless. And lots of people lose their jobs because it’s not a sustainable service.” (Interviewee 8)

“Yep, it’s dead. It doesn’t work. It’s got to be [...] reformed.” (Interviewee 6)

Other issues highlighted in our interviews that were also raised in the 2018 report, included the lack of employers’ and employees’ awareness about the AtW Programme; the lack of clarity about process, timescales, and who is responsible and for what; and the need for a collaborative approach to Access to Work by the disabled applicant and their employer.

(ii) Lack of awareness about the Access to Work programme

Drawing on their own organisation’s research, the Head of Research in a leading voluntary organisation representing disabled people observed that there is a lack of awareness about AtW, from both employers’ and employees’ perspectives, and

considered the whole process to be extremely challenging, often deterring people from applying.

“Access to Work, [...] there’s a lack of knowledge from an employer’s point of view. [...] But there are like [...] a whole load more [disabled workers], that would just have no clue about [...] how to apply for it and [...] what they are entitled to, and having to do that off their own back is really difficult for them and prohibitive, so they wouldn’t even do it.” (Interviewee 10)

Some respondents concurred, stating that AtW was ‘the best kept secret’.

(iii) The onus is on the disabled applicant-- blurred boundaries

The same respondent further noted that as the responsibility for applying for an AtW grant rests solely on the disabled individual, it adds to their invisible labour. It is unnecessarily burdensome and complex to negotiate, as the system can be experienced as labyrinthine.

“It’s not the employer that makes the application, it’s the employee, so it’s down to the employee to sort of do it ultimately. [...] Having to navigate the whole system and [...] claim for things that they may not even know they could claim for.” (Interviewee 10)

Moreover, while the AtW programme provides support that “goes beyond the reasonable adjustments that employers are required to provide under the Equalities Act 2010”³⁷, what is ‘reasonable’, and who is responsible for what, can be unclear. This lack of clarity and blurring of boundaries can lead to disagreements between AtW representatives and employers, and importantly results in added pressure on the disabled applicant, as they are stuck in the middle and remain unsupported.

37 Adams et al. (2018).

“[T]here could be instances where, and again it could come down to Access to Work feeling that, it’s the employer’s responsibility, and maybe the employer disagreeing.” (Interviewee 20)

(iv) An outdated approach—overly bureaucratic systems and processes

Given advances in technology, a number of respondents noted that the AtW approach, systems and processes are unfit for purpose. They find them rather outdated and overly bureaucratic.

“[The] reimbursement structure just has no idea of current payroll and finance structures or infrastructures.” (Interviewee 6)

For instance, employers find the expense claim process to be somewhat incompatible with ‘modern’ financial systems, as AtW still require hard copies to be printed, signed by a number of people (who may not be in the same location) and posted to AtW for each individual claim. In the experience of one of the researchers, claim forms can be returned, sometimes for no apparent reason, and it can take some time to clarify what exactly the issue is. Forms can be returned for not using the correct colour pen or pages not being stapled together. Reimbursement for equipment that is part funded by AtW can be problematic and might take even longer than the usual claims process. (Email correspondence, Interviewee 39)

This lack of a streamlined, user-friendly system can be onerous for all claimants, but is especially so for large organisations employing significant numbers of disabled people, as the transaction costs of administering AtW claims become very, and perhaps even too, high.

“[Y]ou’re dealing with 1,000 cases a year, you’re dealing with 1,000 financial claims a year [...] it needs to be much more integrated again with the business [...] Not compatible with the systems that we have in the business.” (Interviewee 40)

Claims are often very slow to be reimbursed, which further disadvantages disabled claimants, and for many, despite the extra three-month allowance for sending in

claims during the pandemic, the ‘clunkiness’ of the process has been brought into even sharper relief in the context of COVID-19.

Furthermore, in order to secure a grant from AtW, the assessors require extremely detailed information about the disabled worker’s schedule, much further in advance than is realistic.

“They would want schedules of all meetings people will go to in the next, for example, six months, so they could approve taxi fare for in work travel. And of course, like realistically [...] could give ... [my] ... schedule for next month, but like six months?” (Interviewee 31)

AtW assessors appear to have a very fixed definition of work, which assumes workers keep the same hours at the same workplace every day, with meetings scheduled months in advance. AtW does not always fit the needs of many workers, whether disabled or not.

(v) Unresponsive and Inflexible

As a leading disability rights activist and a CEO of an influential voluntary organisation pointed out, AtW is not well equipped to support disabled people who are self-employed or are entrepreneurs.

“Government services like Access to Work don’t cope very well with self-employed people, they’re just not structured for that. [...] The government isn’t very well geared up to supporting disabled entrepreneurs.” (Interviewee 3)

This is of particular concern, as out of necessity, increasing numbers of disabled people move into self-employment or become entrepreneurs. This occurs for a number of reasons including being ‘managed out’ of employment; lack of appropriate opportunities; self-employment being the only option that accommodates disabled people’s needs; or they, like their non-disabled counterparts, prefer to be self-employed or to be an entrepreneur.

The lack of responsiveness and inflexibility is further illustrated by the advisors’ recommendations, which may or may not be appropriate for the disabled applicant. Whilst it’s not always the case, the individual with lived experience

will often be more aware of what their requirements are than a third party, who may well not be an expert in the disabled individual's condition or impairment and, importantly, its impact on them.

For instance, one respondent told us about a severely sight-impaired AtW client who required a tablet/iPad for his work. However, his application was refused, as it did not match the assessor's recommendation. Instead, AtW agreed to fund 'special spectacles', which he would be unable to use on account of his sight loss, but this 'special aid' was deemed appropriate by the assessor and was three times the cost of the equipment he actually needed.

"So, he applied for access to work, and they offered to furnish him with a pair of glasses that would read the screen and then speak into an earpiece. They cost £3,000. He said, 'I don't want that; I just want an iPad for £1,000.' 'No, you can't have that.'" (Interviewee 8)

Another issue raised was about people's fluctuating conditions. They may need support sometimes as they experience fatigue; however, AtW cannot accommodate them.

"Access to Work [...] isn't as easy to get if it's just kind of fatigue that you get from commuting." (Interviewee 15)

(vi) Timeliness

Timeliness in providing grants to cover key elements is a significant issue for many AtW clients. Some respondents reported waiting periods of up to several months. This could have an impact on the applicant's ability to work effectively whilst waiting and in turn, could create a hostile atmosphere between them and their colleagues, who might perceive them as not pulling their weight. It could also lead to the disabled individual losing confidence and feeling powerless, which is further exacerbated by the fact that they do not know when they might receive the grant and when the issue will be resolved.

"We've had reports of people basically taking up to four months to get their access to work equipment or funding [...] So obviously if you're starting a new job [it] is not great to be sitting around for four months, and that brings in a lot of animosity, potentially from other staff. But also, just a feeling, a really negative feeling of the staff member of themselves and sort of helplessness that comes alongside that." (Interviewee 10)

"The [...] problem we found with Access to Work is the delay of getting things in place." (Interviewee 37)

(vii) Cap on funding

The funding cap (£62,900) which was introduced in 2015 disadvantages a number of disabled people.³⁸

Whilst the funding can seem like a substantial sum, costs for employing support workers, BSL interpreters and travel to work by taxi can easily exceed this upper limit. The Deaf community has been particularly badly impacted by the cap, as they rely on highly trained BSL interpreters for their work. In several instances, this has led to deaf applicants having to curtail their hours.

"The cap [...] doesn't match market prices of BSL interpreters, so people who need to rely on a full-time BSL interpreter are having to reduce their hours, find another job, or go part time." (Interviewee 6)

Summary and Recommendations

Most respondents were of the view that the concept of AtW is important and necessary for levelling the playing field for disabled workers. However, they also agreed that implementation is highly inefficient, rendering the delivery of the programme, at times, ineffective, which echoes IFF Research's evaluation of AtW in 2018.³⁹

There is an urgent need to raise awareness about AtW with both employers and employees. The onus currently solely rests on disabled applicants, however; encouraging a collaborative approach between disabled individuals, employers and AtW would benefit everyone. Involving all parties from the outset would also address the issue of 'blurred boundaries'.

Modernising AtW's current systems and procedures, from application through to the claims process, would ensure better 'value for money'. This echoes government plans to invest in "Digital improvements such as developing the facility to submit invoices online."⁴⁰ Moreover, it would make the programme more responsive, ensuring timeliness and reducing the stress currently experienced by disabled applicants.

Another action that the government planned in 2018 was "Taking applications 12 weeks ahead of a job start date rather than the current six weeks to allow more time for support to be agreed and put in place"⁴¹. This has now been actioned and would go some considerable way to ensuring the disabled worker is set up to succeed at the start of their new role if implemented consistently.⁴²

As the nature of work has changed and continues to change, it is critical that the AtW programme and advisors understand that disabled and non-disabled people

have various different work patterns, whether they are employed, self-employed, or both. The programme's current rigidity causes challenges both for AtW and their clients.

While having an AtW assessment (and many assessors can be very helpful when an applicant requests particular elements) it would seem appropriate to make decisions taking into account the lived expertise of the disabled person. The government's plan to introduce managed personal budgets is welcome⁴³ and would enable greater choice, control and flexibility for disabled workers.

Finally, the funding cap renders AtW insufficient for many disabled workers, effectively penalising those with the highest support needs and with certain impairments.

39 Adams et al. (2018)

40 Esther McVey, (2018): <https://questions-statements.parliament.uk/written-statements/detail/2018-03-20/HCWS563>

41 McVey (2018)

42 <https://www.gov.uk/access-to-work/print>

43 McVey (2018)

11.

Research Evidence – The Disability Confident Scheme

(a) The Scheme

The Disability Confident Scheme was launched in July 2013 by the DWP replacing the previous ‘Two Ticks’ scheme. Its aim is “To get more disabled people into employment, and reduce the employment gap between disabled and non-disabled people”, and “Support employers to make the most of the talents disabled people can bring to their workplace”.⁴⁴

The DWP’s objectives for the scheme are to encourage employers to become more confident, increase their understanding of disability and the benefits of employing disabled workers, and increase the number of organisations joining the Disability Confident Scheme.⁴⁵

The scheme is voluntary and has three levels designed to support employers on their Disability Confident journey.⁴⁶ There are currently approximately 18,800 organisations signed up to the scheme, with the majority (78%) on level 1 ‘Committed’, 19% on Level 2 ‘Employer’ and 2% on level 3 ‘Leader’.⁴⁷

To start the Disability Confident journey, on Level 1, organisations have to agree to five commitments, including, but not limited to, providing reasonable adjustments, offering interviews to disabled people, and supporting existing employees. They

must also select one activity they plan to undertake from the scheme’s list over the ensuing twelve months. Examples of these activities include offering work experience, traineeships, internships or student placements to disabled people. Level 1 doesn’t require any assessment.⁴⁸

In order to progress to Level 2, employers need to carry out self-assessment based on the two themes of ‘actively recruiting’ and ‘retaining’ disabled people, as well as one activity for each of these themes.⁴⁹ No independent assessment is required.

Transitioning from Level 2 (Employer) to Level 3 (Leader) requires a third party, who already holds Level 3, to assess the organisation’s previous commitments and activities. It does not require the third party to be independent. Furthermore, Disability Confident Leaders should champion good practice and are encouraged to use the Voluntary Reporting Framework.⁵⁰

While in theory, the Disability Confident Scheme reads well at first sight, the lack of any independent oversight, monitoring or accountability unfortunately means that in practice, it falls short of its intended objectives.

Moreover, the number of ‘criteria’ and ‘activities’ that organisations are required to meet, in relation to all Levels, sets a really low bar. For instance, to achieve

44 Powell A Brown J Pyper D (2018) Research Briefing Disability Confident Scheme. *House of Commons Library*, UK, 8 January. Available at: <https://commonslibrary.parliament.uk/research-briefings/cdp-2018-0001/>

45 Powell et al. (2018)

46 Department for Work and Pensions (2019f) How to Sign up to the Disability Confident Employer Scheme. UK, 25 November. Available at: <https://www.gov.uk/guidance/disability-confident-how-to-sign-up-to-the-employer-scheme>.

47 Department for Work and Pensions (2022) Employers that have signed up to the Disability Confident scheme. Dataset, UK, 4 May. Available at: <https://www.gov.uk/government/publications/disability-confident-employers-that-have-signed-up>

48 Department for Work and Pensions (2019b) Disability Confident – Committed | Level 1. UK, 28 November. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829621/disability-confident-committed-level-1-pack.pdf

49 Department for Work and Pensions (2019c) Disability Confident – Employer | Level 2. UK, 28 November. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830641/disability-confident-employer-level-2-pack.pdf

50 Department for Work and Pensions (2019d) Disability Confident – Leader | Level 3. UK, 28 November. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848304/disability-confident-leader-level-3-pack.pdf

Level 3 an employer can select one of ten ‘activities’ under ‘theme one’, and one of six ‘activities’ under ‘theme two’. In practice, this means that they can either provide mentoring for disabled workers, or include disability awareness equality training in their induction process, or simply guide staff to information on mental health conditions. If Level 3 required Disability Confident Leaders to meet all criteria and activities under both themes, it would go some considerable distance to addressing the disability employment gap and creating an inclusive working environment.

(b) Scheme Evaluation

According to a government survey undertaken in 2018, 38% of employers expressed dissatisfaction with the Disability Confident scheme. The issues raised were the lack of clarity in relation to the provision of guidance and information; support throughout the Disability Confident journey; and bespoke advice and examples of best practice.⁵¹

(i) Interview evidence

When asked about the Disability Confident Scheme our respondents were unanimous in their concerns. They described the scheme as more of a marketing and public relations tool to make organisations look good. Respondents criticised the fact that in order to be awarded Levels 1, 2 or 3, little evidence is required in relation to how the employer makes an impact on disabled people’s working lives.

A number of respondents were concerned that the Disability Confident Scheme was used as a ‘tick box exercise’ to obtain government recognition that they are disability-confident. One respondent described this as a ‘fake badge’, while others concurred that it was merely a ‘marketing tool’. The broader concern raised was that disabled people seeking to work with Disability Confident organisations have lost confidence that the scheme lives up to its promise.

“It’s just about you can make some commitments on paper, but nobody follows up. [...] What’s the point? And it gives a bit of a fake badge of approval, and I think a lot of disabled people for exactly that reason [...] lost confidence. It doesn’t mean if you see a symbol like ‘two ticks’ or now ‘Disability Confident’ that [...] this [is] going to be a better place to work or a good place to work.” (Interviewee 04)

“It’s great for marketing. [...] it looks good and people know what it is. So there is this strong sort of PR type thing attached to it.” (Interviewee 06)

“We actually hear that from people who look for employers with the Disability Confident badge and then are really disappointed that that doesn’t actually mean anything when they start working.” (Interviewee 15)

One expert interviewee recounted their experience of how easy it can be to obtain Level 1. When they visited an organisation to advise the HR director in relation to their disability strategy, they mentioned the scheme. Subsequently, they were somewhat taken aback when the employee, who had not previously heard of the scheme, was celebrating the fact that the organisation was able to achieve Level 1 in under an hour.

“[S]he left the room and I stayed talking to the HR director. And 45 minutes [to] an hour later, I came out and said hello to this employee who had asked me what Disability Confident was again and she was at her computer, and she said oh, [...] we’re now Disability Confident Level 1. She’s filled out a form, 45 minutes after learning what the thing is.” (Interviewee 06)

(ii) Monitoring and evaluation of outcomes

While the scheme offers a lot of promise, several respondents critiqued the lack of monitoring and evaluation. Even at Level 3, the scheme does not require that the organisation employ a significant number of disabled people, nor that they demonstrate a better environment for disabled workers.

⁵¹ Department for Work and Pensions (2019e) Disability Confident scheme: Summary findings from a survey of participating employers. Report, UK, 13 November. Available at: <https://www.gov.uk/government/publications/disability-confident-survey-of-participating-employers/disability-confident-scheme-summary-findings-from-a-survey-of-participating-employers>

One participant suggested that it would be appropriate to request employers to put an action plan in place in order to document improvement and outcomes. Another issue that was identified was the ease with which an organisation can gain Level 3. This is because the assessment can be carried out by an organisation with whom they have an existing relationship rather than by an independent body.

“[T]here’s no real measures[...] that I’m aware of that are in place, so there’s kind of no evaluation.” (Interviewee 15)

“Whilst they said to get to Level 3 you have to use the voluntary framework, they didn’t say [...] you have to show that you’ve actually got a decent proportion of disabled people in your workforce at different levels, or that you’ve reduced the pay gap. Or [...] [that] you’ve had an action plan and you’re seeing improvement. You don’t have to [...] show any outcomes.” (Interviewee 04)

“Disability Confident [...] are not monitoring effectiveness or if employers are actually providing a good experience for disabled people [...At] Level 3 [...] you only need two commercial businesses with a good relationship with each other to sign it off.” (Interviewee 06)

“Disability confident leaders who have got their documentation perfectly, you can’t reject them, but you know they’re not doing much about it [...]. They got it two years running. I had to audit them. I had to pass them, but I said to them there is not much substance here apart from these examples. They said yeah ‘Well we don’t have the budget.’ They ‘don’t have the leadership buy in’, and all that. So, ‘This is all we can do,’ and quite frankly you couldn’t reject them because the form was nicely done.” (Interviewee 27)

“[W]e’re considered kind of best Disability Confident Leader [...] but it’s still not 100%. I’d say [we’re] probably about 50% of where we should be in terms of supporting employees who are disabled.” (Interviewee 33)

One of the scheme’s objectives is to increase numbers of organisation sign ups. As one of the respondents noted, this has led civil servants to focus on getting

employers to move through the Levels quickly. This indicator of success does not capture any of the other more critical objectives.

“You’ve got to stop measuring your success by numbers because what it’s causing them to do, the Disability Confident team, their own marketing events to get employers to move through the Levels. That’s not changing disabled people’s lives, so we need to get back to what is this scheme trying to do and our success criteria has to match that. Otherwise, we just need to ditch the whole thing and stop pretending that we’re helping.” (Interviewee 06)

(c) Disability Positive Employers with Goodwill

The scheme provides a good framework for highly motivated employers. One respondent mentioned that even organisations on Level 1 that were committed to being disability-positive employers could use the scheme’s guidance to affect change. However, this relies on the goodwill and engagement of the employer, as there is no enforcement within the scheme.

“[S]ome smaller employers [...] are only disability confident Level 1. But my goodness, they take it seriously. And they make sure they can evidence every single thing in that Level 1. That’s better than just racing through to a Level 3 and doing sod all about it.” (Interviewee 06)

Summary

Whilst the Disability Confident Scheme's guidance and documentation is a useful framework, its lack of ambition, monitoring, enforcement, and independent oversight, means that it is unlikely to have its intended impact. This view is supported by Bacon and Hoque, who argue that:

"If Disability Confident is to succeed [...] it requires the introduction of targets for the number of disabled people employed, with employers being required to report progress towards these targets [...] and] the introduction of credible measurement and independent monitoring to ensure these targets are met."⁵²

Rather, the scheme's success appears to be measured solely by the number of organisations signed up to it. However, it does not have key performance indicators (KPIs) linked to the other stated aims and objectives, which would actually improve disabled people's working lives. For instance, Hoque and Bacon⁵³ suggest that each level should require employers to meet a set minimum percentage of disabled workers employed within their organisation. Disability Confident has been critiqued as merely a 'tick box exercise' used by several organisations as a marketing 'badge' and a PR tool. This has led to disabled workers losing trust and confidence in the scheme and prominent disability activists being "genuinely shocked" by how weak the scheme is.⁵⁴

In its current form the Disability Confident scheme is unlikely to prevent disabled people being managed out of their jobs, let alone halve the disability employment gap. However, (a) setting the expectation that employers should complete all 'criteria' and 'activities' within the 'themes' associated within each Level, (b) monitoring the outcomes, and (c) using various KPIs to measure the scheme's success through an independent body would go some way to addressing the current concerns.

52 Bacon N. & K. Hoque (2019): Briefing Note: Two Ticks or No Ticks? An Assessment of Two Ticks 'Positive About Disabled People' certification (<https://www.disabilityatwork.co.uk/wp-content/uploads/2019/02/Disability@Work-Two-Ticks-Briefing-Paper-4.pdf>)

53 Hoque K. & N. Bacon (2021): Submission to Shaping Future Support: The Health and Disability Green Paper Supporting Employers to improve work opportunities for disabled people through Disability Confident

54 Pring, J (2016) Rebooted Disability Confident 'is shockingly bad'. *Disability News Service*, 28 July. Available at: <https://www.disabilitynewsservice.com/rebooted-disability-confident-is-shockingly-bad/>

12.

The Role of Unions

As with many workplace issues, the role of labour unions is pivotal in managing disability in the workplace and this role is seen in two broad ways, which we analyse in more detail in this section.

First, unions can provide support to employees in a number of ways, particularly with regard to obtaining reasonable adjustments. Second, unions can also serve as a support mechanism and information clearing house for employers. Among the many different organisations from whom employers can seek assistance in relation to disability, labour unions can be an important resource.

The support given by unions can have the effect of instilling confidence in workers in ways that broadly benefit their working experience. One union representative we interviewed referred to their organisation's research, which revealed that disabled workers were more likely to disclose their disability when they were a member of a union than when they were not (Interviewee 9). As previously discussed, disability disclosure at the start of a job/condition is important for setting up a positive employee–employer relationship.

Unions provide employees with other important support and information. As discussed in the previous chapter, many disabled workers have little to no knowledge about the Access to Work programme, which may help with funding reasonable adjustments. As employers are also often unaware of AtW, unions can serve as a useful intermediary, making both employer and employee aware of the programme and its potential. As we discuss elsewhere in this report, AtW certainly has its limitations, but it can be a useful method of obtaining funds for reasonable adjustments for many disabled workers.

“Some HR are fantastic and really do try and find out what the adjustments are. They know about Access to Work. When Access to Work does work, I have found it fantastic as a programme...I think large organisations are better at things like that.” (Interviewee 13)

Moreover, many disabled workers lack precise knowledge about their legal recourse under the Equality Act. For example, most workers are unlikely to know that if they want to make a claim of discrimination before an employment tribunal, they must do so within three months and a day of the first act of discrimination. Workers are likely to struggle in figuring out what the precise start of discriminatory behaviour was, especially if it is a pattern of behaviour on the part of the employer. Unions often provide legal support and guidance in these instances.

“Often, you know, union membership is the way that someone gets access to legal advice in the employment context.” (Interviewee 18)

Despite the benefits that union membership can offer disabled workers, particularly with regards to legal advice, the picture painted for us was not completely positive, as some interviewees suggested that union officials may sometimes struggle with legal advice, partly because dispensing such advice is a specialised service, yet it is one of the many different services that union officials render for their members.

“I worked for a trade union, and I did see first-hand the difficulties that a lot of trade union officers have because they have to do so many things. I mean, they’re negotiating salaries, they’re advising on discrimination, they’re advising on all of that employment law in the Employment Law handbook. They’re really stretched... And so I have no doubt that some people don’t get a very good (legal) service from their union, and I think that’s the reality.”

(Interviewee 18)

“[...T] here are fewer law centres because of funding. There are fewer Citizens Advice Bureaus [...] some unions are good at it, some unions are bad at it.”

(Interviewee 24)

In addition to the support that they provide for employees, unions can also act as a valuable resource for employers, despite the common misconception that unions and employers may work at cross purposes. The great majority of our interviewees indicated that implementation of the Equality Act is patchy at best, with some employers providing shining examples by embedding the concerns of disabled workers into their organisation’s culture, while other employers fall short of making the workplace as inclusive as it could be.

These struggles may occur because employers possess harmful biases in their worker evaluations, or employers may have good intentions but are unaware of how to proceed, perhaps because of practical or logistical limitations.

Union representatives can assist employers with information to help them understand the requirements of disabled workers and support both parties to reach agreement without conflict. As one union representative indicated,

“We upskill reps with guidance and training advice, quick learning modules... So we’re always trying to make sure that at the core we’re giving our workplace representatives tangible tools that they can use to drive for positive change for workers...” (Interviewee 9)

Finally, if we step back and observe from the organisational level, our interview evidence revealed stark differences in the provision of reasonable adjustments and broader treatment of disabled employees in unionised vs. non-unionised workplaces. A number of interviewees remarked that larger organisations are often more likely to have specific policies in place regarding reasonable adjustments, and while union membership overall is declining, the workforce in these organisations is more likely to have union representation. One interviewee also indicated that in these settings, disabled employees are also more likely to get along well with HR representatives.

Conversely, while our interviewees struggled to identify particular industries or sectors where implementation of the Equality Act might be better or worse, they did almost uniformly indicate that disabled workers were worse off in precarious jobs or zero-hour contracts. People in these work situations are also much less likely to have union representation than in other sectors.

In summary, unions often play an important role in supporting disabled workers. Our evidence indicates that this support is helpful with respect to both obtaining reasonable adjustments and legal advice, although there is variability in the quality of legal advice and support. Furthermore, this assistance instils confidence in employees which can further improve workplace relationships. Unions can also support employers through information provision and communication about reasonable adjustments. Finally, unions are often more likely to be present in large employer organisations, where there is also more likely to be specific policy around reasonable adjustments, as well as awareness of AtW.

13.

Legal Recourse

Legal recourse is central to the enforcement of the 2010 Equality Act. Under the law, there are no regulators who write new rules or perform inspections to ensure that organisations are providing reasonable adjustments to disabled workers. As we have noted elsewhere in this report, there are informal support mechanisms for both employers and employees to assist with putting reasonable adjustments in place. However, despite this support scaffolding, sometimes employees are managed out of their jobs anyway. In these cases, the only real recourse employees have is to file a legal claim against their employer in an employment tribunal, in pursuit of their former role, monetary damages, and/or an admission of wrongdoing. While such recourse may appear to give disabled workers a fair opportunity to pursue justice in the face of discrimination, our research revealed that there are serious shortcomings in this process.

(a) The Need for Effective Legal Representation

There are a number of factors that might seriously discourage disabled workers from pursuing claims against their employer, and an important one is cost. Employment tribunal cases can last months, if not years, and all the legal experts whom we interviewed indicated that representing oneself before a tribunal requires a level of knowledge and expertise not possessed by the average individual. In other words, it is vital to have legal representation or the employee has an extremely low chance of prevailing in court.

“We know statistically there’s been lots of studies in the tribunal system of the effect of representation or not being represented and they show you the things that you’d expect. They show you that represented employer versus unrepresented employee, the success rate of the employee is very, very low in that situation.” (Interviewee 11)

Consistent with this point, most of our solicitor respondents indicated that disabled workers are not well versed in the logistics of bringing legal complaints. In the words of one solicitor:

“I asked [disabled employees], ‘First of all, is there anything [...] in your experience with your current employer, that would make you feel that you might want to challenge it through a legal procedure?’. They said ‘Yes.’ [...] When I said, ‘And do you know how to go about doing that?’, they said ‘No,’ and when I said, ‘Do you know who to go for to ask how to support you to do that?’ they said ‘No’.” (Interviewee 6)

(b) Funding Legal Representation

At the same time, having legal assistance for an extended period of time is expensive, which many disabled people cannot afford. Fortunately, there are law centres who are willing to take on pro-bono cases, but they are few and they are unevenly distributed around the UK, which means that free legal representation is not universally available.

Additionally, the government’s Legal Aid programme used to provide a lifeline, but significant cuts in 2012 have rendered the programme unavailable to all but the most economically deprived citizens. Most law centre solicitor respondents indicated that people pursuing tribunal cases did not have the funds to see a claim through to the end, but they earned too much money (just over the threshold) to qualify for Legal Aid. This puts many disabled workers in a financial no man’s land, in which they are poorly equipped to see a case through to its conclusion.

The government's evaluation of the Legal Aid programme, while emphasising savings generated from the funding cuts, also revealed that the changes have produced "advice deserts" in which solicitors had left Legal Aid completely, thus leaving fewer solicitors to take on cases as part of the programme⁵⁵. This same report emphasised that there was still a vital need for legal representation when people found themselves in court:

"...while efforts to simplify and streamline court processes were commendable, the system was not yet sufficiently capable of catering for those without legal representation."⁵⁶

While this report evidence is not specific to disability law or employment law, the evaluation is consistent with our overall evidence that there are fewer Legal Aid resources for disabled workers seeking to bring discrimination claims.

Some solicitor respondents also argued that the Legal Aid changes had created significant delays and backlogs in the employment tribunal system, as reduced funding also affected the number of judges and administrative staff:

"What we're seeing in the employment tribunals right now is that their numbers were decimated. They lost a lot of admin staff, a lot of judges... there's a huge backlog now, which means delays to cases. Which means one might not really want to bring a case, if it's going to take 18 months to two years." (Interviewee 13)

Finally, the quality of due process could be improved with greater diversity. Some tribunals have panel members in addition to the judge and some interviewees argued that greater diversity on these panels would produce fairer decisions.

"Simple things that would rectify the imbalance in the scales would be put a disabled person on the panel. 'Oh, but we do on occasions.' Do it on all occasions." (Interviewee 24)

(c) Employment Tribunals and Mental Health

While tribunal cases are expensive with respect to time and money, they are also expensive with respect to one's mental health. One of the most significant problems with the tribunal process is that it is often a traumatic experience for disabled workers who bring cases. Virtually all of the legal experts interviewed indicated that once a case has gone to a tribunal, employers adopt the tactic of denying the employee disability. Consequently, the employee must prove that they are disabled, a process that puts their medical records and history under detailed scrutiny.

"[T]he argument has always been that the tribunal system is meant to be informal, and you're meant to be able to represent yourself, but I think the vast majority of people would find that terrifying. I wouldn't like to do it, and I am a lawyer, And I think there's something about trying to present your own case where you're emotionally involved and affected that just makes that really difficult and traumatic. Even if you've got the skills to do it. And I think, most practicing lawyers wouldn't want to represent themselves in a claim, they would want to get a mate to do it." (Interviewee 11)

"I think I do want to reiterate how difficult the litigation process is for anyone, and then the additional challenges that a disabled person may have within it. So, the time delay, the lack of legal assistance, it's a very crippled, like crumbling service." (Interviewee 13)

Employees may also have to answer highly personal questions during cross-examination, which can leave them feeling exposed and/or humiliated. Additionally, most interviewees indicated that it is not uncommon for disabled workers not to disclose their disability at the start of a role, so as not to garner unwanted attention. If they later seek reasonable adjustments and ultimately find themselves before a tribunal, the employer may claim the employee was not disabled because adjustments were not requested from the outset.

⁵⁵ Ministry of Justice (2019) Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Report for UK Parliament, UK, 7 February. Available at: <https://www.gov.uk/government/publications/post-implementation-review-of-part-1-of-laspo>

⁵⁶ Ministry of Justice (2019): 8

As employment tribunals are so costly to individuals bringing discrimination cases in terms of time, money and mental health, there are clear incentives to bring cases to a speedy conclusion. Individuals bringing claims before tribunals may not be aware in advance just how costly bringing such claims can be. Consequently, solicitors and union representatives typically advise them to settle their cases as rapidly as possible and virtually all our solicitor respondents indicated that most cases are settled before they ever reach a final hearing. While such advice is useful in that it may achieve a financial resolution for the individual as quickly as possible, there are disadvantages to this approach. Specific requirements under the “reasonable adjustments” clause of the Equality Act can only change and/or become more stringent, as case law in the UK changes. As tribunal rulings are handed down on specific cases, these rulings provide the foundation of legal precedent and influence subsequent employment tribunal rulings. However, if cases are mostly settled, such decisive rulings are not reached, thus depriving individuals of the chance to bring greater change to the law.

Another significant disadvantage to disabled workers who negotiate to settle with their employer is that non-disclosure agreements (NDAs) are frequent companions to legal settlements. This means that as a condition of the settlement, the employee is not allowed to discuss the settlement or any of the company’s behaviour that led to the settlement. This works to the advantage of the employer, as negative publicity is potentially reduced, yet may generate further harm to the employee who cannot discuss the issue. One solicitor explained it:

“And where I do get successful outcomes, unfortunately NDAs (non-disclosure agreements) are quite frequently used, as a non-negotiable. And often it’s in the client’s interest to take it, because of the numerous problems in the tribunal system enforcing rights, which makes it, for anyone, stressful, time consuming, a detriment to everyone’s mental health.” (Interviewee 13)

Another interviewee indicated that NDAs may allow employers to carry on with harmful behaviour since the NDA prevents transparency around the organisation’s behaviour. The use of an NDA in one instance could be scaled up to obscure trends in government data as well, since the behaviour is hidden.

“No, there are no trends because the trends are hidden in a non-disclosure agreement. And I can say more generally...that I think the government needs to rethink non-disclosure agreements and decide what areas should be allowed in, because actually there are lots of things that go on that never get told which we might call whistle-blowing.” (Interviewee 24)

Finally, even when settlements promise financial awards for wronged employees, the awards are not always forthcoming and further legal action may need to be taken to extract payment. A 2013 government report from the Department for Business Innovation and Skills revealed that 49% of employment tribunal claimants were paid in full, but 16% were only paid in part and 35% were not paid at all.⁵⁷ Having to utilise legal counsel in order to chase awards only serves to intensify the negative feelings the employee hoped to avoid in the first place through settling.

⁵⁷ IFF (2013) Payment of Tribunal Awards. Report for Department for Business Innovation and Skills, UK, 1 November. Available at: <https://www.gov.uk/government/publications/payment-of-employment-tribunal-awards>: 6

14.

Research Evidence – COVID-19

(a) A Mixed Picture

In response to the question about how COVID-19 has affected the relationship between disability and work, most respondents thought that the pandemic was a mixed experience, with positives and negatives.

Many interviewees noted that disabled workers, who had previously been denied adjustments for years such as remote working, were granted these alongside everyone else. While this was a welcome development, as it showed that flexibility and adjustments can be facilitated by employers, concerns were raised that these temporary measures should not be rolled back.

“It’s a mixed bag, it’s not universally negative. [...] what it has done is demonstrated that you can make adjustments that had been previously denied to individuals on a mass scale overnight. [...] There has been some innovation that might not have happened if there hadn’t been this sort of global crisis.” (Interviewee 01)

“They’re flexible towards kind of all employees. Like many, many disabled people now saying, oh gosh, what we’ve been asking for like years and years and years [...] now suddenly became possible in [...] [a] matter of weeks and it’s fine [...] it’s just because it was for everyone.” (Interviewee 31)

“The pandemic may throw up problems, but equally it may also point the way to [...] positive discussions between disabled people and employers.” (Interviewee 19)

Negative impacts of the pandemic were very pronounced for certain disabled people. For instance, mask wearing and social distancing created new barriers. Whilst everybody who was able to could work remotely, the issue of adjustments for disabled workers continued to be contentious, with many not able to get the equipment they required. In some cases discrimination even increased.

“For the deaf community, and [...] those with hearing loss and tinnitus, the likes of the masks has been a huge barrier.” (Interviewee 26)

“Sustained issue for disabled people to get adjustments and continue to face discrimination at work. [In] some places it spiked.” (Interviewee 09)

(b) Disabled People were More Severely Affected by the Pandemic

Some respondents noted that disabled people, who either due to their impairments or front facing roles were unable to work remotely, had no choice but to risk exposure to the virus. This, in combination with other issues, including race, was most likely a factor in the disproportionately high COVID-19 death rate of the disabled population.

“Disabled people who are working are more likely to work in low paid and often frontline jobs, so they may be less able to work at home.” (Interviewee 04)

“When people were working from home... [some visually impaired workers] ...were still going into work and got COVID as a result.” (Interviewee 08)

“60% [...] of deaths from COVID were of disabled people, disabled workers in particular [...] especially in lower paid jobs. And often there’s intersectionality here, so black, disabled workers again very much, in particular, in lower paid jobs, or you know, zero-hours contracts, that kind of thing. They felt forced to go into work and also felt that they were being forced to work in unsafe environments.” (Interviewee 23)

(c) Working from Home–Pros and Cons

The benefits of working from home included feeling less harassed and more relaxed, symptom management, increased energy, and flexible schedules. Disabled people found they were also needing to take less time ‘off sick’, were more productive and able to better manage additional responsibilities in their roles as parents and carers.

“They feel more relaxed [and] sadly, [...] they feel less harassed [...] Home environments are generally set up to tailor to us and that has been amazing for a lot of disabled people and made work [...] much easier.” (Interviewee 06)

“So actually, it was a positive thing for inclusion for us, that so many people who may have been struggling with, perhaps, fluctuating conditions, energy and resilience, they can do their work when they want, when they can, how they can, where they can.” (Interviewee 36)

“But actually what we’re also finding is that people’s symptoms are improving and they’ve realized that it’s because of the work that they were doing, so they’re now deciding to work part time or to change jobs so that they can be more flexible.” (Interviewee 15)

“People saying they took a lot less time off sick because actually when they’re working from home, they didn’t have that need to take time off sick, so that’s something that could make a big impact. And could [...] lead to less disabled people being pushed out of their jobs because of sickness absence.” (Interviewee 23)

“For some people, it’s given them control of their environment, [...] especially also when they’ve got additional responsibilities. If they’re a carer, if they’re a single parent, etc, as well as being a disabled colleague.” (Interviewee 40)

While many respondents saw benefits in working from home, they also recounted some negative aspects. Examples included inadequate home office set-ups, as disabled workers might not have their required adjustments at home, or shared accommodation, which was not an environment conducive to working.

“At the other extreme, there’s the employers [...] who think [...] ‘This is good then, we don’t need offices, everybody can work at home. [...] We save a lot of money’. But then [...] we need to make sure that [...] all the staff, but [particularly] disabled staff [...] have actually got [...] adjustments at home.” (Interviewee 04)

“I’m in a shared house, it’s noisy [...] in the office we’re all equal, we’re in one room, we have access to the same food in the canteen, and all of those things.” (Interviewee 06)

Others mentioned feeling isolated and anxious about missing important informal meetings and opportunities, thereby negatively impacting their careers. As some employers plan to continue hybrid working, in order to not further disadvantage disabled workers it is imperative to mitigate these risks by creating a facilitative environment.

“[There are] people who [...] want to go back into the office [...] they felt quite isolated and worried about [...] promotion opportunities and things like that.” (Interviewee 15)

“You have to create a culture, [...] when you’re in the office, where you say: ‘Oh, do you want to talk about preparing for that presentation over lunch?’ And somebody says, ‘Yeah, I do, but I’m aware that it’s just us two, and that Claudia’s working from home. So how can we bring her into the conversation?’ [...] It’s about the whole way in which working from home is enabled as a form of productive and connected work by the whole office culture and procedures around it.” (Interviewee 38)

(d) Culture Shock

The pandemic presented non-disabled people with issues they had not previously experienced. It raised awareness about disability and gave them an insight into new ways of working and the barriers their disabled colleagues face on a daily basis. Moreover, for some, who had not previously considered themselves disabled, COVID-19 changed their perspective, as they were categorised by Government as clinically extremely vulnerable (CEV).

“Many of our [...] non-disabled colleagues have been forced to challenge the way of what it is to work, and how to work, and their ways of working. And that shock [...] had [an] effect on [...] their beliefs about the barriers for people with disability.” (Interviewee 07)

“I think it’s really brought to the fore a greater understanding around the need for disability discrimination legislation for people who wouldn’t have previously self-identified as disabled. [...] Somebody who’s got a condition like an autoimmune disease, would they necessarily see themselves as disabled? Or somebody who’s had cancer and is recovering from it, doesn’t necessarily see themselves as disabled and then suddenly Covid [has] really brought it to the fore.” (Interviewee 12)

(e) Redundancy and Recruitment

Many respondents felt that, as has happened in the past, disabled workers would be the first to lose their jobs, and especially so, if they had been shielding. Concerns were also raised about employer’s negative perceptions of ‘shielders’, which is likely to make them even more reluctant to recruit disabled people in future.

“Disabled people were often let go quite quickly, because companies didn’t want to support them, if they were shielding but weren’t able to work.”
(Interviewee 13)

“Or what if this happens again and those people have to shield? [...] the difficulty that disabled people could cause if they employ them, [...] there’s that perception potentially out there.” (Interviewee 15)

Some interviewees also mentioned that disabled people were so concerned about losing their jobs, that they would rather put up with hostile or poor working conditions than requesting the adjustments that they required.

“They were feeling that the most important thing is to have a job. [...] The last thing I’m going to do is raise a grievance about flexible working, disabilities, pregnancy, whatever it would be.” (Interviewee 28)

The legal professionals noted that discrimination enquiries have significantly increased and that these issues will eventually filter through to the employment tribunal system, which is already overwhelmed. They suggested that it is unlikely that the ‘COVID defence’, which employers try to use to explain delays in providing reasonable adjustments, would be accepted by the courts.

“It’s significant, employment discrimination enquiries [are] going up about a quarter.” (Interviewee 12)

“We’re going to see a lot of issues around redundancy coming into the tribunals now because of furlough coming to an end and the system is collapsing. [...] There are huge delays in in the employment tribunals now.”
(Interviewee 11)

“Another one, of course, is about equipment, and employers not providing employees with the right equipment or delays in providing that equipment. [...] what I call the COVID defence—which we all understand what that means is, ‘Oh, we couldn’t do that or there was a delay, wasn’t our fault, it was to do with COVID.’” (Interviewee 22)

(f) Governmental and Media Discourse

The negative effect of the media's reporting and the Government's rhetoric about disabled people and the value of their lives during the pandemic, was another concern mentioned by respondents. Disabled and older people with underlying conditions were cast as 'lesser' than others, and their deaths were merely considered to be collateral damage.

"I think attitudes around disability and risk to personal safety have been exacerbated by COVID. [...] An attitude that underpins a eugenics health system [...] permeate[s] every aspect, from hospitality to health to education. [...] It sets that kind of overarching tone, which says this group is not valued and that makes it ok for employers [...] to behave within that paradigm, because [the pandemic] recalibrated the conversation, and not in a good way." (Interviewee 08)

"Disabled people were battered by COVID from all directions, and they were completely overlooked by the government. So that's been disastrous." (Interviewee 18)

(g) Long Covid

Several respondents raised concerns about long Covid and its debilitating effects, which would significantly increase the number of people who would require adjustments. An additional issue was whether long Covid would be legally recognised as a 'disability'.

"The systems were not in place to deal with disability and long-term ill health and fluctuating conditions even before we had what's potentially a huge additional cohort of people [...] who've become disabled by the pandemic and will need more support. So, I think it'll be a real issue around system capacity." (Interviewee 01)

"We've got around a million more disabled people, who will need adjustments and will need support in their workplace to continue [their] job." (Interviewee 03)

"There's concern about that, both in terms of guidance and whether the courts are going to treat [long Covid] as a disability in legal terms." (Interviewee 11)

At the time of writing, the EHRC stated that as "'long Covid' is not among the conditions listed in the Equality Act as ones which are automatically a disability, such as cancer, HIV and multiple sclerosis, we cannot say that all cases of 'long Covid' will fall under the definition of disability in the Equality Act."⁵⁸

However, the symptoms of long Covid could still amount to disability, as they can affect the individual's ability to carry out day-to-day activities over a prolonged period, but this would have to be tried through employment tribunals.

Summary

COVID-19 has had both positive and negative impacts on disabled people's working lives. Temporary measures that were put in place for all workers, were welcomed and gave valuable insights to non-disabled colleagues. Where people could work remotely, this was extremely beneficial, as it enabled disabled workers to control their environment, leading to higher productivity, and greater wellbeing.

However, the pandemic also created new barriers for people who could not work remotely, as well as for people with specific impairments. Another issue was the overall rhetoric about the 'value of life' which casts disabled people as disposable and undermines hard won disability rights. The uncertainty posed by long Covid, and its disability status were also highlighted.

Going forward, employers will need to ensure that disabled workers are either able to continue shielding while working remotely, or safely return to work. As with previous findings, flexibility, collaboration and putting the disabled worker's needs at the centre of a solution-focused approach seem to be at the core of good practice.

58 Equality and Human Rights Commission (2022) EHRC statement on 'long Covid', disability and the Equality Act. UK, 9 May. Available at: <https://www.equalityhumanrights.com/en/our-work/news/ehrc-statement-%E2%80%98long-covid%E2%80%99-disability-and-equality-act>

15.

Conclusion

In this report, we have tried to analyse the problem of why so many disabled people in the U.K. are managed out of their jobs every year, despite the presence of laws that are designed to protect the rights of disabled workers. Through our research, we have revealed a number of issues related to organisational compliance with the Equality Act, as well as with the enforcement of individual rights under the law. Despite these issues, however, we found vital support mechanisms coming from the voluntary and non profit sector and businesses. Additionally, other ideas have been put forward with the goal of making work more equitable for disabled people.

Much of our research uncovered the problematic organisational relationships between employers/line managers and disabled employees. As we have indicated, the Equality Act gives disabled employees the right to ask for Reasonable Adjustments in the workplace. In many instances, employers are successful in providing the appropriate adjustments for their employees. Indeed, there are cases in which employers and line managers are diligent with respect to linking the concerns of disabled employees to organisational habits, procedures and routines, with the result that these workplaces exhibit a higher degree of overall inclusiveness.

However, just as Barnes and Burke found significant variations in organisational compliance with the Americans with Disabilities Act of 1990⁵⁹, we found similar variation in compliance with the Equality Act. It is with great frequency that we

see failures in the implementation of reasonable adjustments and these negative outcomes often spiral into the far worse outcome of workers being managed out of jobs.

The failure to provide adjustments occurs for a wide variety of reasons: managers possess biases that result in a diminished priority for disabled workers; there are internal or external delays to agreeing and implementing reasonable adjustments; or business models, such as precarious work or zero-hour contracts curtail the rights and concerns of most workers, including disabled people. Most of our interviewees indicated that a failure to obtain reasonable adjustments frequently produced a situation in which a disabled worker was unable to perform their role effectively. Subsequently, they ended up having to take sick leave as their physical and mental health deteriorated, along with the line manager relationship. In these instances, extended sick leave or poor performance would often provide cover for employers to manage the employee out of work.

While there is still an unfortunate number of these instances, there are also support mechanisms that can ensure they are less likely to occur. Access to Work can help provide adjustments, although there are an unfortunate number of complaints regarding its flexibility and its punctuality in delivering adjustments. Many different voluntary and non profit sector organisations have hotlines and provide information to both employees and employers that are designed to bring both sides closer together and inform each side of their rights and responsibilities.

59 Barnes J and Burke T (2006) The Diffusion of Rights: from Law on the Books to Organizational Rights Practices. *Law and Society Review* 40 (3): 493-524

Barnes J and Burke T (2012) Making Way: Legal Mobilization, Organizational Response, and Wheelchair Access *Law and Society Review* 46 (1): 167-198

Some unions can encourage workers to disclose their disabilities to their line managers; however, disclosing one's disability can be difficult because of stigma and fear of discrimination. The voluntary government programme 'Disability Confident' requires minimal activity of its members and as a result, few organisations can claim to have become more inclusive as a result.

Additionally, the advice from the voluntary and non profit sector is often about being inventive and crafting ways to provide reasonable adjustments, when the solution might not be obvious. This is a crucial point because a frequent complaint from our interviewees about organisational managers was that they lacked imagination or were too quick to conceive of reasonable adjustments as "ramps and lifts" that would be considered inordinately expensive. Often, asking the disabled employee what their needs are will provide both simple and innovative solutions.

The reality of disability, however, is that it is a spectrum with a range of impairments and conditions; as our research found, most of the time, it is not expensive to provide reasonable adjustments and remove the barriers to work, but it may require some creativity. Huising and Silbey show in their research how inspectors and university managers have to work together to craft pragmatic solutions to challenging health, safety and environmental problems (2011). Providing reasonable adjustments is also often an exercise in achieving pragmatic solutions.

What this shows more broadly is that providing an inclusive workplace is often about changing mindsets and discarding preconceived notions about disability in the workplace. While this is certainly challenging, most interviewees agreed that an important step here is to employ the social model of disability in which reasonable adjustments are offered in order to remove barriers in the workplace. Adhering to the medical model of 'fixing' the disabled worker is not only offensive but is destructive towards workplace relationships.

We were also keenly interested in how individual rights are enforced under the Equality Act, should a disabled worker wish to bring a complaint against their employer. While workers should theoretically be able to seek justice through employment tribunals, the reality is more complex and often more pernicious for individual workers. Decades ago, Marc Galanter found that the "haves come out ahead" in court and that repeat players such as businesses or other organisations frequently beat one-shot players, such as individual citizens in court⁶⁰. Galanter's research still resonates, as our research indicated that employment tribunals typically present steep, uphill battles for individual workers.

Filing a legal complaint is expensive for individuals, with respect to time and money, and negatively impacts mental wellbeing, which is why solicitors and unions alike typically advise rapidly settling. While this may spare litigants their money and sanity, settling does not advance case law, it often produces smaller awards, settlements frequently come with non-disclosure agreements attached, and there is an alarmingly high rate of award non-payment from settling organisations.

Most lawyers we interviewed indicated that even with top legal representation, employment tribunals were frequently a traumatising experience for individual litigants and did not represent the objective pursuit of justice that the authors of the Equality Act appear to have envisioned. It was suggested that greater employment tribunal panel diversity (i.e. including disabled people) would likely have better and fairer outcomes.

Our interviewees who expressed frustration with the employment tribunal process often conveyed a desire for a regulatory path forward, whereby organisations might be inspected for their Equality Act compliance. However, such desires were seldom accompanied by specific ideas, although respondents suggested researching international examples for inspiration.

60 Galanter M (1974) Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review* 9 (1): 95-160

Additionally, organisations that are subject to the Equality Act are such a vast and heterogeneous group that the job of inspecting them for Equality Act compliance would be enormous and difficult to achieve. The government would likely fall back again on judicial solutions, similar to what is already in place. Given this reality, the clearer answer appears to be to avoid employment tribunals altogether if possible, but this is only possible if reasonable adjustments are provided and workplace relations are harmonious for disabled workers.

Moving employers towards a disability-positive framework returns us to the issue of changing hearts and minds. Disability-positive employers act creatively to remove barriers and positively to facilitate inclusive workplaces.

Genuinely disability-positive organisations did not distinguish between disabled and non-disabled people. Instead, they viewed all their employees as talent to be nurtured and subsequently were focused on ensuring that the work environment prioritised health and wellbeing for everyone. This included offering 'workplace adjustments' to all employees, irrespective of whether or not they were disabled. These case studies were a cause for optimism and, in the authors' opinion, represent what an inclusive and healthy workplace should look like. With the advice and support of voluntary and non profit sector organisations, especially Deaf and Disabled People's Organisations, and the leadership of particularly enlightened employers, we envisage a future in which disabled people can enjoy long, productive, and meaningful careers.

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17.

Defined Terms and Abbreviations

(a) Defined Terms

ADA—Americans with Disabilities Act

ADP—The Association of Disabled Professionals

APPG—All Party Parliamentary Group

AtW—Access to Work

CEV—Clinically Extremely Vulnerable

CIPD—Chartered Institute of Personnel and Development

DDPOs—Deaf and Disabled People’s Organisations

DOH—Department of Health

DWP—Department for Work and Pensions

EDI—Equality, Diversity and Inclusion

EHRC—Equality and Human Rights Commission

Equality Act—Equality Act 2010

HR—Human Resources

OH—Occupational Health

ONS—Office for National Statistics

NDA—Non-Disclosure Agreements

UPIAS—Union of the Physically Impaired Against Segregation

(b) Abbreviations

BSL—British Sign Language

KPIs—Key Performance Indicators

RNIB—Royal National Institute for the Blind

18.

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Ableism and the Labour Market

“Just dealing with the square peg in the round hole problem by making the peg round rather than actually thinking about the inclusive environment”.

