

## Written evidence from the Social Justice Research Ltd (DEG0069)

How can DWP better support employers to take on and retain disabled employees, and to help them progress in work?

- Much more attention and focus should be given to educate **private** sector employers (of all sizes) on Access to Work, reasonable adjustments, positive action provision included in the Equality Act and disability awareness training (focused on disabled people's rights). This must be free of charge to the employer – funded by government and delivered by disabled people's organisations.
- The government could run an information campaign and offer free training. They can reach businesses via email in much the same way the government has emailed business in preparing to exit the EU).

How effective is the Disability Confident scheme?

- Based on interviews with disabled people the scheme is described as “not fit for purpose”, “patronising” and often “tokenistic”
- Based on interviews with SME employers there is a lack of awareness of the scheme amongst private sector employers
- The scheme is inadequate as it currently stands because there is no complaints procedure for poor practice within a firm that is accredited with the “Disability Confident” badge. Employers do not even need to employ disabled people and can still advertise on all of their business material that they are “Disability Confident”.
- The scheme tends to attract third sector employers rather than private sector employers. As I have noted above, from my research the private sector should be the focus – they need to become better educated on changing workplace culture and this can be achieved with disability awareness training, delivered by user-led disabled people's organisations (as experts by experience)
- To reach Disability Confident Leader status, an organisation should demonstrate detailed knowledge and implementation of Access to Work and the provisions of “positive action” in the Equality Act. They must see the “moral” case and not just the “business” case of promoting the rights of disabled people.
- Employers should only merit the description of “Disability Confident” when they can be assessed against their knowledge and understanding of a wide range of disability rights issues, accessibility issues, inclusive practice, digital inclusion and when they proactively involve disabled people in formulating clear action plans for accessibility, flexibility and non-discrimination.

**Enforcement and next steps**

Are “reasonable adjustments” for disabled people consistently applied? How might enforcement be improved?

- As it stands, we can not say whether “reasonable adjustments” are consistently applied – we do not have any data. We need urgently to differentiate between size of employer when making any analysis. This goes against previous research that suggests size of firm is irrelevant. My research suggests that size is an important variable when it comes to knowledge and understanding of legal duties. What is reasonable for a large multi-national organisation is not reasonable to a small local business. This highlights the underlying problem with the concept of “reasonable” in legal terms. Enforcement can only be improved once we have a very clear set of criteria for what constitutes “reasonable” and this must be nuanced to context of the organisation. At present we do not have data on the number of disability discrimination cases brought against SME employers compared to the number brought against large employers. Employers are currently responsible for making “reasonable adjustments” and then Access to Work is used as a top-up (above and beyond) what is expected from the employer (and based on what is deemed “value for money for the taxpayer”). But if employers are not clear of their own duty how can the disabled worker or the employer begin to apply for Access to Work and how does the DEA judge what can be funded via Access to Work? At the moment the system is too confusing and ambiguous meaning that without this data, we cannot begin to address the underlying barriers that employers face in hiring and retaining more disabled people
- An employer is more likely to view a request as “reasonable” if there is funding to help meet the cost of it. As it stands Disability Employment Advisers (DEAs) who can carry out workplace assessments and make recommendations to the employer about which reasonable adjustments may be possible are not being effectively used. This must be addressed because a DEA can also provide information to the employer about grants which may be available to help meet the cost of making reasonable adjustments.
- Small and medium size employers are a critical source of employment in the UK (as they are across the developed nations), but at present all policy tends to focus on large organisations who are better equipped to know about and then implement reasonable adjustments.
- If an employer is reluctant or refuses to consider involving Access to Work or implementing their recommendations, this could serve as evidence of failure to implement reasonable adjustments. An employer must show that their duty with regards to reasonable adjustments has been discharged i.e. an employer will not be justified in treating a disabled employee less favourably if a reasonable adjustment would have prevented this treatment but without a clear definition of “reasonable” it makes this a very difficult issue in the eyes of the employer.

- We need an independent body with a remit to quality assure all legal cases for disability discrimination in employment with a responsibility to collect and publish data at a much more nuanced level than is currently being done.
- We should also see employers collecting and reporting data on disability pay gaps.
- The guidance for DEA staff says that people can apply for ATW funding up to 12 weeks before starting their job. In my mind, this doesn't make any sense. If it is a person's first job, how will they know what adjustments they need? Also, how does the employee know what is "reasonable" to expect the employer to do? It is so ambiguous, both the employer and employee do not know what the employer should be doing - the measure and lengths they should go to before Access to Work kicks in. The only time we find out is at tribunal and by then the employment relationship has been ruined.
- One suggestion is to have a blanket formula that is clear for both the employer and the employee showing what reasonable adjustments (as a bare minimum) are compulsory for all employers and then list measures that employers with annual profits in excess of £x must contribute to, on a falling scale. Or remove the concept of reasonable adjustments and replace the system with AtW funding for ALL workplace adjustments. AtW has already been shown as a positive-sum approach. Employers could then make an annual contribution on a pro rata basis (dependent on turnover or profit). Some employers may even decide to contribute above what is expected to demonstrate how they want to be recognised as a "purposeful business" based on valuing diversity. This could be a measure of social responsibility for employers and data could be published showing the level of contribution made by each employer. Better still, if ALL adjustments were funded by the state, via taxpayer and employer contributions (based on a scale of profit), a cost benefit analysis would show it is economically viable - the most cost-effective way for the taxpayer and business owners is for this methodology. Remove the legal obligation on employers completely, that will reduce their fear of prosecution for non-compliance and it would promote equality and diversity and foster improved workplace relations based on reciprocity. With full workplace support more disabled people who want to work will be given work, removing them from social security benefits. The overall savings will be enormous. Most adaptations are one off costs that can be moved with the job. If the investment is to change a building's accessibility (a big-ticket item) it will benefit more than just that one employee in the longer run. Consumers too would benefit from these investments which will drive up consumer spending, and then in turn UK productivity. A win-win for disabled people, business, the taxpayer and best of all – for humanity!

What would you hope to see in the Government's National Strategy for Disabled People?

- If we keep “reasonable adjustments” - we need a body to monitor, evaluate and regularly review how employers are implementing reasonable adjustments and taking proactive steps to use the provision of “positive action”
- We should also see employers of all sizes collecting and reporting data on disability pay gaps.
- Employers need infrastructure in place – they need a free (non-commodified), and easily accessible support service to overcome the barriers they face. I would recommend a user-led body who can offer free (government funded) disability awareness training, information, advice and guidance on using Access to Work and other grants available, their responsibility under the Equality Act to make “reasonable adjustments” and to share examples of good practice. This service must be FREE to all SME employers to avoid it becoming a commercial activity for profit.
- A clear commitment to invest in long-term in-work support with well qualified personnel for people with a wide range of impairments
- A change to the Equality Act - to make it a legal duty for all employers to be proactive rather than reactive in relation to “reasonable adjustments” (if we keep this concept)
- A commitment to provide information, advice and guidance to ALL employers on the availability of support via Access to Work, the responsibility to make “reasonable adjustments” and the benefits of taking “positive action”. From my own research with SME employers, they do not understand their responsibilities. SME employers want to do better, but they feel they are not supported with a lack of access to information and guidance on these issues. Like disabled people, SME employers are facing barriers. If the government is really committed to improving the route to paid work it must also start to help SMEs understand the “moral case” for hiring and retaining disabled workers and providing free resources and training by DPOs will change simultaneously help to change attitudes.

How should DWP look to engage disabled people and the organisations that represent them in formulating the Strategy?

- DWP should be engaging far more routinely with user-led disabled people’s organisations as opposed to relying on the charities that run *for* disabled people. This will require an investment of time and resources to bolster these grassroots, smaller, often local DPOs capability to work in collaborative ways with parliament and government. These DPOs are best placed to inform policy improvements. I would recommend a good starting place is: <https://www.shapingourlives.org.uk/>

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