

## Written evidence from UNISON (DEG0124)

### About UNISON

UNISON is the UK's largest public service trade union with 1.4 million members, 1 million of them women. Our members are people working in the public services and for private contractors providing public services including in the essential utilities. They include frontline staff and managers working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport, non-departmental public bodies and the voluntary sector.

As a trade union UNISON regularly engages with employers and government to protect and improve the pay and conditions of all who work in public services as well as the services they provide to society. Based on government data, we estimate we represent up to 200,000 disabled workers in employment. We have a National Disabled Members Committee which helps develop our policy on disability equality and have used the experience of our members to inform the response to this consultation.

### *Progress so far and impact*

- What progress has been made, especially since 2015, on closing the disability employment gap? How has this progress been made?

The disability employment rate was 28.6 in 2019, according to government figures, compared to 34.6 in 2015. This would suggest some progress has been made. However, 28.6 is still shockingly high, is significantly higher than that of other protected groups and other European countries, and relates to a period just before COVID-19 when employment was high overall. It also falls far short of government's promise to half the gap by 2020.

UNISON believes it is very disappointing that the gap was still 28 points at a time of high employment and we are very concerned that the expected economic impact of COVID-19 will see the gap increase once again.

Already a recent report from Citizens Advice<sup>1</sup> found disabled people were twice as likely to be facing redundancy as a result of COVID.

One in four disabled people (27%) were facing redundancy. This rose to 37% of those who said their disability has a large impact on their day-to-day life. Half of those who were in the shielded group (48%), as they were extremely clinically vulnerable to coronavirus, were at risk of redundancy.

These findings suggest that disabled people are likely to be disproportionately impacted by COVID related redundancies. Government needs to act now to ensure the employment gap is not exacerbated as a result of the pandemic by implementing specific and tailored services to help disabled people find and retain employment.

**UNISON is calling for:**

- **Government to establish specific and tailored services to help disabled people access and retain employment**
- **What is the economic impact of low employment and high economic inactivity rates for disabled people? Are some disabled people (for example, young disabled people or people with different health conditions) more at risk of unemployment or economic activity than others?**

Data from ONS<sup>2</sup> shows that there is a correlation between particular impairments and lack of access to work. However it is important not to overly focus on impairments or to lose sight of the social model of disability.

One of the key drivers of the employment gap is employer's refusal to make adjustments – and not some failing or reduced employability on the disabled worker's part.

Nonetheless, the employment rate for disabled people with severe or specific learning difficulties was the lowest rate of any impairment at 17.6% according to ONS data. Disabled people with mental illness or other nervous disorders had the second-lowest employment rate (28.5%).

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<sup>1</sup> Citizens Advice, *An Unequal Crisis – Why workers need better enforcement of their rights* 2020

<sup>2</sup> ONS, *Disability and Employment UK 2019*,

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/bulletins/disabilityandemploymentuk/2019> accessed 16/12/20

This highlights the need for much more work from government in supporting learning disabled people and those with mental illnesses into employment and supporting them to retain that employment. UNISON's 2019 *Lets be reasonable* report<sup>3</sup> found that only 8% of disabled workers had access to disability leave and the refusal of many employers to agree to disability leave as a reasonable adjustment for a period of mental illness means that many of these workers end up pushed out of employment due to their sickness absence record.

In terms of age, ONS data identifies the greatest employment gaps in those aged 50 years and over. The employment gap for disabled people aged 50 to 54 years is 33.4 percentage points, and the gap for those aged 55 to 59 years is 33.8 percentage points.

Many older workers acquire their impairment later in life and then find themselves pushed out of employment due to lack of reasonable adjustments and the knock-on effect on their sickness record.

Our 2019 report on reasonable adjustments demonstrates the ways in which the current system is failing, with 67% of disabled workers being refused some or all of the adjustments they need. In many cases the worker never even got a response to their request. Where adjustments were agreed, 23% waited a year or more for the agreed adjustments to be implemented. Many workers reported this had meant increased sickness absence and resulting capability proceedings.

UNISON strongly believes that government needs to take robust action to improve enforcement of the duty to provide reasonable adjustments, especially in order to reduce the very high employment gap for older disabled workers who acquire impairments later in life.

Although ONS data shows that the employment gap for younger disabled people is not as high as other age groups, economic activity at this age can become entrenched for life and government should establish tailored support schemes to help young disabled people find and retain employment in order to avoid a lifetime of economic activity that could be avoided.

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<sup>3</sup> UNISON, *Lets be reasonable – Disability equality in the workplace*, 2019, <https://www.unison.org.uk/content/uploads/2020/12/26261.pdf>

### **UNISON is calling for:**

- **Government to strengthen the right to disability leave, which would help to keep workers with mental illness in employment**
- **Government to invest in more tailored support for learning disabled people to help them access and retain employment**
- **Government to improve enforcement of duty to make reasonable adjustments through consideration of fixed penalties and other options so a protracted employment tribunal is not the only option for disabled workers denied the adjustments that could keep them in employment.**

- **What has been the impact of the coronavirus pandemic on disabled peoples' employment rates?**

Although it is too early to assess the impact of COVID-19 on disabled people's employment rates, the Citizens Advice report shows that disabled people are already twice as likely to be facing redundancy as a result of COVID-19 compared to non-disabled people.

The Labour Force Survey Q1 and Q2 figures<sup>4</sup> show a small increase in the employment gap but further data will be needed to understand the full impact.

Some UNISON disabled workers have reported being let go because their employer would not take sufficient steps to make the workplace COVID-safe for higher risk workers. A UNISON survey found that 60% of Black workers, including Black disabled workers, did not have an individual risk assessments and 35% said even after a risk assessment their employer took no additional steps to safeguard them in the workplace.

### **UNISON is calling for:**

- **Early intervention to ensure disabled workers are not disproportionately impacted by redundancy and tailored support for disabled people seeking work**

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<sup>4</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08> accessed 16/12/20

- **Employers should have a duty to carry out individual risk assessments for all disabled (and Black) staff and to take additional steps to make the workplace COVID-safe for these staff.**

### *Providing support*

- **Where should lead responsibility for improving disabled peoples' employment rates sit (for example, DWP; Business, Energy and Industrial Strategy; Health and Social Care)?**

The solutions needed to address the employment gap for disabled people span a number of departments, including the DWP, BEIS and HSC. It therefore makes sense to have an overarching Disability Unit to oversee these departments and to direct and coordinate their work on this issue. However it is clear that this is not how the current Disability Unit is working. Instead it seems from the outside that each department is working in a silo and the Disability Unit has no clear oversight or ownership of the issue due to the real power remaining with the individual departments.

### **Unison is calling for:**

- **A beefed-up Disability Unit with real powers to direct the work of other departments and to hold them to account on the disability employment gap**
- **What international evidence is there on “what works” in supporting disabled people into, and in work, and how applicable is this to the UK?**

Across the EU disability employment gap for people with limitations in basic activities is about 20% with some countries achieving 10%<sup>5</sup>. The lowest gaps are in Luxembourg, Latvia, Spain and France with the UK in the highest quartile for both disabled men and women. To a 2019 report<sup>6</sup>, the gap still varies between countries even when controlling for sociodemographic characteristics. There is no inherent reason why the UK disability employment gap should be so high. According Other European countries with similar economies

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<sup>5</sup> Melanie Jones, *Disability and Labor Market Outcomes*, <https://wol.iza.org/uploads/articles/253/pdfs/disability-and-labor-market-outcomes.pdf>, accessed 16/12/20

<sup>6</sup> Roos van der Zwan & Paul de Beer, *Explaining the disability employment gap in European countries: the influence of labour market policies and public opinion towards people with a disability*, February 2020.

have shown that it is possible to reduce the gap to much lower levels.

In fact UNISON believes that there is already sufficient evidence in the UK (see UNISON's 2019 report) that refusal of reasonable adjustments and flexible employment options is a key driver of the disability employment gap, with workers – and particularly older workers - falling out of employment due to resulting sickness absence and capability procedures. Better enforcement of the right to reasonable adjustments and flexible working as a right would significantly reduce the employment gap, particularly where it is most acute for older workers.

- **What is the right balance between in and out of work support, and is DWP getting the balance right? What more should the Department look to provide?**

UNISON is particularly concerned about disabled workers experience of applying for Personal Independence Payments (PIP). This benefit is designed to support disabled people's independence, including their right to work. However, our 2018 report, *Punished for going to work*<sup>7</sup>, found a strong concern from disabled workers that being in work was a barrier to them receiving PIP or receiving it at the full rate and that this was used against them by assessors.

***UNISON member: "I feel I's very unfair that because I return to work when I'm well that they reduce my money. I work when I'm well and stay at home when I'm ill. I feel I'm being punished for going to work."***

***UNISON member: "They need to know disabled people can work. They act like if you're working you shouldn't claim PIP."***

The impact of this was not only financial but was particularly felt by those on the higher Motability allowance who lost their means of travelling to work. Some members reported having to give up their job as a result.

***UNISON member: "No car, no option to continue with employer. On sick leave at the moment. But want to work"***

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<sup>7</sup> UNISON, *Punished for going to work*, 2018

[https://www.unison.org.uk/content/uploads/2018/10/Punished-for-going-to-work\\_PIP-Survey-2018.pdf](https://www.unison.org.uk/content/uploads/2018/10/Punished-for-going-to-work_PIP-Survey-2018.pdf), accessed 16/12/20

UNISON is further concerned about the punitive nature of work capability assessments and the sanctions and conditionality regime which undermine the supposed supportive approach of the DWP to disabled people seeking employment. UNISON also strongly believes the benefits system, including Universal Credit, is not flexible enough to support disabled people in re-entering employment with the continued existence of cliff edges and perverse incentives.

**UNISON is calling for:**

- **PIP to be redesigned to put the independence of disabled people, including the right to work, at its heart**
  - **An end to punitive sanctions and the five week wait for Universal Credit and re-institution of disability premiums**
  - **A less rigid benefits system that acknowledges the needs of disabled people and can accommodate flexible working**
- **How can DWP better support employers to take on and retain disabled employees, and to help them progress in work?**

Existing programmes tend to focus on voluntary approaches, such as Disability Confident and the voluntary reporting framework. We comment on the Disability Confident scheme below, but in general UNISON's experience is that voluntary approaches are unlikely to achieve the significant changes required to half the disability employment gap.

Lack of access to progression in work is a key driver of the disability pay gap which needs to be addressed alongside the employment gap. UNISON's *Lets be Reasonable* report found that 23% of disabled workers said they did not have equal access to training and 32% said they did not have equal access to promotion. A key issue was reasonable adjustments. With 67% denied the adjustments they needed, many not even receiving a response, and 23% waiting a year or more for agreed adjustments, progressing in work is often impossible for disabled workers.

Without mandatory requirements to publish pay gap data, it is difficult to hold employers to account for this lack of progression for disabled workers.

**UNISON is calling for:**

- **Mandatory disability pay gap monitoring and robust and measurable action plans to tackle the gap**

- **How effective is the *Disability Confident* scheme?**

UNISON does not have evidence to support the efficacy of the Disability Confident scheme. Our workplace reps find there is often no relation between employers who have signed up to Disability Confident and those who have a genuine commitment to recruiting and retaining disabled people.

UNISON has been a partner in the development of the NHS Workplace Disability Equality Standard and the first year data from this has also underlined the lack of correlation between disability confident employers and the recruitment of disabled workers.

UNISON has a very small number of examples where signing up to Disability Confident has led the employer to consider negotiating improved policies for disabled workers, but this is a tiny minority. Conversely, we very frequently have reports from workplace reps that Disability Confident employers are dragging their feet in providing reasonable adjustment or pursuing disabled workers through unnecessary sickness absence and capability procedures.

The key issue is the lack of any link between becoming a Disability Confident employer and any measurable outcomes for disabled people. Level 1 is simply a statement of intent with no real actions required and only level 3 (leader) involves any independent assessment.

Unless Disability Confident is strengthened to include actions and measurable outcomes at level 1 and 2 to employ and retain disabled people, and stronger monitoring of results, it will not deliver greater employment of disabled people.

**UNISON is calling for:**

- **Mandatory publication of outputs/outcomes and independent assessment to be included in all levels of Disability Confident, with a clear link to increases in the employment of disabled people for progress to the next level.**

- **What improvements should DWP make to the support it offers to unemployed disabled people via Jobcentre Plus?**

UNISON is very concerned that the impact of COVID-19 will be disproportionately felt by disabled workers. Already there is data from Citizens Advice on this. In previous recessions<sup>8</sup> disabled workers were particularly affected and the DWP needs to take this learning into account when devising programmes to support employment in the face of the pandemic.

However, recently announced measures are not directed at disabled people and take a 'one size fits all' approach. Additionally, the eligibility requirements of the Kickstart programme exclude some young disabled people. The new Plan for Jobs will only work for disabled people if it includes tailored support delivered by specially trained staff who understand the labour market disadvantages that disabled people face.

**UNISON is calling for:**

- **Government investment in specially tailored employment support for disabled people**
  - **Kickstart programme to be extended so that unemployed young disabled people not on Universal Credit are included**
- **The coronavirus pandemic continues to make it difficult to offer in-person support. What evidence is there of “best practice” in supporting disabled people remotely—either in or out of work?**

UNISON wrote to the Chancellor in July asking for an extension of Access to Work to cover homeworking and some of the gaps between what Access to Work will fund and what the employer is expected to fund. We very much welcomed the government's announcement in August that it would do this and we believe this has had a significant impact on disabled workers.

We have had anecdotal evidence from some members of excellent support from Access to Work when they switched to homeworking. However other disabled workers were told that the service was for

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<sup>8</sup> <https://www.disabilityatwork.co.uk/research-areas/in-work-disability-gaps/all-in-it-together-the-impact-of-the-recession-on-disabled-people/> accessed 16/12/20

key workers only during the pandemic and it is disappointing that there was clearly still a lack of capacity on the system.

**Unison is calling for:**

- **Further investment to increase the capacity of Access to Work to deal with unmet need**

○ **How can DWP put this into practice in services such as Access to Work and the Work and Health Programme?**

UNISON's 2020 report<sup>9</sup> *Disabled workers and COVID 19: Time for a homeworking revolution?* found that only 5% of disabled people working from home during the pandemic had help from Access to Work. 41% did not know about Access to Work and 23% did not think Access to Work could help with working from home.

Another issue raised was the lack of an electronic system for the processing of applications. Additionally, members already in receipt of Access to Work faced problems with submitting claims with an insistence on "wet" signatures. Although over the course of lockdown DWP did allow some disabled workers to submit electronic claims on request, this was not standard practice and UNISON members found they had to argue with DWP staff to be allowed to do this.

There also remains an issue with the cap on Access to Work which UNISON objects to in principle - but if it must remain it should be raised so that Deaf workers needing specialist and technical British Sign Language interpretation do not lose out.

**UNISON is calling for:**

- **A new commitment from government to publicising Access to Work, such as including information with HMRC communications sent to all workers**
- **An electronic system for Access to Work applications and the submission of claims, in addition (and not instead of) the existing paper scheme**

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<sup>9</sup> UNISON, *Disabled workers and COVID 19: Time for a homeworking revolution?*, 2020, <https://www.unison.org.uk/content/uploads/2020/07/C19-disability-and-homeworking-report-FINAL.docx>

- **End – or at least increase - the cap on Access to Work so that it covers the actual cost of technical and specialist BSL interpretation**

### *Enforcement and next steps*

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

UNISON believes that there needs to be a step change in enforcement of the right to reasonable adjustments.

Our 2019 report, *Lets be Reasonable*, found that a shocking 67% of disabled workers were refused some or all of the reasonable adjustments they needed. In fact, in many cases the employer didn't even bother to reply to them at all.

Even where reasonable adjustments were agreed by the employer, 23% said they took a year or more to be implemented.

As a result of lack of reasonable adjustments, disabled workers ended up resigning from their job or being sacked due to performance or sickness issues that could have been avoided with the right adjustments. 31% of disabled workers in UNISON's survey felt they had been unfairly treated because of their disability-related sickness record and of these 45% had been subject to a capability process and 28% had been subject to a disciplinary. This is a key driver of the employment gap, with disabled workers driven out of the workforce due to a lack of enforcement of the duty to provide reasonable adjustments.

***UNISON member: “I feel I am in a constant battle to remain in work. Reasonable adjustments at sickness review are agreed, initially they are carried out and then start failing. Emotionally I'm at the point where I'm beginning to think about giving my job up because fighting my condition is tiring enough!”***

The experience of COVID 19 is also notable. After years of disabled workers being told working from home was not reasonable, UNISON's 2020 report, *Disabled workers and Covid 19 – time for a homeworking revolution?* found that 50% of disabled people were working from home. 73% said they were more or as productive at home. This was because they were better able to manage their impairments, could work a more flexible day and did not face painful

and tiring commutes. Over half want to continue to work from home after COVID 19 but 37% said their employer was likely to refuse this. UNISON strongly believes that there must be “no going back to normal” and that disabled people should have the right to work from home if they want to.

**UNISON is calling for:**

- **A step change in the enforcement of reasonable adjustments with significantly increased options, such as fixed penalties, for disabled workers to address refusal of adjustments**
  - **A new mechanism to ensure that requests for reasonable adjustments are responded to in a timely manner by employers**
  - **An update of the Employment Code accompanying the Equality Act to include examples of timescales for the implementation of different adjustments**
  - **Disabled people should have the right to work from home as a reasonable adjustment**
- **What would you hope to see in the Government’s National Strategy for Disabled People?**

UNISON wants the Disability Strategy to do more than play lip service to the right of disabled people to work and to instead bring forward a comprehensive set of measures to robustly tackle the barriers they face in the labour market.

A key driver of the employment gap is lack of access to reasonable adjustments and the resulting sickness and capability routes out of the labour market.

We believe action must be taken on the current inadequately enforced right to reasonable adjustments which sees individual disabled people forced to wait 18 months or more for a costly and protracted Employment Tribunal hearing which also destroys their relationship with their employer. Instead other enforcement options should be available, such as a new body under the ambit of the EHRC with the power to enforce, including through fixed penalties.

We also believe that the long waits disabled people face for reasonable adjustments must be addressed. This could be done by updating the Employment Code which accompanies the Equality Act

so that examples of reasonable timescales are laid out for different kinds of adjustments. There should also be a new duty on employers to at least respond to the worker within a set period.

While there are far too few employers who allow access to disability leave or flexible working to allow workers to manage their impairments, the pandemic has shown that homeworking is a reasonable adjustment for many disabled people. UNISON believes that flexible working should be a right for all and that there needs to be better enforcement of homeworking and disability leave as reasonable adjustments.

Finally, the employment gap and the pay gap are inextricably linked. Without mandatory publication of disability pay gap data, along with robust action plans to tackle the gap, disabled people will continue to be disproportionately congregated at the lower ends of the pay scale.

**UNISON is calling for:**

- **A step change in the enforcement of reasonable adjustments (see above)**
  - **A new right to flexible working, including stronger enforcement of homeworking and disability leave as reasonable adjustments**
  - **An employment strategy for disabled people that focuses on recruitment and retention, to support the recovery from the pandemic**
  - **Mandatory disability pay gap reporting, alongside mandatory action plans and robust enforcement of both.**
- **How should DWP look to engage disabled people and the organisations that represent them in formulating the Strategy?**

We believe that the experience of working disabled people is crucial to understanding some of the barriers faced – and barriers overcome – for these workers.

Although we have not had engagement with the DWP on the Disability Strategy to date, despite representing an estimated 200,000 disabled workers, we hope that this is due to the understandable impact of the COVID-19 crisis on the department.

We would expect the DWP to include trade unions and representatives of disabled workers in their engagement on the disability strategy in the new year. It is important that this is pre-publication engagement where organisations can truly feed into the recommendations at an early stage in the development of the strategy. It would not be acceptable to produce a strategy and then consult with disabled people and their representative organisations. Pre-decision consultation is key to ensuring the strategy adheres to the values of “nothing about us without us”.

**UNISON is calling for:**

- **Pre-publication consultation with disabled people, including disabled workers and their representative trade unions**

***December 2020***