



Cardiff Business School  
Ysgol Busnes Caerdydd

# Legally Disabled? The career experiences of disabled people working in the legal profession

## Full report of findings and recommendations





**Legally Disabled? The career experiences of disabled people working in  
the legal profession**

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Independent Living and Learning)

Key partner: The Lawyers with Disabilities Division of TLS

## **Foreword**

The well-established philosophy of the disability rights movement in the UK is ‘nothing about us without us’. For this reason the ‘Legally Disabled’ project co-produced this research and its recommendations with disabled people in the legal profession in England & Wales: involving at every stage those that will be affected and (we trust), will benefit, from its findings. Funded by national lottery money awarded to DRILL (Disability Research for Independent Living and Learning), a four nations consortium of the UK’s disability rights organisations, this research is the first of its kind, led by disabled researchers and involving disabled people in the UK legal profession . It draws on the expertise of Dr Debbie Foster, Professor of Employment Relations & Diversity at Cardiff Business School, Cardiff University, and co-researcher Dr Natasha Hirst, independent researcher, photo-journalist and disability rights campaigner. The aims and objectives of DRILL together with the partnership of the Lawyers with Disabilities Division (LDD) of The Law Society facilitated unprecedented access, trust and the involvement of disabled people in the profession. Many people contributed to the success of this project, not least participants that gave up time to attend focus groups, be interviewed, or fill out questionnaires and encouraged others to do so. Special thanks go to Disability Wales who chose to fund the project through DRILL, Jane Burton, Chair of the LDD, the LDD Committee, members of our Research Reference Group, City Disabilities and its founder Robert Hunter, Daniel Holt of the Association of Disabled Lawyers (ADL), the Interlaw Diversity Forum, Elizabeth Rimmer CEO of Lawcare, Isabel Baylis ED&I advisor at Matrix Chambers and the ED&I teams at TLS, SRA, Bar Council & BSB. Finally, thanks to Cardiff Business School, Cardiff University and the ESRC for supporting the research through the provision of time and funds to the research team.

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## **Introduction**

The UK Government's Family Resources Survey (2019) estimates that 3.7 million people or 19% of working adults are disabled. This undoubtedly disguises the real number of disabled people in employment who choose to conceal their impairment as a consequence of negative stereotypes, or fear of discrimination. Disability is not a minority issue. It is estimated that 1 in 3 people will experience some sort of disability during their working life (IPPR, 2003) and the mental health campaign group MIND predict that 1 in 4 people will be affected by mental health concerns, in their life-time.

Positive images of aspiring and successful disabled people and those occupying high status careers are few. Employers and disabled people also report that conversations about disability in the workplace are 'too difficult' and often avoided, for fear of 'getting it wrong'. The Business Disability Forum's 'Time to talk' in the workplace campaign, set up in February 2019 acknowledges this, primarily in relation to mental health. Evidence, however, continues to be limited about the experiences of disabled people with a range of impairment experiences and in specific occupational settings. Our research found disabled people in the legal profession entitled to workplace adjustments were often not receiving them, because they feared the consequences of making a request. Furthermore, among those that did, a significant number experienced ill-treatment, ignorance or discrimination from senior personnel, ill-equipped to respond to them.

We need to face a simple fact that disabled people who anticipate a negative reaction or fear discrimination from their employer, are not being over-sensitive. We live and work in an ableist society, where negative assumptions and stereotypes continue to exclude and disadvantage disabled people and, until this bias, unconscious or conscious, is acknowledged and properly understood, it cannot be challenged. Our research suggests that day-to-day, disabled people in the legal profession confront rituals, practices and attitudes that exclude or undermine them in their roles as trainees, advocates and employees. The culture that sustains these exclusionary practices is, furthermore, maintained because until now, little research has documented their experiences.

This research stands alongside other reports in 2018 and 2019 that shone a light on the legal profession. This included research published in 2018 by The Bridge Group and by academics



Friedman and Laurison (2020) that highlights enduring socio-economic inequalities in the profession. As well as findings about bullying and sexual harassment in the profession by The International Bar Association (IBA) (Pender, 2019). All make for sober reading and the latter report takes the #MeToo movement as its inspiration, adopting the #UsToo hash tag to symbolise the need for change.

'Legally Disabled' had no comprehensive previous research or campaigns to draw on. Little research had been conducted on disabled people in professional occupations generally, let alone law, suggesting to us that disabled people are largely *unexpected* in higher status occupations. This is reflected in broader social and employment policy, which has concentrated on the entry of disabled people into 'any work' (the all work test), often meaning low skilled and low paid jobs, instead of starting from the assumption that the labour market is failing to utilise untapped talent. Media narratives that portray disabled people simultaneously as charity cases and 'victims' or 'scroungers', also sustain negative stereotypes. Consequently, talented, educated and successful disabled people are presented as 'exceptions', 'remarkable', or 'inspirational', as opposed to *expected*. We call on Government and the profession to support disabled people in training and the development of long term careers and to end the current patronising preoccupation with low expectations. For this to happen there needs to be nothing short of a revolution in social attitudes towards disabled people. We hope this report will provide the evidence base in the legal profession for change to begin, although this will require the profession to face difficult questions raised by participants in this research, which span all aspects of the work process from recruitment, training, working practices, promotion, retention and pay.

The profession has made significant investments in equality, diversity and inclusion initiatives, but we found these concentrated on a hierarchy of disadvantage by characteristics – gender, socio-economic background, race and the occasional mention of sexuality and religion. Disabled people feature in fewer initiatives, even where analyses of multiple or intersectional disadvantage is acknowledged. The profession has developed important initiatives on mental health and well-being, but although mental ill-health can be a cause of long term disability and often accompanies disability because it is strongly associated with social exclusion and stigma, it is often only one dimension. Being disabled

can be a complex identity: for some it is concealed or rejected, for others to identify as disabled is a political statement. Disability is much more than a medical diagnosis or a state of health and we argue in this report that this needs to be better understood and appreciated by listening to the views of disabled people themselves. This report provides a platform for the voices of disabled people in the profession to be heard. It is now the responsibility of the profession to hear these voices and take positive action.

### **Research Methods**

The overriding aim of this research was to 'give a voice' to disabled people working in the legal profession in England and Wales. Data thus focuses on the experiences of disabled people in the profession from their perspective. The methodological approach adopted is co-production. The rationale underpinning co-production is that research that is produced in partnership with those it is intended to benefit, not only more accurately reflects the experiences and priorities of that constituency, but is owned by those who helped to create it. Our key partners during this project have been The Lawyers with Disabilities Division of The Law Society (LDD). When we began this research they were the only recognised group within the profession that represented disabled people's interests. However, because the LDD is situated within the The Law Society (TLS) and its purpose is to primarily represent disabled solicitors, we also established a 'Research Reference Group'. This consisted of disabled barristers, pupils, trainees, paralegals and some solicitors and reflected the wider variety of career routes available in the profession.

We began the data gathering process by holding a series of eight focus groups with disabled people in the profession throughout England and Wales. We began with focus groups to ensure that the views of the researchers, themselves disabled but not working within the profession, did not dominate the research agenda. We wanted the concerns identified by disabled people in the profession to be prioritised and to shape the interview questions we asked. We identified a range of recurring themes from focus group debates that formed the basis of a semi-structured interview schedule. 55 interviews were conducted and we attracted people from a range of different occupations and specialisms in law, some employed, self-employed and others in training or recently retired. Interviewees included

paralegals, solicitors, barristers, judges, trainees and those who had entered training but had not secured subsequent employment. This range of interviewees enabled us to plot the different career journeys and aspirations of participants.

Interviews were conducted by phone, skype, or face-to-face, depending on the preference of the interviewee. This flexibility also allowed us to interview over a large geographical area, accommodate impairments and fit around people's busy schedules. Interviews lasted between 1 and 3 hours. For the majority of people we spoke to this was the first opportunity they had had to speak about their personal experiences of being a disabled person in the profession. Many commented that the experience was cathartic. Interviews were digitally recorded, confidential and anonymised. Recordings were transcribed verbatim by a professional transcription service but prior to this, each person was allocated a pseudonym. The rich data from our interviews and the insights they gave us then formed the two surveys: one distributed to paralegals and solicitors, the other at barristers.

The aim of the surveys was to reach as many disabled people in the legal profession as possible. We had achieved a depth of understanding with our interviews, but were aware that some people had not come forward to speak to us and preferred complete anonymity. The Law Society, The Bar Council, Regulators, Lawcare and our Research Reference Group helped distribute surveys. The combined total of completed survey responses we received was 288: of which 241 were solicitors or paralegals and 47 were barristers.

In compiling this report we draw on both qualitative and quantitative data. Qualitative, mainly interview data, is presented first so that the voices of disabled people in the profession shape the dialogue and structure. Direct quotations from participants provide insights into the lived experiences of disabled people and the day-to-day challenges they face. This is difficult to achieve with other types of data. Semi-structured interviews also enabled researchers to explore topics that we may not have identified as important and we were happy to be taken in the direction that interviewees felt was important to them. This is an under-researched area, so established literature was virtually non-existent and we had few preconceptions. In this sense co-production was an excellent tool and able to influence priorities. Partnership with disabled people in the profession was, therefore, vital.

We present the quantitative survey data after the qualitative interview data. This gives breadth to the findings. The qualitative and quantitative data is combined in the 'Summary of Findings' presented in the next section of this report. Some open-ended questions were included in the survey and where relevant, we have used these to provide further illustrations. Given the comprehensive evidence base that has been amassed over more than two years of data gathering, it is inevitable that not all data will appear in this report. Our intention is to undertake further analysis, which will form the basis of additional practitioner and academic publications.

This research was conducted in compliance with the research ethics policies and procedures of Cardiff University. Research ethics approval was granted to each part of the data collection by Cardiff Business School's Research Ethics Committee. All research was conducted in a manner that ensured the anonymity and confidentiality of participants and with their informed consent.

## **Executive Summary of Key Findings**

### **A) Disability, Background & Career Aspirations**

For those disabled in childhood, positive experiences of parenting and schooling were significant in developing self-advocacy skills and confidence: indicators for success in later career stages. Research also identified a sub-group of participants we term ‘childhood litigants’, who had contact with the legal profession through personal injury or medical negligence. This opened up career enhancing opportunities e.g. work experience/access to networks in law and, in some instances, financial resources. Disabled interviewees also reported a largely positive experience in terms of accessibility and adjustments at University, which many referred to as providing a useful ‘benchmark’ for employers.

### **B) Securing Training and Employment: The Application and Recruitment Process**

66% of barristers and 59% of solicitors and paralegals we surveyed told us that they were disabled when they started their training. However, only 1 barrister and 8.5% of solicitors/paralegals were confident to disclose this when they made their application. We found those who identified as disabled/having a long-term medical condition at the point of application, were most disadvantaged when applying for training or employment: short-term work placements appeared to mitigate some of this disadvantage. However, while barristers were largely satisfied with the accessibility of the pupillage gateway, a significant finding was that only 9.7% of disabled solicitors and paralegals reported a positive and supportive response when using legal recruitment agencies. This suggests contracting-out of recruitment may be preventing disabled people even entering the profession and undermines Diversity & Inclusion (D&I) work within it. In both interviews and surveys, limited opportunities to request basic reasonable adjustments at application and recruitment stages, were cited as key obstacles and few were willing to initiate such a request, for fear of discrimination. Those that did request, reported mixed experiences: a combination of our qualitative and quantitative data suggests these were largely negative.

An important consideration for many disabled applicants was how accessible potential employers were. Addressing accessibility should not just involve access for wheelchair users,

but consideration needs to be given to a range of physical, sensory or learning impairments. When asked how easy it was to find out about the accessibility of a prospective trainer/employer, only 0.9% of solicitors/paralegals surveyed found it 'very easy' and 6.9% 'fairly easy', with 60% expressing concern that inaccessible working environments limited their opportunities. The latter comparable figure for barristers was 50%. The move towards on-line application processes in recruitment and training was raised as a particular concern by some disabled participants and there were particular fears about the implications of the new Solicitors Qualifying Examination (SQE).

### **C) Career Paths and Progression**

Findings suggest career paths in the legal profession can be more precarious and unpredictable for disabled people because of barriers including accessibility, location of premises, rigid working practices, health-related career interruptions, expectations of physical networking, unwillingness to facilitate adjustments. Some areas of practice were cited as more accessible than others, both physically and attitudinally (see full report). Interpretations of what constitutes 'essential criteria' for a job role varied by firm, chambers, or area of law being practised and was sometimes based on taken-for-granted or historical precedents. We found exclusion of disabled people was not always intentional, but routinely accepted in relation to behavioural codes, rituals and stereotypical expectations. These were common barriers at the Bar, though the amount of emphasis placed on physical networking as a career progression activity, which can exclude some disabled people, was identified as important across the profession. The report also highlights what we call 'misplaced paternalism': where senior colleagues can make assumptions that underestimate disabled people's abilities and aspirations and deny them opportunities that would advance their career, with the seemingly good (but misplaced) intention of 'protecting them'.

Our two surveys (solicitors/paralegals and barristers) asked how many respondents had impairments that were visible or non-visible. We made this distinction because we are aware that identifiable disabled people are subject to negative social attitudes and, if the choice is available, some people choose to conceal rather than declare they are disabled for

fear of discrimination. Interestingly, over 90% of respondents surveyed reported having a non-visible impairment: 70% exclusively reported a non-visible impairment and an additional 20% identified as disabled people with both visible and non-visible impairments. However, only 50 - 60% said they disclosed their non-visible impairment when applying for training and jobs/tenancy and, even in cases where an impairment was visible, the majority chose to conceal the non-visible impairment. This suggests many who should be receiving workplace adjustments are not requesting them, or are only receiving partial adjustments and are unable, therefore, to realise their full potential. Even in anonymous equality monitoring surveys we found among solicitors/paralegals only 60% declare they are disabled and the figure is 55% for barristers, suggesting the presence of disabled people in the profession is numerically greater than recorded by regulators and professional associations. Fear of stigma, ill-treatment, or discrimination, are the main reasons people said they chose to conceal they were disabled. Of those that have requested adjustments, over 80% of respondents reported the process caused stress and anxiety. We also found that disabled people were reluctant to move to another role or organisation for promotion because they feared losing agreed adjustments. This is important, as it suggests disabled people are failing to advance, not because of their talents, but because the anticipation of discrimination is limiting their progression. Our full report provides examples that suggest such 'fears' are not unfounded.

#### **D) Disability & Working Practices**

Reforms to working practices in the profession have largely been driven by considerations of gender rather than disability. Where increased flexible and remote working has become more accessible to other groups (often women) this has benefited some disabled people, although we found availability is uneven and often dependent upon seniority. There can also be disadvantages to being expected to work flexibly. In our survey of solicitors and paralegals 85% reported pain and fatigue associated with their impairment: managing unpredictable working hours, in different locations, or being expected to work at short notice can, therefore, be difficult. Some working practices were established at a time when few disabled people worked in the profession. However, disabled people frequently reported an organisational reluctance to adapt, reform, or address exclusionary practices and an unwillingness to listen to suggested practical adjustments based on their experiences. In organisations where a disabled person occupied a senior position, or an

organisation exhibited 'high trust' relationships between staff, it was more likely that suggestions from disabled people about adjustments and working environments were welcomed. However, we found limited knowledge of the range of adjustments and equipment available on the market, because of the under-utilisation of experienced providers such as Access to Work.

The widespread continued use of billable hours as a measure of performance across the profession disadvantages many disabled people. Where billable hours had been totally replaced, or used as a threshold for a bonus rather than a hard target, we found evidence that disabled people found it easier to request and secure appropriate adjustments. In a high discretion occupation, quantifying productivity using billable hours appears to undervalue the quality of the service relationship with clients. Further analysis would be required to establish the contribution of different systems to an anticipated disability pay gap in the profession. In some organisations a specific partner or partners had responsibility for work allocation: in such instances there appeared to be a much greater potential and awareness of differences in working practices and a greater possibility of facilitating reasonable adjustments.

Access concerns in places of work and the timing and scheduling of work and attendance in external working environments were problems highlighted particularly by disabled barristers, but also by other disabled legal professionals practicing advocacy. Findings suggest courts were better equipped to facilitate adjustments for disabled clients or litigants, but that there was insufficient anticipation that legal representatives themselves might be disabled and require reasonable adjustments.

### **E) The Role of Key Personnel and Workplace Adjustments**

Findings suggest immediate line managers or supervisors play a pivotal role in the reasonable adjustment process, in the management of sickness absence, performance management and promotion. However, we found the quality of the relationship between line managers/supervisors and disabled employees was often too dependent upon 'good will', 'luck' or personality, rather than a good understanding and professional training.



The majority of the senior disabled research participants, if the choice was available to them, chose to conceal their impairment or medical condition for some of their career. This even applied in cases of significant hearing and sight loss. Ill-treatment or fear of discrimination associated with disability did not always decline with seniority, which contradicts what is often commonly assumed. The report refers to adjustments requested by successful and profitable senior staff that were either denied or only secured with difficulties and ill-will. Because identifiable senior disabled people are numerically few, the profession lacks established precedents for making adjustments to senior roles, which means that, without intervention, this situation will persist.

Interestingly, we found a mixed response to questions we asked about the role of HR departments and diversity professionals (where they were present). There was a general feeling that HR had paid less attention to disability in their D&I portfolio and targeted initiatives were less well developed. HR was, moreover, often regarded as the last place to go to adjudicate a conflict, rather than to facilitate an action. The question 'whose interests do HR serve?' was frequently posed and many had concluded that it was their employers. We found HR activities related to disabled employees primarily described as ensuring the organisation was minimally legally 'compliant'. An absence of institutional knowledge and practical experience of dealing with disabled staff was frequently referred to.

#### **F) Ill-treatment, bullying and discrimination**

Findings indicate a significant proportion of disabled people in the legal profession have experienced forms of ill-treatment, bullying, or discrimination, the majority of which were associated with their disability. Our survey of solicitors and paralegals found 60% had experienced ill-treatment in the workplace and of these 80% believed it was related to disability. Among barristers 45% reported having experienced ill-treatment and 71% of these believed this was related to disability. Common experiences included ridiculing or demeaning language towards them (40% solicitors/paralegals; 60% barristers), exclusion or victimisation (47% solicitors/paralegals) with over 53% of solicitors and paralegals classifying their experiences as discrimination and 35% of barristers. The most significant ill-treatment related to 'poor attitudes/lack of understanding towards an impairment or health

condition', with a significant figure of over 80% of all groups surveyed reporting having experienced this behaviour. We found the psycho-emotional effects of bullying had led people to seek psychiatric support and counselling and seriously affected mental well-being. Some left promising careers as a consequence, others continued with determination but often at great personal cost, while the associated stress caused relapses in existing illnesses, precipitated new ones, or in some cases ended the ability to work completely. Those we spoke to with more than one protected characteristic, commonly reported experiencing multiple discrimination, usually related to their ethnicity or gender. Some within this group went to huge lengths to conceal their status as a disabled person (where possible) to avoid a double or triple disadvantage. The consequence of concealment is that access to adjustments that would make their job easier and improve performance were, essentially, forfeited. Examples of ill-treatment that appear in our report suggest the legal profession has a long way to go to address poor behaviour and those on the receiving end of the ill-treatment need to feel confident that they can report it. Among solicitors and paralegals 37% said they "never" reported ill-treatment, among barristers surveyed the figure was 54%.

### **G) The Role of Disabled People's Networks and Organisations**

The disability rights movement has a long-established saying: "nothing about us without us". It acknowledges that disabled people and their representative organisations must be at the centre of any change for it to be effective. Feeling disabled may be a very individual experience, but our data demonstrates that it is usually possible to identify common barriers. Reasonable adjustments focus on the individual and use a medical model of disability, one that dominates in law and social policy. However, we found that this individualisation can 'privatise' the experience of disability. Many people who joined a network or group run by disabled people spoke about sharing their experiences and finding out from others what works. It is important to identify these shared experiences, which can be physical, attitudinal, cultural, or which may be based on common misconceptions and stereotypes. By doing so, it is then possible to integrate them into policy and practice and ultimately depersonalise them. Solicitors appeared to be best served by networks organised

by disabled people with experience of working in the profession; disabled barristers reported the least support.

Respondents to our surveys, when asked about what contributed to positive experiences at work, cited “visibility of other disabled people in the working environment” in their top four. The “presence of diversity networks” ranked lower; nonetheless, more than half of those surveyed did not have access to a disability network because either there were too few disabled people working in their organisation to form a work-based network, or they were located outside of London. We found, when asked for positive suggestions, reducing isolation and sharing experiences of disability and work in the legal profession, featured highly. Many people spoke about an absence of organisational knowledge and expertise on disability. Given the variety of work settings and their differences in size within the legal profession, it was expected that organisational experience of disability would vary. Our findings suggest, however, even in those organisations with a dedicated D&I presence, disabled people’s networks were underdeveloped and had less organisational support and presence.

## **Findings: Qualitative Data**

### **1. The significance of formative experiences**

In focus group discussions, formative experiences were identified as significant to career choice, particularly for those who had experienced disability in childhood. Confidential interviews enabled us to explore the reasons why in greater depth and we found career aspirations were shaped by key people at school, by parental attitudes to disability and by access to resources (financial and social). Some interviewees referred to positive ‘can do’ attitudes in childhood that were significant enablers. A number of our interviewees had also been involved in childhood personal injury or medical negligence cases that brought them into contact with the legal profession and subsequently inspired them to pursue a career in law. These participants cited ‘self-advocacy’ and ‘confidence’ as important skills that had been learnt from such experiences.

Childhood contact with legal professionals had provided a source of informal careers advice and important work experience opportunities for some: reinforcing evidence from other studies that have established a positive link between background and personal contacts and access to the legal profession (see Bridge Group, 2018; Friedman and Laurison, 2019). One interviewee illustrated how important these contacts were:

“I became paralysed through a medical negligence situation, um, so I had solicitors acting for me when I was between the ages of 11 and 15. So my case concluded... so I was 16 years old.... basically the story probably went along the lines of my dad was terrified of the idea of me going off and doing work experience at a local high street firm, um, and rang up *X solicitor*, and *X solicitor* said “send her up my way””.

In this instance the solicitor happened to be a well-respected figure in their field and the work experience became influential in this interviewee’s choice of future career:

“I just remember sitting in a big meeting with the QCs; there was a lot of media interest in this particular case, and the family were understandably very anxious about what was going to happen, um, and it was all about client care, um, and I just thought actually this is something that I would be good at and I’m interested in, and then I stopped wanting to be an Air Hostess....”

The primary focus of our research is disability rather than socio-economic background, thus the extent to which 'childhood litigants' had parents with sufficient private resources to pursue legal action was not determined. However, the latest Social Mobility Commission 'State of the Nation' (April, 2019) report, based on an extensive analysis of Office for National Statistics data found that, not only were "those from better off backgrounds... almost 80 per cent more likely to be in a professional job than their working class peers", but disabled people experience a double disadvantage because "Just 21 per cent of people with disabilities from working class backgrounds enter the highest occupations (Social Mobility Commission Summary: 3). For the first time the Commission explored the intersecting disadvantages stemming from class, gender, ethnicity and disability and the impact of these characteristics on employment and pay and concluded that:

"All groups face challenges, particularly disabled people. These challenges are even greater for those from all groups who come from a working class background. Women, people with disabilities and minority ethnic groups from working class backgrounds generally experience multiple disadvantages in occupational outcomes. (Social Mobility Commission: 2019, 9-10).

The outcome of childhood litigation, if positive, can provide access to valuable financial resources to facilitate independent living. In the absence of inherited wealth and adequate state funding to meet disabled people's needs, we found instances where awards from legal action funded expensive equipment, adaptations and personal assistants: thus mitigating common physical barriers. Some interviews took place in the homes of interviewees where we observed the benefits to study and employment of such resources. The significance and expense of adaptations, equipment and services (e.g. transport or taxis) should not be overlooked. Disabled people often referred in interviews and discussions to the taken-for-granted aspects of working – getting to work, parking, or socialising, as some of the most difficult and tiring aspects of a working day.

Where interviewees were properly facilitated practically and by employers, managers and colleagues, we encountered examples of people who would stereotypically be regarded as having substantial 'functional limitations' overcoming these in quite straightforward ways. What was important in such cases was not the extent of the so-called 'functional limitation', but the availability of appropriate aids and the attitudes of those around them, reinforcing

social model approaches to disability. The case of 'Derek' who acquired impairments after an accident but before university, illustrates this well. He employs two 24 hour carers, has a "very supportive family" and a range of sophisticated technology that had been adapted for his specific purposes.

While studying at University he identified firms that he thought might facilitate a vacation placement, based on "location", "culture" and "if the people were friendly and approachable". He looked at the awards that the company had won, in particular its commitment to increasing diversity. He also looked at trainee retention rates: "So I just think if its 90%, they must be getting something right." He secured 3 interviews and said of the firm he eventually chose:

"they've been really happy to have that sort of conversations about how they make things work.... they've all been great. And then, with having my two carers and...stuff, they've been really good on that as well."

During his vacation placement the firm didn't change his hours of work. However, in discussions about his training contract he was told they were fine about him working four days a week. Derek's experience to date has been extremely positive, but he has had extensive access to appropriate aids and resources. Reflecting on his own experiences he also wondered if a significant factor in enabling open and positive discussions was because of the visibility of his impairment: "such a big thing that you just can't escape it".

We began our interviews by asking participants 'what motivated you to pursue a career in the legal profession?' An interest in justice, or prior knowledge of someone already in the profession - parents, relatives, school, a professional contact or work experience - were all important. This suggests social background and professional contacts are significant career enhancers, a finding echoed in two recent reports on the influence of socio-economic background on high status employment. A report by The Bridge Group (2018:10), for example, found a strong correlation between socio-economic background, school attainment, entry into a "selective university" and access to "higher status professional networks". This is reinforced further in research by Friedman and Laurison (2019) that estimates that the likelihood of becoming a lawyer is 17 times higher if one of your parents has been in the profession.

The importance of what sociologists refer to as social and relational capital, should not be under-estimated in traditional professions. Social capital as a currency includes taken-for-granted and difficult to quantify aspects of 'social fit': many characteristics of which are unquestioned and often stereotypically biased towards upper- and middle-class male, white, heterosexual, non-disabled candidates. Relational capital, by contrast, refers to the social networks or relationships that one potentially has access to.

Both these studies identified the type of University attended as playing an important role in furthering advantageous social networks and job opportunities. Our own findings suggest that for most disabled people the type of university attended was less important, instead the extent to which university was a positive and accessible experience was more significant. University was perceived as a largely positive environment for our disabled interviewees. Significantly, even where someone reported a largely negative experience in their training or working career, we found most recounted a positive experience of university. Physical access, the implementation of reasonable adjustments, particularly in relation to assessments, and positive careers advice, were all factors often referred to as the 'benchmark' against which interviewees judged and contrasted their post university experiences in the profession.

## **2. Securing training and employment**

Securing training for the majority of those we interviewed had been a challenge, regardless of whether they had been disabled before or after entering the profession. A proportion of our interviewees, despite multiple attempts, had been unable to secure training or had completed training but could not secure employment. These were people who had an impairment, a long-term medical condition, or identified as disabled at the point of application. All appreciated that law was a very competitive career choice and we did not speak to anyone who did not understand this. A sub-group that did appear to find it relatively straightforward to secure a training contract and then employment, were childhood litigants: though interestingly, most were concentrated in personal injury or medical negligence. In the words of one interviewee, in this sector having an impairment,

particularly one that is visible can provide disabled people with a “distinct USP” (unique selling point). This participant referred us to her firm’s website, which clearly states she is paralysed, which she admits is there to help create empathy with clients. Her own view is that if this helps to secure a client and ensure that they are comfortable, she is happy for this to happen. She also admitted to dropping into telephone conversations that she is a wheelchair user, where she felt this was appropriate:

“I’m completely fine about it, although I think my employers will probably cringe if I say it like this: we use it as a marketing tool...they like to call it a USP”

Adding, she has to be careful not to make a:

“person who has a lesser injury feel inferior or that they are making a nuisance of themselves”.

The above experience even in Personal Injury law was far from universal. For example, we met at least one person who believed that their status as a disabled person could have benefitted their job role but their employer refused to acknowledge this and other interviewees who were keen to stress that the so called ‘soft’ skills it is assumed disabled people have, could only take them so far in their career. ‘Theo’ for example, whose impairment was visible and who worked in personal injury law believed that at the end of the day whoever you are, employers will prioritise the ability of a person to be a good lawyer over everything else:

“Once you get into the kind of corporate, er, area... even, I would suggest, in the PI clinical negligence, those skills are secondary. I think ... all of my employers have looked at me and gone, “Can he do the job? Does he understand law? Can he bill... if we’re going to pay him 50 grand a year, is he going to bill 150 grand a year? Is he going to bill... treble his salary to justify him being here?””

We also encountered some interviewees’ that felt so called ‘soft’ or ‘people’ skills were often stereotypically attributed to disabled people inappropriately and others that believed some firms “used” disabled people as “poster boys or girls” to market services or portray a certain image of diversity for marketing purposes. While drawing attention to the fact that a sub-group of our interviewees are based in Personal Injury and medical negligence legal practice we also caution against seeing these as stereotypically ‘suitable’ area of law for disabled people.



Demonstrating work experience in a legal setting prior to applying for training is beneficial for all applicants, but it can be particularly important for a disabled person to challenge preconceptions about their abilities. We were told of examples where short term placements had been particularly advantageous, allowing employers, as one interviewee put it “take a risk” with a disabled person, which could lead to a training contract, a positive reference, or longer term employment. The case of ‘William’ is illustrative here. He spoke of law firms being characteristically “risk averse” and the value of being able to point to work experience on a CV and providing examples of adjustments being successfully implemented:

“And I think that lots of firms would think unless we can accommodate this person from day one we are potentially not making a reasonable adjustment, rather than saying, well, we've never had anyone with your impairment before, we want to offer you the job, we're not 100% sure that we've got everything in place for the day you start but please, you know, let's keep an ongoing dialogue and see if we can get to a place where it is... you know, a more enabling environment.”

In his current role ‘William’ has actively engaged in discussions to create a more inclusive application process and provide a wider range of opportunities for students to gain work experience. Gaining work experience and shadowing a barrister was, he believed, vital to his own success in securing a pupillage:

“She, you know, let me follow her for two years, started becoming paid. As soon as I had a bit of that on my CV I pretty much got five mini-pupillages off the back of it. Then, as soon as I've got five mini-pupillages two years working in criminal law, when I'm applying for, you know, pupillage positions, before I'd even done by BPTC, I got four interviews.”

A significant point that was raised by people who were disabled at the point of application was the absence of part-time or flexible training contracts and employment opportunities. This sub-group found few flexible training opportunities, other than the CILEx route, and some felt effectively excluded from other routes. For example, ‘Imogen’ chose the CILEx route because it was flexible enough to allow her to manage periods of ill health, when she was unable to study at all, and to study alongside having a child and working full time:

“the advantage of it was I dropped it, I picked it up, I dropped it, I picked it up.”

Some interviewees referred to proposals to introduce a new Solicitors Qualifying Examination (SQE) for training solicitors, which has the stated objective of being more

inclusive. While some welcomed this and hoped it might also presage the development of more remote and part-time working, others were more sceptical. Some questioned how robust the new training would be and the level of competence as a practitioner that would result. Others felt that considerations of flexibility and accessibility had not been properly factored in because disabled people were not sufficiently consulted or involved in the set up process.

When applying for training many also reported limited opportunities to request reasonable adjustments. Those with non-visible impairments believed that in most circumstances it would have placed them at a disadvantage to request an adjustment, so most did not.

When 'Alice' was applying for pupillage she was advised not to disclose her hearing loss and to keep her hearing aids covered by her hair. During an interview at a prestigious chambers, her battery failed.

“It was just awful and I had to admit that I'd got a hearing problem, but I didn't just say, give me a minute and I'll just change the battery. I struggled on.”

During pupillage, Alice “got into trouble” for not carrying out the instructions of her pupil master because he'd spoken to her when her back was turned and she had not been aware.

'Carol', was one interviewee who felt she had experienced disadvantage during the selection and recruitment processes because of her dyslexia and dyscalculia and the large-scale use of psychometric testing by law firms. When she began applying for training she had gone to organisations like Employability and attempted to negotiate the removal of psychometric testing completely, but with little success. Originally refused employment at a firm where she was turned down on the maths test, she was later hired as a paralegal, but put in a billing role. It was left to her to inform her line manager of her impairments and when she did, her line manager responded negatively. Eventually she turned to HR for help, who admitted that there had been a communication problem and tried to resolve the situation with her manager.

"But it was definitely the attitude that particular manager... It was really awkward to be honest. That he should start sending me e-mails going can you spell? And there would be minor typos in them".

Even where impairments were visible and requests for adjustments could not be avoided, the effort to get them, for most interviewees was significant and stressful. As one interviewee with a sight impairment put it:

"I think sometimes you can exhaust yourself, and you can spend the first few months of your job ...just trying to get the level playing field in place whilst they're trying to also measure your effectiveness".

Gaps on a CV due to illness can be problematic for disabled applicants and after completing his LPC 'Ben', despite having a reasonable amount of work experience, found he was being turned down for training contracts because his degree was a few years old. He decided to return to university to complete a Masters to address the problem, whilst also working and doing voluntary work. Although able to access more support through university, including mentoring, he did, nonetheless, feel he had been disadvantaged because of his disability and frustrated that his situation had not elicited an appropriate reasonable adjustment or detailed feedback:

"it is heart breaking and it's really demotivating and you get... it's tiring and you go for an interview and you're not sure, or, you know, as soon as you go for the interview, you're not sure whether they're going to hire you... they're not going to hire you, because of your... discrimination, or because you've had a gap, or because you don't have the skills, or you don't have the experiences. And when you ask for feedback, they just say, oh, yeah, it's based on experience, um, rather than anything else, so you don't... you don't know where your gap... your weaknesses are, what your strengths are and you can't work on those weaknesses. So it is... it's a real, real challenge..."

### **3. Choice of career path**

In the course of our research it became apparent that career paths in law are not always straightforward or predictable and we interviewed a wide variety of people who had taken different routes or changed their original expected route. We wanted to capture changes in career paths or aspirations and identify whether such changes were disability-related or not. The Bar was a path that some had considered, but for a variety of reasons, had rejected. A

number of interviewees cited disability related barriers but a minority had persisted down this chosen route. 'Astrid' had been deterred specifically for disability-related reasons:

"I had the aspiration to be a barrister. I thought that would be good, then I found out, okay, a lot of the chambers were inaccessible. They weren't very open to people with my kind of disability. I had a physical mobility issue, which is not in a wheelchair, they were a lot more amenable to someone in a wheelchair but with mine, it's different" (Astrid, qualified solicitor).

Whereas 'Jessica', despite feeling she lacked both social and relational capital, persisted with a pupillage until essentially forced to abandon it:

"I am not necessarily from a hugely privileged background. I went to a bad state school that closed and so I didn't really know, kind of, barristers and things like that. My parents were very, like, oh, I don't think that's a good idea..." ... "I think that's kind of an intersectionality thing of not having that kind of innate confidence to pretend you're excellent all the time built into me." (Jessica, unable to complete pupillage for disability related reasons).

'Jessica' referred to the influence of peers who had received a 'better' education than her, but who, nonetheless, encouraged her. She had gained a 1<sup>st</sup> class degree and originally completed a GDL but decided on the Bar, though when she became increasingly unwell, because of limited financial resources and an absence of advice, she didn't complete her BPTC. She recalled being told by one barrister:

"I wasn't very well and I was getting iller and I was hiding it and I remember the woman just saying to me in conversation 'you can never have a day off sick as a barrister'. I've never had one. And me being really, really sick and getting worse and just going home and not telling them... so people have kind of accidentally discouraged me without realising it."

None of our interviewees were under any illusion that the Bar was a highly competitive choice, but believed it wasn't beyond the profession to address many of the disability-related obstacles encountered. Chris, an aspiring barrister, who has been told on numerous occasions he was unsuitable because of his speech impairment told us:

"that doesn't mean it shakes my belief that I can be a barrister. I'm sure that my practice might be a bit different to other barristers but I do know of barristers who spend very little time in court. And if communication is a barrier that can't be overcome, I think it can, but if I don't or if the Bar does not change to help me overcome those areas I know I can build a practice where I'm very rarely in court..."

A number of people referred to criteria being used to evaluate the competence of a trainee or during interview for a pupillage and a reluctance to make what were often routine and

common adjustments. Interpretations about what constituted a 'reasonable' adjustment, or 'essential' criteria and whether these judgements were discriminatory appeared to be problematic. Some negative experiences suggested that requests for adjustments had been rejected by chambers because they were viewed as giving the disabled candidate an 'unfair advantage', or 'impossible to accommodate' within the criteria currently set by the profession. This suggests that so-called 'essential criteria' needs to be regularly re-examined and that the profession needs to ask itself: in what respects does criteria serve to exclude or place a disabled person at a substantial disadvantage for the sake of image, tradition, ignorance or convenience and if it is just a poverty of imagination that is stopping them recruiting a disabled person?

Many referred to the difficulties involved in challenging criteria in a profession that has historically, counted few disabled people among its ranks. Unintentional exclusion may simply be by virtue of a group's prior absence. Disabled people represent a numerical minority in the profession and, therefore, taken-for-granted practices, criteria and physical spaces that have the effect (intentional or otherwise), of excluding or disadvantaging disabled people, may not be regularly scrutinised. Proactive audits or positive action is required to redress past imbalances, though it is common that positive action is resisted on unsubstantiated grounds that this will somehow 'dilute' existing 'standards' many of which were originally 'justified' on weak grounds, such as tradition. A report by the much missed Disability Rights Commission in 2007, the outcome of a statutory investigation of teaching, social work and health related professions, reported the presence of discriminatory attitudes, policies and practices from a routine conflation of professional competence with health/illness, to justify the exclusion of disabled people. This can often be an unconscious process, though in this case findings from the report were used to spearhead the abolition of pre-employment health questionnaires.

Many of the disabled people we talked to had successfully gained multiple qualifications and experience to further their careers as a consequence of meeting barriers from pursuing a first, second, and sometimes third choice route into the profession. Despite being well qualified, however, they continued to be excluded. When examining the influence of socio-

economic background on careers both Friedman and Laurison (2020) and The Bridge Group (2018) questioned whether merit was the key determinant of success in law. Our findings, however, suggest background alone may only provide part of the answer. Many well qualified disabled junior legal professionals found it difficult to secure a first paid position, finding for disability-related reasons barriers to working in their chosen area, most commonly because of inaccessible premises, or employer reluctance to make reasonable adjustments. This contrasted with someone who had acquired an impairment later in their career. In addition, some interviewees recounted instances of ill-treatment (see further below), but were unsure if this was a consequence of their disability or another protected characteristic.

Those disabled people who had secured a training contract or employment having declared they were disabled, also reported their careers being stymied by being placed in roles that they were either over-qualified or underemployed to do, with few career prospects. In this respect while we agree with Friedman and Laurison's (2020) observation that the seemingly objective criteria of 'merit' is often less important in the profession than other factors such as self-presentation and arbitrary behavioural codes, we disagree that these are always the consequence of what they refer to as 'privilege' or socio-economic background. Irrespective of social background we found disabled people confronting barriers based on ableist expectations, which by default, meant they did not 'belong' or 'fit' in the profession. This situation is compounded by the fact that disabled people rarely encounter key decision-makers in the profession in their own image.

#### **4. Application and recruitment**

At application and recruitment stages of training and employment disabled people reported a number of problems, which tended to vary according to whether their impairment was visible or non-visible. 66% of barristers and 59% of solicitors and paralegals we surveyed told us that they were disabled when they started their training. However, only 1 barrister and 8.5% of solicitors/paralegals were confident to disclose this when they made their application. Most interviewees had concluded that declaring that they were a disabled person prior to interview would disadvantage them, indicating that the profession has a

long way to go to persuade people that they will not be discriminated against if they exercise their right to request an adjustment. Of those we interviewed with visible impairments, the majority disclosed at the written application stage because they accepted that their impairment would become obvious at interview. However, deciding how much to disclose was problematic for some. 'Geraldine' for example, would disclose her impairment but only provide minimum information but then at interview she said:

"I sort of noticed then when I went for the interviews a lot of them were like, oh, have you had time off ill? How much sick leave have you had? Have you had this, have you had that?"

A small number of people told us they chose to conceal their disability on application for fear that they would not secure an interview, but then had largely negative experiences when presenting for interview, at which point it became apparent they were disabled. Some referred to the eyes of the interview panel 'glazing over' once they entered the room, others felt at the application stage they were being 'screened out' (see 5.1).

The reluctance of those with non-visible impairments to declare raises the question of whether quotas that ensure some training contracts or jobs are reserved for disabled candidates, should be introduced. Or, as is the case with a number of pupillages available at the Bar, funding or training places should be specifically available to disabled applicants, to go some way towards levelling what is currently a very uneven playing field. One interviewee referred to the positive impact of provisions available specifically for disabled candidates at the bar:

"some inns have a scholarship for disabled people and that's cool, makes me feel wanted and welcome and I'm getting [extra] support... they might put me in there because it shows diversity and I'm fine with that. I know... I know I can do the job".

We only came across one firm in the City of London that had developed an application track for disabled candidates seeking a training contract. This had emerged from experiences of targeting recruitment of disabled applicants to work experience and vacation schemes. We are also aware that The Law Society, through the LDD, recruit firms to offer placements and work experience to disabled candidates, though numbers of participating firms remain relatively low.

An important consideration for many disabled applicants was how accessible potential employers were. Addressing accessibility should not just involve access for wheelchair users, but consideration needs to be given to a range of physical, sensory or learning impairments. When asked how easy it was to find out about the accessibility of a prospective trainer/employer, only 0.9% of solicitors/paralegals surveyed found it 'very easy' and 6.9% 'fairly easy', with 60% expressing concern that inaccessible working environments limited their opportunities. The latter comparable figure for barristers was 50%. The move towards on-line application processes in recruitment and training was raised as a particular concern by some disabled participants and there were particular fears about the implications of the new Solicitors Qualifying Examination (SQE).

Interviewees were equally split for and against when asked if they supported positive action or discrimination and we examine these views in greater depth later. However, there was universal agreement that something needed to change in the profession. References were made to high profile campaigns on gender inequality in the profession, but there was also despondency at the slow pace of change even in an area with significant traction. It was felt that disability was a much harder 'sell' to employers. Diversity initiatives were perceived as limited by the influence of the so-called 'business case' for equal opportunities, which were not necessarily concerned with furthering social justice. The two objectives are often viewed as incompatible, yet in a profession such as law, a strong case could easily be made for social justice as well as lost talent to be the basis of a good business case.

#### ***4.1 Recruitment Agencies***

A key finding from interviews, which we were able to probe further using a larger sample when issuing our survey, were reports of negative experiences when dealing with recruitment agencies. Only 9.7% of disabled solicitors and paralegals surveyed reported a positive and supportive response when using legal recruitment agencies. This suggests contracting-out of recruitment may be preventing disabled people even entering the profession and undermines Diversity & Inclusion (D&I) work within it. 'Stephen', for example, told us that:



“Some of them aren’t interested in helping whatsoever. There are the ones that literally just use you....and if they can’t sell you easily then they don’t want to know and they are some of the big names as well. ... Obviously, you get the ones who don’t even bother replying to you and they’ll phone you when they want something but, when you want something, they’re not interested. Literally I’ve found three that I trust and that are good.”

Several interviewed reported how Agencies were reluctant to send them to job interviews once they declared they were disabled and when they did, they often failed to tell the employer that reasonable adjustments had been requested. ‘Astrid’ recalled turning up for interviews believing that her request for extra time had been conveyed, only to find employers were not aware of it. Basic requests for reasonable adjustments not being conveyed to employers were cited by other interviewees. Negative experiences at recruitment meant a number expressed scepticism about the inclusivity of employers:

“whenever they say, ‘We are inclusive, we’re investors in people,’ I say...okay, really how inclusive are you? I make it a point of duty to go and visit certain places if I’m going to interview. I’ll go and visit a few days beforehand just to see their staff, how they are, etc. and I usually find they hardly have anyone like me or with any type of visible disabilities” (Astrid).

Given these negative experiences it was not surprising that we found a reluctance to disclose to recruitment agencies. ‘Kathy’, for example, spoke about her “desperation to secure a first job”:

“I didn’t think they’d hire me if I told them [I was disabled], which was probably right. So the way I’ve worked it is... and then the one after that I waited until they offered me the job and then I told them because I still... I’ve heard other lawyers say that as well, that you need to get as far down that recruitment process as possible before telling them because then they’re a bit more... they want you by then”

Those that did disclose and request adjustments reported mixed experiences: a combination of our qualitative and quantitative data suggests these were largely negative. ‘Nina’, a wheelchair user found that 95% of the jobs that she was interested in applying for were advertised by recruitment agencies, however, she had never been asked if she was disabled: the assumption being that she was not. As a consequence, she had been proactive and always asked about accessibility. She was, nonetheless, “suspicious” that once she did ask, some agencies “screened her out” of job opportunities:

“If asked, some would find out if a role was in a building that was accessible, some wouldn’t or would say the role is now taken. Never sure if quick turnaround was the truth”.

Interviewees reported that agencies usually held little information about the accessibility or location of a job. 'Nina' had been given the wrong information about the location of a job (the firm had more than one office), which then impacted on access when she arrived, only to discover that she couldn't get through the door or that she was stuck in reception.

One interviewee suspected that the attitudes of recruiters towards disabled candidates might vary depending on the field of law being applied for:

"Maybe it's the recruiters I use, but once they see a good candidate, I don't think they really care. Because I think... maybe it might be the field as well. Because commercial property, apparently there's not enough lawyers... To do that. So they just want really good candidates more than who the actual person is."

#### **4.2 Accessibility & Recruitment**

Wheelchair users are an obvious group that require pre-interview information, however, accessibility is a much broader issue and can, for example, include offering information in alternative formats, parking, provision for an assistant to accompany someone. Transparent procedures to request adjustments should, but are currently not, routinely provided. The move towards on-line application processes were also a concern for some disabled people who feared they were, or could be, disadvantaged by them. When asked how easy it was to find out about the accessibility of a prospective trainer/employer, only 0.9% of solicitors/paralegals surveyed found it 'very easy' and 6.9% 'fairly easy', with 60% expressing concern that inaccessible working environments limited their opportunities. The latter comparable figure for barristers was 50%.

The move towards on-line application processes in recruitment and training was raised as a concern by a number of participants. This, in part, has arisen from ongoing debates about the suitability of proposed arrangements for disabled people that will accompany the introduction of the new Solicitors Qualifying Examination (SQE). However, it is also a consequence of emerging research into the way Artificial Intelligence (AI) is used in recruitment and selection processes and problems of bias in relation to disabled people. Emerging evidence suggests AI data sets may be using ableist assumptions and criteria,

which inevitably filter out disabled talent. Metrics and algorithms are often based on 'standard' previously successful candidates and it has been suggested may not be compliant with human rights law (see for example: Marston-Paterson, 2019). The use of technology and practices that utilise such technology need to be scrutinised through equality impact assessments that fully consider disabled people with different impairments.

Interviews also identified disabled people having to undertake time-consuming pre-application research on prospective employers, chambers and premises to determine basic access requirements. Many visited chambers, firms or courts in advance of making an application: such work should not be necessary. Both time consuming and exhausting it is also exclusionary and made some feel like they were 'unwelcome' in the profession. Wheelchair users often rationalised this state of affairs as 'inevitable', though some did express anger and frustration that law firms, chambers and employers generally, were still operating from inaccessible premises. Almost 25 years after the Disability Discrimination Act came into force, equality of opportunity in employment and by implication, access to legal services, continues to be a problem for disabled people in England and Wales.

### **5. Social and Cultural 'Capital' and the role of 'Performance' in the Legal Profession**

As previously discussed, social and cultural capital refers to social advantages or non-educational competencies that are often taken-for-granted and difficult to quantify but are essential for 'fitting-in'. Physical capital (having the right body image) and relational capital (having access to cultural and social networks) are both viewed as fundamental to professionalism (Hayes, 2012). Much has been written about the disadvantages faced by women in the profession because of the influence of these factors (e.g. Sommerlad et al, 2010; Muzio and Tomlinson, 2012), but the implications for disabled people remain under-explored. Image, or looking 'right' and knowing how to present oneself and behave in certain ways - confidence, connections and feeling comfortable with a particular peer group, or in specific social or business setting - are all social signifiers for success. Social capital is most commonly associated with socio-economic background, but our overall impression from our data was being disabled reduces one's social capital. Little consideration is given to

people with quite common impairments, including poor eyesight, hearing, being on the autistic spectrum and mental health difficulties. The assumption is that everyone is part of non-specified 'ideal', which is non-disabled. An 'ideal' that excludes and simultaneously advantages some people over others. Of the senior disabled people we interviewed, which included judges and partners (retired & practicing), most had acquired their impairment during their career, which meant their status often, but not always, secured the adjustments they requested. Even among this relatively 'privileged' group we did, nonetheless, find stigma was an enduring barrier to full disclosure for some, because of the common equation of incompetence with impairment and disability.

What we term the 'performance of law' tends to assume that professionals are non-disabled. This is not only evident in the number of inaccessible work environments that disabled people report they encounter: firms, chambers and court rooms, but is assumed in the rituals that permeate the profession. These include the importance given to informal social interaction in the robing room prior to court appearances, the expectations of networking, a long hours' culture and the woeful absence of procedures that alert the court that an advocate (rather than a defendant), requires reasonable adjustments. Accounts of advocates being carried into wheelchair inaccessible courtrooms and feeling humiliated were relayed to us, but it was often the everyday events that illustrated well the routine experience of feeling excluded:

"I'd love to be able to go to networks and stand in the middle of a room and have a lovely chat with somebody in... in heels drinking a drink. I can't do that so I've had to do things differently. And I've... and I have... I'll be honest, I have fibbed about why I don't want to do it. So instead of saying, actually, I can't do that, I can't stand in a room with a drink and something to eat and talk to people, I've just said I don't want to do them and I don't like doing them." 'Linsey'

Interestingly, even where a disabled person had appropriate social capital as a consequence of socio-economic background or status, the emphasis within the profession on successful performance of social networking still presented challenges that in some instances could not be overcome. Studies of women working in the legal profession highlight the gendered character of assumptions underlying networking and career advancement, particularly to partnership. Yet few considerations are given beyond common dietary requirements to

adjustments required for disabled people. We interviewed at least one person who had become a Partner but had felt compelled to give this up because of the pressures of networking and its effects on their impairment:

“It was always a struggle. And even if I... even if I... in the event, I heard okay and got away with it, as I would describe it, there was still the anxiety leading up to it, which was exhausting, and then there would be the exhaustion after it.”

Another former senior Partner in a medium sized law firm had taken early retirement rather than adapt his role to accommodate his disability. He felt it was “unfair” on his colleagues because he was unable to network effectively in the way he used to:

“It would be difficult to justify maintaining my position as a senior equity partner when I wasn’t realistically able to make the contributions to the practice that the role would have required really.”

A sub-group of interviewees we talked to were legal professionals that revealed they were on the autistic spectrum. They described being very good at the “grunt work” required for the job and some stated they were valued for the detail they could bring to complex tasks. However, when it came to face-to-face client interactions and social networking, usual prerequisites of career advancement, they were substantially disadvantaged. Many had left successful careers believing that if they set up their own businesses they could overcome these problems, only to find that their people skills became even more problematic, as one owner-manager of a law firm explained:

“we autistics haven’t got good people skills..... we just don’t do small talk” (and he describes how things literally) “all fell apart”.

He went on to explain how the Solicitors Regulatory Authority (SRA) had been pivotal in him deciding to take early retirement, because of what he described as his “poor communication skills”. He referred to his difficulties with “officialdom”, and not being able to ‘read’ situations. He worried about how his behaviour would be interpreted and realised that he was misinterpreted, as he feared.

A significant number of other people with a variety of impairments and from different social backgrounds described how the unique ‘performance of law’ disadvantaged them. One recounted how, when visiting chambers, she was told: “We’re not too sure how you would

be able to stand, how you look”. Disabled people with hearing and sensory impairments talked about the sensory overload experienced in networking settings that made no accommodations for them. Wheelchair users and people with mobility difficulties recounted episodes of being wheeled through kitchens and basements to get to a venue, or of being forced to meet clients in car parks. The absence of seating at networking events and the usual practice of offering drinks and nibbles, but not necessarily tables to place these on, were basic oversights that posed huge obstacles to the participation of some people. This is what we mean when we refer to ableist norms permeating the life and performance of the legal profession. So pervasive and accepted are they that they are overlooked.

One interviewee, who we will refer to as ‘Max’ had practiced in small firms for over 30 years and had been a solicitor in criminal law for over 20. Following a stroke he became a wheelchair user and needed to adapt his practice, eventually deciding to return on a consultancy basis. He spoke of the obstacles he faced that he had never previously considered including accepted protocols, but also everyday barriers like kerbs, parking, out of order lifts and access to courts. Robing rooms were suddenly inaccessible and he was excluded from informal social interaction. Despite being forced to get changed in a toilet he was, however, largely positive:

“Judges, the Magistrates, er, other professionals... you know, without exception, there’s no problem at all, and I’ve got treated like anybody else. I’m treated exactly the same as anybody else which is how I would wish it to be. Um, it’s... it’s just actually physically getting into the courts”

In the early days he recalled an incident when he argued with an usher about having to fill out a risk assessment form, however, once in court he said: “I forget about it. You know, it doesn't even cross my mind once I'm in court.” It took him some time to establish a way of working but he had a supportive wife and son and Access to Work provided him with funds for a personal assistant. He also limited his advocacy to a particular geographical area and this enabled him to facilitate access to a wheelchair adapted Crown Court, which hasn’t always worked out:

“I think people do the best with what they've got but it's, um... it's not easy, it takes a lot of planning to actually go in the courts these days”

“I've had one in the last few months where, you know, despite requests that it not be listed there, it was listed there and then when I turned up, um, we... we couldn't get in, um, so I went back to the main Crown Court only to find that they had moved it back into the main Crown Court but not until the afternoon and nobody bothered to tell me.”

In this case the rest of legal team hadn't been told the case had been moved either and blamed him for causing the problem. He also remarked that on one occasion inaccessibility had forced a disabled defendant to sit in the public gallery to have his case heard.

### **6. To conceal or disclose?**

Whether to conceal or to disclose to an employer that you are disabled was a dilemma predominantly faced by interviewees with non-visible impairments. A significant number with visible impairments, however, also had non-visible impairments, many of which they also chose not to disclose. This suggests that given the choice, people generally don't disclose. For the majority, the decision to disclose was a difficult one, despite the fact that the legal right to request reasonable adjustments is dependent upon disclosure and as lawyers, our research participants tended to be more aware of this. Some people told us they disclosed on a 'need to know' basis. One solicitor in a City firm who had been diagnosed with Multiple sclerosis (MS) disclosed to his line manager, HR and partners he worked closely with, but currently doesn't openly identify as disabled. He anticipated that there would be a time in the future when he would but was concerned that being too open might affect his career progression.

“If I'm working in a team or whatever and I need to raise it, I probably just say something more generic like I've got doctor's orders to do X or Y... I find that's fine but I feel like I'm in probably quite a lucky position with the team I've got here. I've worked in other places where I can imagine that actually not working, but within my current team I've not had any issues with that.”

Another interviewee with a sight impairment made the decision not to disclose until reaching a senior position and, did so only after being directly questioned about it or 'outed' during executive training. This participant had also experienced working in both the public and private sectors and had found disclosure to be easier in the former. The competitive culture in private practice was identified as a prime obstacle:

“private practice... is very sort of testosteroney and winner-takes-all... it means that the soft skills and collaboration, and perhaps quieter voices, and diversity... aren't taken into account... there's a lack of recognition that people recruit in their own image”

Most people in training or working at the Bar admitted they consciously concealed their impairment. One interviewee recalled becoming increasingly unwell during her pupillage but felt she had nowhere to turn to for advice or support within the profession. She described feeling “very isolated” and was anxious that she would be “found out” and then considered unsuitable for the Bar. She recalled how:

“I would be up all night before... the day before a mini just petrified that I would have a seizure and that someone would know and see it in me that I wasn't well enough to be a barrister, which was what I was hiding..... I got stuck in the toilets of the court once and couldn't get out, and was too scared because the person who was looking after me was the one who told me she'd never been sick in her life. I was too scared to tell her so I was just trapped, paralysed in the toilets for a few hours and pretended I'd gone home. I think I managed to send her a message saying I'd gone home, but I hadn't.”

For some participants, being interviewed was the first time they had openly ‘come out’ as disabled. The fear of the consequences of disclosure were so great for some that they had made the decision to struggle on without workplace adjustments, sometimes at great personal cost. We had predicted that this might be a common strategy for disabled people with non-visible impairments at the beginning of their career, but were more surprised that some with visible impairments preferred not to raise their identify with colleagues or employers: this applied in some instances, regardless of seniority. ‘Harry’ for example, was on a promising career trajectory and knew that he was being considered as partnership material when he was diagnosed with his impairment. For 5-10 years he concealed the fact that his hearing was degenerating because he felt it was the “only rational thing to do” if he was going to succeed, to the extent that he chose medical professionals who he was confident would collaborate in this subterfuge. However, the moment when he knew that concealing was no longer going to work for him, was when he recalled he returned home following a court case that he had struggled in:

"because I couldn't see any way I can continue to do law. And law is the only thing I've ever been good at, quite literally. So I decided I had to give up my job"



Fortunately for him what he described as: "a wave of political correctness hit the firm", which he heard was "at the instigation of the senior partner": important because this provided leadership on disability and allowed him to stay on. Nonetheless, despite this, he still described how he was subjected to behaviour he referred to as being "out grouped":

"There was a wave of political correctness hit [the] organisation, not because they were nice people, but they recognised it was in their own interests to be politically correct to attract the best recruits. And suddenly, all those people who said, oh, we don't know when you can hear and when you can't, spoke up. I was able to continue my career without difficulty. All of these we can't... we can't accommodate... sort of things disappeared overnight..."

'Finn' is another example of someone who had risen to the position of partner while realising that he was progressively developing a life-changing impairment. Despite being told the best approach was to be "upfront", he also made the decision to conceal:

"I'm not saying that's bad advice but I think you are shaped by your experiences"... "I never took that advice, and that's why I still don't to this day".... "I'm much better than I used to be... but I'm not someone who walks into the room and says hey, before we start, you should know..."

Within a year of becoming a partner, however, he realised that he was really struggling, in particular with the networking associated with partnership, revealing that:

"I can remember feeling a sort of intense pressure because I felt like I couldn't hide. And being put in lots of situations where... You know, where I couldn't hide whereas perhaps previously, before I was a partner, you could hide a little"

He continued to conceal to the majority of personnel in his firm for 10 years and only disclosed to individuals if totally necessary, but eventually the pressure was so intense he stepped down. At the time this happened he still believes "95% of the other partners didn't know", adding:

"...lots of the time, I could get away with it, and to a certain extent I still can. I suppose, my philosophy, without ever being a philosophy, if I can hide it I will hide it... It's only when I can't..."

For a lot of people who to disclose to, was as important as the decision to disclose itself. The problem is that if disclosure is to too small a number of people in an organisation, then a key confidant leaves or retires, this can be problematic. 'Finn' eventually informed HR, but

despite their support he felt the conversations that subsequently took place pushed him to step down as a partner:

"It wasn't acrimonious and it wasn't... It was entirely my decision and I was very happy... But there was... There was always that sense of as soon as I said I'm struggling that was it."

Asked whether he thought things could have worked out differently if he had received better support he said:

"I don't think it was inevitable that we'd end up where we did. And I think in different circumstances, working with different people, and perhaps, you know, with 10 years down the line now and there's no doubt about you know the workplace is changing and... and diversity and inclusiveness and things like that, they're much more on the agenda than they were"

Ultimately, he admitted, he didn't challenge the firm to make adjustments to his role of partner, but did receive the adjustments he needed once he was redeployed to another role because he became more assertive and confident about requesting them.

An interviewee who had pursued the CILEx route was among a number of participants who defined as disabled with a mental health impairment. 'Keith' was able to gradually build up expertise and qualifications, so this route suited him. He described his disability as "anxiety and schizophrenia", which he always disclosed when applying for training or employment, saying: "I know that's often said to be a high-risk strategy, because there is a lot of stigma attached". To gain work experience he had applied to 3<sup>rd</sup> sector advisory organisations for unpaid work, as well as small law firms, but the response he received had not been straightforward. In some instances his application had been completely rejected, in others he was offered employment but in a less challenging role:

"when I went to the interview for [Z organisation], for example, they did a test on housing law, which I sat and I'd applied to become an adviser and then they interviewed me and they kind of looked at me and said, would you like to work as an administrator? So I had to decide then when I was more or less at the door of the interview, whether I was going to press ahead and insist on being an adviser..."

He rejected the administrator role and eventually a small law firm offered him employment. He believed this was because:

“the partner said he used to work in a charity, helping the disabled, so he was willing to give me a job... I was directed to his firm, because he was looking for a clerk. It was known in other firms he was looking for one and he said later, he used to work as a volunteer with mentally ill people, so he was more willing to give me a job, because he had that experience”.

‘Keith’ seemed grateful for this opportunity, though we found the substance of what he said unsettling. Qualified disabled people are not, and should not, be made to feel they need to rely on ‘charity’ and goodwill to complete training or gain employment. This is perhaps well illustrated by another interviewee with the same medical diagnosis, but who had for many years successfully practiced as an employed barrister and a tribunal judge. The difference in this case was that this interviewee had decided not to disclose his schizophrenia at the beginning of his career and continued not to do so, though he admitted he thought some colleagues had ‘suspected’ it. He chose to work as an employed barrister as a consequence of his impairment because he believed it provided him with greater job security, more control and autonomy and less pressure, than working in chambers. He did admit, nevertheless, that he only recently felt able to tick the box when asked if he was disabled. Interestingly, he felt other judges seemed to show an awareness that he had a different ‘psychic make-up’ and were ‘additionally courteous’. Though he did admit that:

“I get annoyed sometimes because I’ve had serious depression and I’ve had people say to me, ‘Oh, I get a bit low, I get a bit down.’ But schizophrenia, paranoid schizophrenia, these are words that people immediately think oh, that’s a dangerous person.”

During recent work hearing Tribunal cases he felt he had become increasingly conscious that both mental ill-health and physical impairment are equally stigmatised and considers class to be an additional barrier. He also felt his views on positive discrimination had changed over the years due to his own lived experiences and felt these were relevant in his current role.

‘Ursula’, a wheelchair user struggled through her training contract, which she put down to her reluctance to disclose needs relating to invisible impairments:

“when I was at my training provider, I think I was trying to be somebody else, trying to do it all by myself. And I think that kind of let me down. If I’d just been honest and said, “Look, I need this. Look, can you do it or not?” It would have been fine. Because I think that was... I

hadn't mentioned before about needing a PA, even when I went for my interview and had the induction or anything."

Although she has been upfront about visible impairments she still, nonetheless, conceals fatigue and worries about the impact this could have on her career progression.

Disclosure can be an emotional and difficult decision, but typically, it is unlikely to be a one-time event, even where someone remains employed in the same organisation. Line-managers and supervisors can change as well as the types of work undertaken. Each time a disabled person works in a new setting it is often necessary to embark on the whole process of reviewing adjustments again with different individuals. Interviewees found this exhausting and stressful, yet often an agreed institutional approach that is applied with consistency throughout, could address this. British Telecom were one of the first organisations to introduce a disability passport scheme, which meant that with the permission of the employee, details of agreed reasonable adjustments were recorded and became portable internally. We also noted that one firm, by default, asks all its employees what support they need to fulfil their potential in their role. Such a simple and universal measure created an opportunity for everyone to have a conversation about their needs without disabled employees feeling stigmatised.

## **7. Working Practices**

Reforming working practices in the profession has, to date, largely been driven by a greater awareness of gender inequalities. The spotlight has fallen on the gender pay gap, inflexible working practices, returning to work following a break, long hours working cultures and the role of social networking in career advancement (Tomlinson et al, 2013). According to the 2018 annual law firm's survey by PwC UK, the representation of women has increased at partner level over the past 5 years "with Top 51-100 firms leading the way... Firms across all bandings continue to recruit more females than males at trainee level". The mere presence of women in greater numbers, however, has not yet addressed the gender pay gap and problems with working practices remain. Some are practices that also disadvantage disabled people, though research from other professions suggests the effects of disability are also distinctive. In accounting, for example, evidence suggests that disabled people with visible

impairments can experience segregation and become concentrated in non-client facing roles. The authors of this study (Duff and Ferguson 2007; 2012) also found such roles were characteristically of lower status, predominantly in small or medium sized regional firms, attracting lower remuneration and career prospects.

The personal qualities required to succeed in a legal career include an ability to work autonomously, good decision-making skills, discretion and judgement, which suggests flexibility would be valued in the profession. However, as women have discovered, flexibility means different things to different people. For example, employers and courts routinely demand flexibility from legal representatives in relation to scheduling of cases, but requests to flexibly accommodate caring responsibilities or reasonable adjustments are deemed 'special'. This is where the individualisation or privatisation of workplace adjustments in practice can disadvantage disabled people and more thought needs to be paid to how collective practices can enhance accessibility. Until disabled people are *expected* rather than *unexpected*, little will change. We found inflexible attitudes permeating what we can only describe as a *poverty of imagination* in areas of the profession, where availability of relatively simple job re-design would facilitate greater participation. Such participation often routinely obstructed or denied by bureaucracy, hierarchy, belligerent managers and outdated working practices. Some interviewees referred to organisational cultures in firms that were shaped, not by productive working arrangements, but by partners who had risen to that position having endured negative practices, which they continued simply because they had to endure them! These are embedded attitudes that will prevent progressive diversity agendas being owned and driven strategically from the top.

The inconsistency of working practices was highlighted in the case of a junior solicitor, 'Bryan', who entered his career with a diagnosis of MS. He requested that his work be assigned to him during working hours and not consistently post-5pm, to enable him to maintain good health and manage fatigue. Although he caveated the request with an acknowledgement that in an international firm, sometimes he would need to work late, this very basic request wasn't granted, nor was he allowed to take any work home.

“the way that they chose to run their team was actually very detrimental to my health and led to a great deal of stress on my part as well because I wasn't able to perform to the level that I was capable of and wanted to be able to perform to, which in turn then made me very frustrated, both with myself and with the situation, which led to, you know, what I consider to have been a fairly steep decline in my physical and my mental health.”

‘Bryan’ had also experienced bullying which created stress, anxiety and depression and resulted in a period off work. He eventually left the profession. Yet, Bryan’s partner, also a junior solicitor who worked in the same firm, was given time off and was allowed to work from home to support him when he was off sick.

“So when you were considering what to do we thought it was too much of a risk to go... to go to another law firm because you get a... you get a bad boss who's the same that's it. And there's no institutional structure in place to prevent that line manager doing what... whatever they want to do because as long as that line manager is making profit for the firm that's fine, that's all they care about.”

A significant majority of our interviewees cited inflexible working practices as a key barrier in their work. One senior solicitor with work experiences that spanned private practice, industry and the public sector, commented that flexible working:

“Gets associated with women going on maternity leave. Flexible working should appeal across the board. In private practice flexible working is “zero”. Adding that “It’s the “whole kind of Victorian thing where you turn up to the factory, and then you’ll work and then go home. Employers could save on office space if they let people work remotely”.

Interestingly, for this individual working in industry had provided the most flexible work environment, because teams comprised of people from all over the world who worked in different time zones: as such presenteeism (being present) in one period of time, was largely irrelevant. Variations in time zones also meant it was the norm for calls to be taken out of the office.

Some research participants had battled for very modest changes to their jobs. Requests for basic adjustments were questioned simply because they were regarded as ‘non-standard’, when, by definition an adjustment usually results in a non-standard arrangement. Even where an adjustment was of clear benefits to both employee and employer, disabled people encountered illogical resistance. For example, ‘Jennifer’ told us how she had:

“to push really hard for that redesign. And the redesign that I have got has been modest, shall we say? ... I pushed very hard to be put into seats that I felt like fitted with my skill set. And I got that, but it wasn't... it was hard to get it...and I think...HR felt like I was being very difficult asking for it. Um, and it... it didn't... it certainly didn't feel easy doing it. And I think here, there's... there's some agreement, at least from my boss that we should definitely try and play to Jennifer's strengths and he... he genuinely recognises those strengths. But it's...honestly, I think we can go further with that. And I think that would be really positive for me if we could, and I think it would actually probably be good for the firm. ... I think also if you could somehow redesign law firms to acknowledge added value in other ways than chargeable hours, that... that would... that would help a lot.”

Seniority was identified as important in facilitating some, though not all, instances of flexible or remote working. Most senior people interviewed doubted that more junior staff would be allowed to work with the autonomy and flexibility they enjoyed, even where supervision was largely irrelevant. However, the viability of working part-time, even when senior, was questioned by some. Solicitors who had reached partner level doubted they could justify doing the role part-time and a self-employed barrister suggested it would depend on the different structures available for paying rent as a tenant: if this was a flat rate or a proportion of one's income. Part-time working might also only be viable if a barrister has an established reputation, because it was recognised that turning down work early on in your career, could have negative consequences. Flexible working for barristers is highly dependent upon court schedules. A barrister with a holiday booked, referred to a case that was unexpectedly extended. They were told that if they refused to continue they could be liable to their client if a replacement barrister was arranged and then lost the case. However, this barrister thought it was not impossible to work flexibly:

“I think if you find the right chambers and you find clerks that are willing and somehow you manage to, kind of, organise your time round the courts and the clients, I think it is... it is feasible, yeah.”

We did encounter some people who detailed positive working environments and practices. Such examples tended to fall into three categories: working practices and cultures that were intended to benefit *everyone* in the organisation; practices that existed to support *specific groups* (often women) that had unintentional positive effects for disabled people; or practices introduced as a consequence of *individual* tailored workplace adjustments. The

problem with the latter, is that bespoke adjustments can often be *reactive* rather than anticipatory in character and, while of benefit to an individual, may remain exclusive and thus fail to influence wider organisational practice.

‘Beverley’s’ experiences are an example of how high trust relationships and seniority can lead to positive flexible working practices. A partner in a personal injury firm, when she began her job, office space was re-organised to make the building as accessible as possible and bespoke adaptations were made to facilitate reasonable adjustments. ‘Beverley’ was also given the flexibility to fit work around hospital appointments. Apart from letting her team know about the times she would be unavailable, she has never had to ask for permission to work from home or move her working hours. She described this inclusive approach as a ‘two-way street’ that benefits both the employer as well as the employees:

“I work five days a week, but I have a certain amount of hours that I have to get done every single... well, it’s over a month, but you work it... you break it down to a weekly basis. Literally, my employers do not care where I get these hours done, as long as they get done... if my best working hours are done between 6.00 o’clock at night and 12.00 o’clock at night, that’s fine, as long as if my client calls me at 3.00 o’clock in the afternoon, I can... I can still deal with them.”

The flexibility available to her also applies to junior solicitors, but she admitted, to a lesser extent:

“you usually give guidance to the junior people and say, “one day a week or two days a week”, not least because actually they need to learn.”

Significantly, employing Beverley has had a positive influence on the thinking around inclusivity of both employees and clients within the firm. The firm was increasingly careful to ensure that everyone was included in all work activities and work-related socialising. Beverley’s position as a partner helped reinforce this culture change and if anyone has any queries about whether or not something is accessible or inclusive, they are encouraged to ask Beverley directly:

“It helps that we’re also quite big on not just focusing on work, but all the activities that go, like the healthy... the fit and healthiness...and the fun aspects of working and doing things that... that you will bond with your colleagues, not just about the chargeables, and it’s about



making sure both those things are actually accessible to me, so I never feel like I'm excluded."

Another interviewee, 'William' referred to the drastic change in culture of his firm following a buyout by an international Fortune 500 company. Prior to this he described how if adjustments were needed, his employer's attitude had been 'buy it yourself'. With a different style of leadership, which he referred to as 'pro-worker', however, a more relaxed and accepting culture had developed:

"I think because there's just a sort of a level of trust throughout the entire corporation... We're a very small part but yet they just trust each part to get on with what they're doing. And as long as it's within a very simple framework, you know, treat everyone with respect, make sure everyone's, you know, enabled to do the best they can do..."

Our findings suggest that the existence of excellent policies and procedures will not automatically translate into a healthy and proactive and inclusive working environment without clear leadership. Examples of the development of good disability inclusive practices, furthermore, usually involved the input of disabled people at a level of seniority that was influential enough to bring about change.

### ***7.1 Performance Management Practices & billable hours***

Disabled people working in law reported that the widespread continued practice of using billable hours in law firms, had a negative effect on their work, impairment and mental health. Where disabled interviewees had worked in contexts where the practice of billable hours had been replaced there was clear evidence that it was easier to secure reasonable adjustments and flexible working arrangements. Billable hours have been an embedded part of the culture of the legal profession, but in the modern service relationship this emphasis on quantifying work by throughput-time appears increasingly out of place, particularly given the growing importance of client satisfaction. As a practice and a method of performance management it is also increasingly anachronistic and potentially discriminatory. Our findings suggest billable hours could severely disadvantage disabled people in the profession.

An analysis of the uneven distribution of hours billed by different lawyers according to their longevity and status within the profession was reported by Connelly (2017), who detailed how junior lawyers at top firms with only a few years' experience undertook a substantially larger number of billable hours than any other group. This has been a cause for concern for the Junior Law Division of the Law Society (see Hussain, 2019). As a means of quantifying productivity, billable hours are not only a crude and low discretion measure of performance, but little consideration has been paid to their disabling impact as a working practice. A reasonable adjustment would adjust the target number of hours expected of an employee if their impairment affected the pace they could work at. However, rarely did we find this happened and most interviewees felt this was an adjustment they felt unable to request.

In the rare instances we found requested adjustments to billable hours were granted, interviewees reported it was often the case that workloads between staff were not wholly transparent. The adjustment was, therefore, difficult to identify, which was the reality for 'Eve', who worked for a firm that charged by the hour:

"They say they have given me a reduced allocation but I don't feel like it's been reduced... it's not really transparent how they're treating me compared to everyone else."

We found anxiety and insecurity were common where billable hours systems operated and these were not only experienced by junior lawyers. A senior partner with more than 20 years of experience cited billable hours as the reason why he chose to take early retirement. He described how "People would put down chargeable time and then write it off because they couldn't recover it" and would 'fiddle' their chargeable hours because of the pressure of performing and bringing in income, but he didn't feel comfortable doing this. This fostered a negative, competitive and suspicious culture, which he described as "toxic" and ultimately counterproductive. An alternative approach would, he suggested, be to support people "if they don't make income targets, rather than just say that's the 'end of the story'".

Another former partner felt the whole practice of billable hours was inherently disabling:

"At the end of the day.... people who record the most time will get paid the most and have the best promotion prospects. If it takes you longer to do your job you will be disadvantaged."

Adding:

"Law is a very simple business really. So when a law firm sets a budget it works out how many fee earners it has, what it's chargeable hours target is, so say 1500 hours a year per hundred fee earners, and that should produce X number of pounds billing and then you might... set a budget at 95% of... Because what you're doing is working out what your capacity is and then you're saying, right, I'm going to work within 5% of the...the new budget of your costs and what's left over is your prospect. Your profit is divided, you know, to the partners, essentially. This is all driven by the billable hour."

Some people worked for firms where billable hours were used as a threshold for a bonus, rather than a hard target. This was the case in a corporate law firm in the City where one interviewee didn't feel his job depended on meeting set targets, though he felt they still played a clear role in measuring success and contributed to what we suggest is likely to be widespread across the legal sector - a disability pay gap. In this firm, partners had oversight of work allocation, however, this operated in what he described as "an organic way". In another firm we encountered a system that operated where one partner was responsible for having oversight of work allocation and a formal system of transparent work allocation. This, he reported, worked very well. The response of a senior interviewee when we described this system to him was:

"I think it would be very useful for us to have a work allocation partner, a work allocation person who that's their job and I can say, 'By the way, I'm a bit different and please bear this in mind'"

However, commenting on the above and our suggestions that alternative measures of performance are possible, another interviewee felt that:

"Until the profession evolves to a more corporate style structure rather than as a partnership model and the billable hour dies, I don't think you'll really see what you're proposing"

Interestingly, in May 2019, Clifford Chance, a high profile London law firm, announced a year-long trial at its Middle East offices that will experiment with breaking the link between the number of hours a lawyer has billed with the evaluation of their performance and bonus. Instead the firm intends to focus on a wider range of activities (including diversity and inclusion) and how lawyers have adopted the firm's wider strategy and professional

development. If successful, the Law Gazette reported (Walters, May, 2019), this approach will be pursued out in the UK.

‘Carol’, a trainee solicitor with paralegal experience, told us her choice of which sector and area of law to work in will likely be influenced by the typical turnaround time and types of deadlines expected. She anticipates that the public sector is more likely to allow her to pace her work because the profit motive is less dominant:

“how do I describe it? Like money...profitable clients will have hard deadlines and possibly deadlines where I can’t produce the quality of work they need...They’ll have a turnaround of a day or something, or two hours even, to view a bunch of documents in two hours for me is something that wouldn’t be feasible. So I would hate to be in a position where I couldn’t...I’d do them a dis-service, you know”?

This research was unable to determine whether the pressures related to billable hours are less in the public than the private sector. A common sense view might assume that this is the case, however, public sector performance management techniques can be equally prescriptive and inappropriate for disabled people and driven by factors other than clients and profit. The contracting out of services, public sector spending cuts and the drive to adopt ‘New Public Management’, which mimics private sector practices and is equated with extracting ‘more for less’ from each employee in the name of value for money and ‘productivity’, can equally disadvantage disabled people. The common denominator in both sectors appears to be the appropriateness of the performance management tool in respect of its application to disabled people.

## ***7.2 The Long Hours Working Culture***

A well-known characteristic of the legal profession is its long hours working culture. This is often presented as inevitable and non-negotiable and has contributed to complaints that the profession is family unfriendly and does not accommodate women. Intensive and unpredictable working schedules similarly disadvantage a high proportion of disabled people, particularly if pain or fatigue are regular experiences associated with impairment. The poor availability of flexible or part-time training and job share opportunities were issues frequently raised by interviewees. In some cases, despite developing a life-long expertise in an area of law, we found a reluctance to accommodate on behalf of an employer led either

to a move into self-employment and self-accommodation, early retirement, or feeling unable to continue in the profession, suggesting that talent is being unnecessarily lost.

'Ian' for example, had been a senior equity partner for 20 years in a firm of approximately 75 partners when he developed a degenerative sight impairment. This affected his ability to drive and he found it increasingly difficult to visit clients outside the office, to network, or work from the firm's premises. He began to work regularly from home, which he admitted was only really possible because of his seniority. Despite having 'permission' to work remotely he, nonetheless, told us he experienced guilt when he did so. Reflecting on the long hours' culture in his firm and the expectation that people would be present in the office, he now believed these were subtle ways of "policing' staff, including partners:

"You had to be at your desk even if there was nothing to do... Who's going to be there latest in the evening? Yes, loads of that... If you weren't sat at your desk, you weren't contributing, you weren't working... If you weren't there, people were suspicious of whether you were pulling your weight."

This culture of 'presenteeism' influenced the way 'Ian' viewed and evaluated his own performance. When probed about his decision to take early retirement, he admitted that he had effectively put pressure on himself to leave: "It was more my assessment and my judgement... rather than anyone imposing it on me." He did, nonetheless, admit that the way performance targets operated in the firm had made him feel "guilty" and had a negative psychological impact. Asked if the type of flexible working he had been granted would have been available to more junior disabled staff in the firm with similar impairments, he was certain it would not have been and that his seniority had enabled him to continue:

"I can think of former colleagues who would have been very negative about one of their juniors saying they were going to work at home this afternoon."

'Ian' thus believed had he experienced disability earlier in his career his progression would have undoubtedly been negatively affected. He also felt that having had a lived experience of disability had changed his own attitudes towards the employment of disabled people:

"There are some aspects of some jobs which are difficult to do if you can't do them physically, but obviously you don't need to close your mind and assume someone with physical problems can't overcome that,"

“I think you’re going to be more motivated to prove it doesn’t affect you in work terms that you can compete with people who doesn’t have that ‘problem’... I think a firm would do very well from taking on someone who on the face of it may have a ‘problem’, which would make it difficult to do the job, but I suspect a lot of people don’t see it that way.”

“I think firms are missing out on a valuable resource because I know lots of people with disabilities of various sorts who could contribute probably more than... or would want to contribute more because they want to prove themselves...you have to get people to see that what they think might be a problem isn’t necessarily a problem and people can overcome it... it’s constantly amazing what people are able to overcome.”

Having now left his senior position ‘Ian’ admitted his potential to influence policy and practice on disability in his firm has been largely lost. This highlights why the *presence* of disabled people at a senior level is so important and how their *absence* reinforces and sustains disadvantage. With other interviewees we explored whether it would have been possible to redesign aspects of their role to accommodate and retain them and most agreed this could have been achieved. The reluctance in the profession to redesign jobs is a major obstacle to talented disabled people seeking a long term career in the profession. We found the sheer poverty of imagination in relation to job redesign to also be widespread with a few exceptions.

We earlier noted the experience of ‘Bryan’, one year PQE, who was repeatedly given work outside core hours and expected to turn it around by the following morning. He told us:

“I practised for a year as a commercial disputes resolution lawyer ... and I left their employment last Wednesday after about a month and a year, and I’ve actually now moved out of the legal sector entirely. That was... the motivation for that decision largely because of the experience that I had while I was at the law firm”.

He added:

“And I considered this for a long time before I left the legal sector, I’ve no idea what type of law firm I could work in where I could actually get the support that I need and be able to ask for that without there being real serious negative repercussions.”

‘Esther’s flexible and home working arrangements were unplanned and accidental as she returned home from a week in hospital:

“... it was either not working at all or working from home because there was an emergency. I had no idea at that point that it would become a permanent arrangement, and I think if I’d said at that point this needs to become permanent straightaway that all hell would have broken loose, but because it happened incrementally, it was easier....And by the time that it

became evident that it would need to be a long-term/permanent arrangement I think I'd already managed to prove, especially to my... line manager, that it did work, we had made it work..."

Expectations related to presenteeism may also unintentionally perpetuate in an organisation. 'George' described one workplace where the status indicator dots on Outlook would be monitored and commented upon by colleagues until late at night.

"It wasn't that the partners wanted to keep tabs on people so they introduced the system, I think it was literally just that was how they set the computers up. I don't think there was any more forethought than that... Everyone was under tremendous pressure and stress and miserable and not seeing their other half and whatever it may be. There was a culture of resentment...With the best will in the world, I can't do 2,000 hours a year really without risking my health in an unacceptable way."

### **8. Use of technology and IT – as enabler or barrier**

If used appropriately and with a range of diverse end users in mind IT can be an enabler and improve accessibility and efficiency, potentially to the benefit of all. Yet, it remains under-used. The Government advisory service Access to Work provide workplace assessments that can reveal technological solutions that neither employee or employer were previously aware of, yet we found only a patchy knowledge of this service among our participants. This ranged from no knowledge of the service whatsoever, to some knowledge but a reluctance on the part of an employer to allow them to visit the workplace, to knowledge but varying experiences of their usefulness. Frustration with bureaucracy associated with many Government services typified the experiences of users of Access to Work. Some felt the service had become more bureaucratic and less helpful over the years and others believed employers had been deterred from utilising their expertise because it was time consuming. Access to Work appeared to prove particularly beneficial to those who were self-employed or sole practitioners. In such circumstances the absence of a professional HR role or IT department often meant quite routine technological solutions were less well known.

Some examples of IT solutions cited by our research participants were very straightforward, such as noise cancelling headphones and voice recognition software. Other, less common

ones included mind mapping software, or pens that record speech and create digital notes from uploaded written notes. Video-conferencing, a common feature in most legal settings was an example of a technology that could be a tool to increase accessibility or alternatively frustrate inclusion. 'Finn' and 'Phoebe' both had hearing impairments and both experienced difficulties with video conferencing in large meetings or with poor quality internet, although one to one was often workable.

'Phoebe' had no prior knowledge of Access to Work when we interviewed her and potential communication support tools, such as speech-to-text provision. She had relied on a colleague's goodwill to scribble notes down for her in large video conferencing meetings, but requests to her line manager for formal and acknowledged support were not met. She was even thoughtlessly allocated as the official note-taker for some meetings:

"I could go through meetings not hearing a single word, and I could go through meetings where someone would go and ask me a question and I would not even have a clue that they had asked me a question!....And I found that very frustrating and very... and when I raised that with my... my boss and the others around me they didn't really take it seriously. Because I think a lot of... because I cope so well one-on-one a lot of people forget and so for them it was like but you can hear us perfectly, and I'm like but it's... it's the people on the other end I can't hear. And, yeah... and then I raised it multiple times and they never ended up, you know, getting anywhere or doing anything with it."

Some interviewees told us of instances where commonly used software packages were incompatible with accessibility features. For example, 'Zoe' explained that:

"I cannot use any of our case management software because it's font size 6 and you can't make it bigger and it doesn't react... it doesn't change when you go on high contrast..."

"It shouldn't be down to the computer to have accessible technology. Because half the time, even when you do have accessible technology on a computer in doesn't work with this software."

The unpredictability of software in different work settings could also prove problematic. This might be further addressed if common and accessible IT infrastructures were to be agreed upon across the profession, or if there were agreed common protocols to inform participants or visitors in advance of available software and updates.

We collected numerous examples of interviewees using voice recognition software that proved helpful for supporting people with dyslexia, fatigue and pain or reduced mobility. In



one workplace, a pilot was rolled out to see how voice recognition software could improve efficiency, meaning that it benefited more than one individual. However, education in the use and limits of such software for co-workers would also be necessary, to ensure its effectiveness.

'Jennifer' chose to be open at work in disclosing her dyslexia and spoke to us about the importance of ensuring that the team around her was educated to understand what that meant in practice. She requested training of co-workers in the use of software to avoid colleagues thinking she was 'sloppy or lazy' but the process of securing training was a 'painful' one.

"one of the interesting effects of having a dyslexia awareness session is almost without fail you will get at least one person who will basically decide to never give you work."

She described the willingness of firms to throw money at equipment and software solutions:

"But when it comes to actually adapting... the people around me adapting to me, that's... that's where life gets a little bit more difficult."

'Esther' is rarely physically on work premises. She accepts that this does have a small impact for her colleagues but has found methods to successfully supervise trainees and line-manage staff. She works from home using technology and communications software to maintain regular contact, utilising internal informal messenger style apps, emails, phone calls and video conferencing:

"I supervise the trainees, so there's a new one every six months, so I will try and see them physically in the office near the beginning of the six months if I can and then also be in constant contact sort of by phone and by email. So I try and make sure that, you know, we sort of overcome the not being there... I think it works okay. My... my sense is with the sort of newer generation of people they are much keener on things like working remotely..."

Interestingly, 'Esther' reflected that the physical presence and 'availability' of colleagues has been less important to her than the willingness to engage with management processes and give open and honest feedback:

"...that's not how they evolved when they became partners. You know, it was about their skills as lawyers not about their skills as people. And it's also this sort of machismo thing

about, you know, lawyers are all about the... sharp end of the law and they're not about soft skills to do with people. It's also maybe a sort of gender thing as well, I suspect..."

Adding:

I suppose it does affect it a little bit not being physically there but I think it's surmountable. And I think if you focus on trying to be a good manager then I think that's more important than the physically being, you know, in the same building..."

Another interviewee, 'Derek' recounted positive experiences of firms he had done work experience and training with and where he had utilised a range of different technological aids. He uses specialist technology including a program called Smart Now. By wearing a cap with a reflective dot this enables his movements to be picked up by camera, Derek controls the mouse by moving his head. He also has Dragon NaturallySpeaking voice recognition software on his computer and between the two pieces of equipment, he can use the computer to fulfil all the tasks required. He has his own equipment set up at home and an identical set up was paid for and provided at work. In the work settings he has experienced, personnel have also been happy to organise his kit and provide access to his two 24/7 carers.

The gradual move towards more 'paperless' approaches to working has improved accessibility for some people we interviewed. Greater availability of research materials online enables people with screen-readers to access content and reduces the need to physically visit libraries and archives and handle heavy books or large bundles of paperwork. However, one interviewee had to fight against a paperless workplace since using print was more accessible for her, but frowned upon by colleagues. Use of technology may also go alongside other adjustments such as reducing glare or lighting or establishing specific workspaces to provide enough space or remove visual or audio distractions.

Technology, isn't just used in the workplace but in the places one visits as part of a legal job and needs to be considered at all career stages. Online methods for applying for training or job opportunities may well use software that isn't accessible. CV Mail was one such package that was highlighted as being inaccessible for people with sight impairments and yet is widely used by law firms. Online psychometric testing used during application processes

was also raised as being inaccessible for people with a range of impairments (see also section 4.2 Accessibility and Recruitment).

### **9. Skills that disabled people bring to roles in the legal profession**

Having an impairment is almost always viewed negatively by non-disabled people and is a key reason why it is seen as problematic to make a business case for disability inclusion. It, nevertheless, became apparent during the course of our research that experiences of disability and particular impairments, meant an individual often brought a particular skill set to their job role, which was sometimes, but not always, acknowledged by their employer. The disabled people that contributed to this report have successfully negotiated the education system, many have completed training in a competitive profession and the majority have worked in the profession, indicating substantial achievements that have entailed overcoming significant social and professional barriers. These life experiences contribute to the acquisition of a significant set of transferable skills. This is well illustrated by 'Felicity' who pointed out that the day to day experiences of finding solutions to the barriers she faces as someone with a sight impairment have enabled her to develop a range of skills:

“the kind of creative long-term, you know, strategy and management, and designing things that work, processes and procedures, and designing them in a way that are more open and inclusive, um, is something as... as a sort of... in a senior role now, is absolutely fundamental, and I... I would never have been able to have done that had I have not gone through, you know, decades' worth of experience. And again I think that is missed out in a lot of the legal profession; that you're just seen as entry level annoyance... Rather than, actually, when you've gone through that, and you come out the other end... those are the things that are going to make you really, really valuable to organisations.”

Earlier, we reported how a proportion of interviewees had been attracted to personal injury and medical negligence law. Some because of their own experiences of disability and feeling that they had something really valuable, but difficult to quantify, to offer. Being disabled often means overcoming everyday barriers and negotiating day-to-day problems that others don't even notice. This type of problem-solving, an ability to put yourself in someone else's 'shoes', empathy, lateral thinking and creativity, can be advantageous in a number of areas of law. Disabled people often said they were good at dealing with different people and

situations, having learnt how to manage unpredictable people and environments. Having empathy for clients in a range of situations was also seen as an advantage in developing rapport and trust quickly. For example, one interviewee, 'Yvonne' believes that knowing the barriers that she faces in day to day life, is essential to her work in a Law Centre.

Several interviewees that self-identified as dyslexic expressed the view that their experiences had facilitated a different way of thinking and doing, as one interviewee explained:

"I think having like, a very lateral perspective so I can link things together... see a lot of different things in a situation, like a case for example, and there are different themes, I'm more likely to pick up on the themes. Pay attention to detail..."

This person referred to an instance where she had been praised for the way she worked, because she records everything in spread-sheets to address memory difficulties. This also involved prioritising issues in different colours:

"And it's been noted that some of the ways that I worked are really useful for team members to adopt and might be something that they like to do to sort of manage their workload"

Another who described himself as dyslexic and autistic, felt he picked up on detail in documents that others missed:

"You know, other people just expect to see... do things this way and then just look at it one way and I start looking at a different angle and then I suppose I can find solutions that other people won't be able to do".

However, he admitted he lacked confidence and, although he felt he performed well on the phone, he found face to face interactions difficult and stressful. A solicitor in his 40's, he felt he had under-achieved because of what he described as an inability to 'read' interviews and perform well. In his current role he believed he was trusted but not appreciated and was not considered as someone who would be promoted, despite being given training and supervisory roles that someone more senior than him would usually perform:

"I can't... I can't just say no to people."

“people that have left have come back to me and said, you know, you're the most hardworking person they've seen ever seen and, you know, yeah, even my... my boss, [that's one] of the partners said that...”

He told us he felt incredibly “grateful” and “loyal” for being given the opportunities he has had with his current employer. However, he also sensed he was being exploited. His interview skills provided few opportunities to secure promotion elsewhere, however. Asked if he thought he had been discriminated against, it was interesting that he felt that the discrimination he had experienced had more to do with his ethnicity than his disability, which he tried to hide:

“Well, I've told some of the work colleagues. I think some of them don't believe it. Because what happened is I think when I go to work I have to pretend I'm someone else....So I pretend I'm... I'm a... I'm not me, I'm a... you know, what a lawyer's supposed to be like. So I put on a face, even when I go to work.”

Struggling with traditional networking expectations in legal practice, was a problem raised by a range of interviewees. However, when we questioned some people further we identified how they did contribute to networking for employers, in non-traditional ways. Lindsey, for example, regularly brought in new clients in her area of family law in high street firms, through personal connections. These contacts had been developed through activities outside of work such as involvement in charities, as a board member, or running an advice clinic. Interestingly, however, Lindsey had never discussed this aspect of her contribution with the firm partners, or as means of identifying her strengths because she didn't think these aspects of her work were valued:

“I think people think I'm a little standoffish. But you know, hey, as far as I'm concerned, I have enough work coming in and I'm quite...quite successful in what I do, so it actually doesn't matter that much. ...I don't say to people I cannot do this, I just say I won't do this and that's the difference”

### **10. Disability, career progression and advancement.**

Fears about the impact of a disability on career progression were common. Those with hidden impairments, or who had acquired an impairment later on in their career, were

particularly concerned about the effects of declaring a disability on promotion, advancement, or if they had advanced, their continued job security. Some revealed how they had continued to conceal their impairment, in some cases literally until it was impossible to do so any more and they were in danger of being 'outed'. Others had no choice but to disclose because there were times when their medical condition necessitated treatment, they experienced relapses, or it simply became apparent. A number worked for top firms in the City of London when they developed an impairment. 'George', for example, had worked at two City firms and recalled that before his diagnosis he had worked in a busy corporate environment and had regularly stayed in the office until nine and ten in the evening. Describing how people who went home before this time were criticised, he said:

"Yeah, almost self-policing in a Lord of Flies type way. It wasn't that the partners wanted to keep tabs on people... Everyone was under tremendous pressure and stress and miserable and not seeing their other half and whatever it may be. There was a culture of resentment. ... So really small things like that, I think, play into the culture of the place."

Referring to the "devastating effect" that his diagnosis had had on him and his career he firmly believed this was because of the culture of the firm he worked for:

"I definitely feel like... the liquidity of my personal labour fell a thousand percent the day I was diagnosed so, for instance, it takes international basically off the table. A, because of a lot of the countries where I could potentially work overseas, basically commonwealth, have very restrictive immigration rules for people who are essentially going to cost the State what I cost the State, and so that's off the table, and it's just internally that's what I'd have to think really hard about moving somewhere else because you just don't know what you'll be facing"

Another City lawyer recalled how he had concealed his hearing impairment for fear that his career progression would be negatively affected, until it was no longer possible to do so. He had made partner before he revealed the extent to which it affected his day to day living and felt his status helped him deal with 'backlash'. However, his situation deteriorated quickly when he moved to another firm to advance his career. Despite having been hired on the basis of his reputation, he recalled that once they had got him to accept their offer he was routinely ignored and excluded in partner meetings. The firm provided a personal assistant (PA), but his workload and international schedule meant she became increasingly exhausted and it was obvious that one PA could not manage. Requests for additional

support, however, were ignored, so he eventually took the matter into his own hands and paid for the employment of a second PA himself. He recounted how:

“when next time they said they couldn't afford a PA...I said don't, I'm hiring someone, you let them in the building. There was a PA outside my door the next day. What was the problem? The problem wasn't that some senior equity partner in one of the top billing firms in the City and certainly one of their several best-known litigators, could not conduct his work. That wasn't the problem. What would be an issue is making the deaf partner pay for himself; that would be a problem. It was a PR issue. They could not face it.”

His proposal to pay for an additional PA spurred his firm into action, but he still felt rather than acknowledge that he actually required a second PA as a reasonable adjustment to effectively do his role, the firm put certain conditions on the provision:

“Like many partners I was behind my timesheets, but they would want it reviewed with another partner in 6 months subject to improvement in time sheet performance”

This inflamed the situation further and he made sure they knew he found their behaviour “deeply offensive”

“I said it was the same as threatening to take away wheelchair ramps or deny access to the disabled toilets”

And added:

“I tried to put it behind me but they saw nothing wrong in what they had done and I just couldn't trust them”

The situation was further compounded by the fact that this interviewee described how he went to great lengths to explain his concerns about his treatment by email, but was met with the response that the organisation needed to ‘understand them’, which had the effect of minimising their impact:

“If I had said something that was just as obviously sexual or racial discrimination he would have known better than to claim he needed to ‘understand’ it”

We drew on the above interviewee's experiences because despite his success and level of seniority, he continued to experience very basic problems with reasonable adjustments. Yes, this interviewee complained and his complaints were acknowledged and eventually the appropriate reasonable adjustments were provided by the firm, but this outcome was only reached once the partner had offered to pay for a PA himself from what he admitted was a considerable salary. The point is, that self-accommodation should not have been necessary and more to the point, is not available to everyone. An adjustment is either reasonable or it

is not and in this instance it obviously was. Having to threaten to leave may have speeded up its provision, but would never mend the trust relationships that had been affected:

"The senior partner... Couldn't understand why I kept them at arms-length after that"

A problem often experienced by disabled people in the workplace is something we will refer to as 'misplaced paternalism'. This commonly takes the form of a 'well-meaning' senior manager or HR person who decides that because someone is disabled they won't be interested in performing some tasks or responsibilities. However, it can often be the case that such roles are demonstrations of citizenship that may be essential criteria for promotion. The fact that the decision to decline a role is taken away from the disabled person is not just patronising, but can have real consequences for career advancement.

After her spinal cord injury, 'Uma' came back to work on reduced hours of three days a week, with her salary being topped up to a full-time level by the firm's medical insurance. However, she felt she wasn't being given challenging work and found herself with an ever-reducing caseload and not enough to do, badly knocking her confidence and damaging her mental health. Colleagues were extremely supportive and there was no ill-treatment but she told us that senior managers "didn't get diversity" and lowered their aspirations for her. Her head of department told her, "if I employed everyone with your disability the business would collapse; I've got the same problem with part-time women workers." Yet, she didn't want to take the risk of applying to a law firm elsewhere and being in a worse situation.

Speaking to 'Esther' about career progression, she told us that because she works in a different way to how partners are expected to, she couldn't see how applying for partnership would be open to her:

"nobody is saying you can't possibly be promoted because you're disabled, they would never say anything like that, you know, on the contrary, they would say, you know, we... we welcome people with disabilities being promoted, but actually when you try and meet the criteria there's no obvious path to get you there... Because it's difficult to do those things. And I think one would have to pursue a completely different and unusual route to promotion to partnership..."



We asked a number of interviewees who felt there were insurmountable barriers faced by disabled people seeking promotion, particularly to partner level in firms, whether they had ever come across promotion processes that took account of adjustments in criteria. The great majority hadn't considered that adjustments to criteria were possible and had no knowledge of them being an integral and accepted part of the promotions processes, where they worked. Reasonable adjustments should apply to all policies, practices and the criteria that governs them in an organisation, but in relation to promotions often do not. To expect a disabled person to fit into a standard job description is one common mistake made by employers, but a failure to make adjustments to promotions criteria suggests that only non-disabled personnel can ever hold a senior position in an organisation, which is plainly discriminatory.

### ***10.1 Career mobility & disability***

Securing appropriate workplace adjustments our findings suggest, can act as an obstacle to career mobility and advancement. While this at first appears counter-intuitive we found this was usually because disabled people had either battled hard to secure adjustments and could not face going through process again elsewhere, or because in the words of one interviewee: "I could work elsewhere for more money but I'm frightened of losing good adjustments". This suggests that disabled people fear or anticipate discrimination or ill-treatment from employers and, this in turn, acts as a brake on disabled people's career progression.

The little research available on disabled people in senior roles suggests "a 'glass ceiling' operating in the careers of disabled people that makes management and leadership options difficult to access" (Roulstone and Williams, 2013:17). In the same way that historically, biology has been used to 'justify' excluding women from senior positions, medical narratives that imply a biological 'deficit' are employed to exclude disabled people. Research shows disabled managers have equivalent career and remunerative aspirations to their non-disabled peers, but earn substantially less. Higher-earning disabled managers are also more likely to be male, work in the private sector and have had a disability for more than 20 years

(Sayce, 2009). The 'glass cliff effect' is one metaphor used to explain the under-representation of minority groups in senior positions: suggesting people with certain characteristics are placed in precarious, risky roles or dead-end organisational locations and, therefore, have fewer opportunities to progress (Ryan and Haslam, 2005). Research in the accountancy profession (Duff and Ferguson, 2007; 2012) furthermore, found that disabled people could become "ghettoised" into non-client facing roles, in less prestigious regional firms, where earnings and promotional opportunities were lower. A study of disabled managers (Roulstone and Williams 2013) describes how disabled people were faced with 'glass partitions' that are distinctive from 'glass ceilings' and 'glass cliffs'. By this they mean that disabled people themselves are limited by fears "about moving role or having your role changed by organisational restructuring and the possible surfacing of negativity from non-disabled colleagues as impairment becomes the primary focus of attention" (ibid: 22).

### **11. Social attitudes and psycho-emotional factors influencing career**

Other people's attitudes towards disability whether positive or negative were frequently cited as having powerful psycho-emotional effects on disabled people's confidence and career aspirations. Interviewees who recalled positive attitudes during childhood from parents, peers or schools, emphasised the positive effects such encounters had had on them, with some stating that until they entered legal training and then employment they had not actually thought of themselves as disabled. 'Astrid' recalled the ill-treatment she had encountered during her training contract, which included disability hate incidents and death threats that were not appropriately dealt with. These caused a long term loss of confidence, anxiety and depression and inevitably, a loss of trust, which contrasted sharply with her earlier experiences:

"When you do not fit into a particular box or particular way of things, there is conflict... you don't really know who you can trust. You become very self-isolating."

'Chris', who now appreciates that during childhood his parents protected and fought for him, described his adult life as "constant fighting". When we interviewed him he was seeking a pupillage and spoke of the day-to-day barriers and attitudes that wore him down:

“Being a disabled person amongst society is hard work. People talk to you like you're a five year old.... you know, it's hard to get a bus, it's hard to... go shopping, you can't get in the shop, it's hard to go to events because they're not accessible.... You're depressed.... You have to fight for everything you want in life.... a constant battle. So yeah, being disabled in general is a strain on your mental health”.

‘Zac’, a solicitor who identified as autistic and dyslexic, but hadn’t received a diagnosis until University, talked about the psycho-emotional impact on him of ‘putting on a face’ for colleagues. He referred to his journey to work on the bus, time he used to “become another person” to be able to conform to the image of a lawyer. This made him “anxious and depressed”, but what was equally exhausting for ‘Zac’ was that he came from a very traditional Asian background, where he was also expected to contribute to the family business when he returned home in the evening. In a role he found difficult because it also demanded he was customer focused. In his interview, he gave the impression that he had very little time to be himself, the one thing he really craved. He said of his choice to go into the legal profession:

“... it's not the career I should have maybe gone into but because of the... you know, the challenge and because everybody has said this to me I wanted to sort of prove them wrong. I guess, that's what it was”.

Similarly, ‘Jessica’ found the pressure to conceal psychologically and emotionally draining, particularly because she felt she had been forced to disclose in a dramatic way when very unwell and people didn’t know how to respond. A significant number of interviewees talked about the need to develop self-advocacy skills and “good mental health support” to deal with setbacks often experienced due to an impairment.

A successful partner when asked if he wanted to talk about the impact his experiences as a disabled person had on his mental health replied:

“Tell me about it! It's huge. It's huge. God knows...I've got nothing to prove...but, intuitively, the impact on my mental health is colossal. You're straining to hear every bloody conversation. The person I'm talking to doesn't know that, but you are. I haven't mentioned this...but, in fact, in many ways my problem isn't X. I've got dyslexia... It's the difficulties I have in absorbing written information that I... I find very, very stressful too.”

A theme that emerged from conversations with a number of senior disabled legal professionals was what we will refer to as 'self-policing'. Competition and expectations, particularly around networking and fee earning, meant several senior disabled interviewees dealt with these pressures by leaving the profession prematurely. An example we referred to earlier was of a partner who pursued early retirement but admitted that his firm had not pressured him to do so, in fact he was the person being judgemental about his contribution and performance. On reflection, he told us he wished he had explored other options such as part-time working, which he might have combined with training or mentoring, because of feelings of guilt, however, this type of self-limiting behavior was not unique to him.

### **12. Requesting workplace accommodations or adjustments**

Inevitably, the subject of workplace adjustments dominated many interviews and examples of requests have been illustrated in previous sections. It became apparent to us that confidence and self-advocacy skills were significant as to whether a request was made or not, and if so, whether a request was successful. However, confidence should not just be regarded as an individual attribute because, as we found, context very much influenced confidence. For example, the ease or difficulty of establishing workable adjustments was clearly affected by things such as organisational practices, culture, encouragement, knowledge and understanding. Seniority, type of impairment and its visibility were also important.

We interviewed a number of disabled people either seeking training, in training or newly qualified. This group lacked the most confidence to request appropriate workplace adjustments, but it is no coincidence that they also lacked more general experience of the labour market. Most feared that to request an adjustment would place them at a substantial disadvantage, which is, ironically, the criteria in law that is used to evaluate whether an adjustment is 'reasonable' or not. The law also places the onus on the individual to request an adjustment. This appears to contain logic, given that an employer cannot be told they have failed to make a reasonable adjustment if they are unaware that one is required. However, this ignores the disadvantages that disabled people as a group

experience in the labour market and the uneven power relationship between an employer and an employee, particularly at the early stages of their career trajectory.

We found the legal profession were failing early career disabled people in particular, because employers often interpret their duty to provide reasonable adjustments as wholly reactive. Responsibility then falls onto the individual to request to be included, when instead an organisation needs to anticipate disability inclusion. For this reason one interviewee made the following suggestion:

“I think people need training in how they should be asking for adjustments and disclosing their disability... I think if you go in there feeling like a burden and asking like a burden then the employer is more likely to perceive you as a burden.”

We met people who had only requested adjustments once they were more established, or had in their words, “proven themselves”. Others had made quite straightforward requests that had been refused and had been forced to find ways of accommodating their own needs. One paralegal, for example, was unable to establish suitable adjustments that enabled her to receive recommended physiotherapy, so she left 45 minutes early on a Monday for physio but would arrive 40 mins early and work through lunch. As a trainee she had asked if she could leave at 5pm, but this request was refused on the grounds that other trainees (who worked until 5.30) would resent her:

“I remember the training partner just said can you not go swimming in the morning? And I was like, well, I have to have a support worker arriving at 6.20 anyway for me to get in the office at 8, how am I going to go swimming before that?”

In her current employment she went on to describe a haphazard approach to flexible working, whereby she is sometimes able to leave early to have physio, but is then expected to work through lunch, but even this “depends on the day, the mood of the team” and,

“it depends who else was in the department at the time. So if there's a couple of other solicitors in the team who are mums and work part time if it's a day when they work... when they're not working I'm sort of basically told no.”

This latter point is important. It demonstrates why staff and line- managers need to understand why a distinctive policy and legal duty to request reasonable adjustments is

required. Organisations also need mechanisms and guidance to resolve competing requests for flexible working from different groups of staff. We found in some instances individuals, or groups of individuals, being left to decide between themselves who should take priority in requests for flexibility. In such instances relative power differentials or numerical presence of people in a particular group, may decide the outcome, rather than genuine need.

How to find out what adjustments can be requested, are available, or possible, and what will be regarded as 'reasonable', was another dilemma cited by interviewees, particularly those at the start of their careers. Not all had received an occupational health assessment and even among those that had, they had little sense of the potential solutions that were available. Organisational knowledge from prior experience of implementing workplace adjustments was significant. Otherwise, adjustments were largely viewed as an individual 'problem' rather than an organisational responsibility, a point made by this interviewee, 'Jennifer':

“the sort of fundamental attitude is that dealing with Jennifer’s disability is Jennifer’s problem, and she will kind of sort that out rather than the organisation has a role in that and needs to adapt as well.”

Another interviewee, 'Xavier', explained that there are days when he isn't well enough to travel into work but would be able to work from home at his own pace. His employer, however, does not support remote working and in response to requests he made to facilitate homeworking he was told that “if someone isn't well enough to come into the office, they aren't well enough work”. Such a basic misunderstanding among employers, when many impairments are often unstable and unpredictable, was common. Nonetheless, we did encounter one or two rays of hope from some interviewees. For example, 'Imogen' had started her career with a financial institution at aged 19 in a secretarial role, but had progressed through a range of roles and has remained with the organisation for 32 years. Her employer consistently provided support to keep her in work with the appropriate reasonable adjustments. This included flexibility when she had a child and the encouragement and financial support for her to gain legal qualifications. When she experienced renal failure, with the support of the staff 'ability aware network' and her line

manager, she was able to continue working. Her employer provided medical facilities on site for her to undertake dialysis twice a day and she eventually had a transplant. She received ongoing support including homeworking facilities to ensure that her valued contribution was maintained.

‘Geraldine’ is still completing her training contract with an employer who is flexible and allows her time off for hospital appointments without putting pressure on her. Access to Work were called in to assess her and ensured the correct equipment was in place. This is in contrast to her previous employer where she worked as a paralegal and came back into work on a 4 day a week phased return after a period off sick, which was presented as a reasonable adjustment. She had one day a week off unpaid, yet her targets were not reduced. She ended up working extra unpaid hours to reach her targets.

‘Yvonne’, is a solicitor who has worked for charities while experiencing hearing loss over the last ten years. She needs adjustments in situations involving large groups of people, such as conferences and large meetings but had learnt that provision depended on those organising an event. As someone who has utilised Access to Work for two staff members and described the process as “absolutely appalling” due to poor administration, when we spoke to ‘Yvonne’ she was despondent that she was about to embark on securing provision for herself. In the past she has bought equipment herself, rather than ask her employer or Access to Work to provide it. She uses a microphone that streams the signal to her hearing aids, and paid for her hearing aids, costs that all add up.

“by the time my hearing loss had become pronounced enough to become a problem to me, I was working in a position where I could largely manage my own work, if you see what I mean, and I was useful enough to basically be able to compensate in a way that maybe other people couldn’t do earlier in their profession.”

In ‘Yvonne’s’ experience, Employment Tribunals are better geared up to support disabled people since they have more disabled claimants. However, when approaching Courts in advance of hearings to explain her requirements, she has found it very difficult to communicate with them and is always uncertain if the information ends up in the right hands. This is especially the case in County Courts that may not even have an office to

contact. Yvonne cited court ushers as often very accommodating, but categorised her experiences with Magistrates Courts as “usually bad”. On occasions, she has experienced difficulties where case hearings had to be conducted over the phone and she was unable to hear: receiving no support or sympathy from the Magistrate who tried to insist that the client do the talking instead. There is still a great deal to be done to improve accessibility and good practice in places that legal professionals work, outside of their office environment. We found one example of a disabled barrister offering to advise on improving accessibility when court refurbishment works were being undertaken, only to be ignored. Contractors were often relied upon to install equipment and be knowledgeable about access, often with poor results, which were then too difficult to alter after installation.

### **13. Key personnel in training and employment**

#### **13.1 Line Managers**

The academic literature suggests that line managers or senior colleagues are central to the implementation of workplace adjustments (Fevre et al 2011, 2012; Foster, 2007; Foster and Fosh, 2010; Foster and Wass, 2013). A good relationship with a line manager or supervisor can be the difference between disability adjustments being a success or failure and a glance through Employment Tribunal cases, where a failure to make a reasonable adjustment was decided, appears to lend weight to this. A number of common scenarios that lead to such failures include: the absence of clear and transparent mechanisms to request, agree and record adjustments; poor understanding of legal obligations to disabled employees; and changes in key personnel that have agreed an adjustment: often this is a line manager.

Some interviewees had found co-workers and teams extremely supportive. A junior costs lawyer interviewed, recalled how, after she had dealt with a difficult case at work she had received support because of concerns about the effects on her welfare. However, when she requested reasonable adjustments to manage a long term health condition she said there was “no such concern for welfare then”. As a costs lawyer she believed there was a potential “case of discrimination in her situation”, but felt “powerless” to take action



against her employer because her employer was paying for her training. The International Bar Council survey (Pender, 2019) found that younger people were disproportionately impacted by workplace bullying in the profession and line managers and supervisors were the most frequent perpetrators, followed by other senior colleagues. The training of line managers in disability management is essential because their position in organisations often means they have to balance the sometimes competing tasks of people management with the management of devolved budgets (Foster and Scott, 2015; others?) . Having a central fund for workplace adjustments is one solution to this dilemma and would also allow for expertise to be centralised.

‘Oliver’ another costs lawyer, but with significant experience in his role, had a very supportive line manager when he developed work related stress and depression. However, he was told to “just get on with it or leave” by a partner and consequently left his job. In this case, one senior individual made it intolerable for him to continue after he returned to work from sick leave. He described his team as “very supportive” and by contrast, the firm “very confrontational”, to the extent that someone had been appointed to negotiate a termination of his contract while he was on sick leave, on behalf of the firm. Oliver was taking a claim for discrimination against his employer when we interviewed him.

### **13.2 Partners and senior personnel**

The role of partners and senior colleagues is often viewed as important because they can provide mentoring, be role models and they are able to confer privileges and opportunities. The importance of senior personnel varied by size of firm and ownership (e.g. owner-management firms), but many interviewees reported that where someone in a senior role had either a direct lived experience of disability, or a link to this experience through family members, this was significant. We counted a number of partners amongst our interviewees and focus group attendees, though it should be noted that only a minority of the partners we interviewed were promoted to this role after becoming disabled. Of those disabled before they achieved a partner status, many had successfully concealed their impairment prior to promotion. It is often assumed that partnership provides seniority, autonomy and,

therefore, confers some protection against ill-treatment and discrimination, though a number of challenged this view.

'Ian' a retired senior equity partner believed, like other partners we interviewed, that:

"it's difficult to be equity or certainly senior equity partner on reduced hours."

He told us that "as long as you generate the bottom line... within reason people don't mind how you achieve it", but he also noted that the way partner roles were currently constituted, restricts opportunities for many disabled people.

'Linsey' had been an equity partner in a firm that merged with a much larger one and chose to move across as an employee. Although age and seniority had given her more confidence, she did not have discussions with colleagues about her impairment.

"I've worked with one of the partners here for about 15 years, we worked together and he did not know how nervous I get on stairs. So like, I would never stand on the stair because I get nervous and when I get nervous and my balance goes, it's horrific. But he would never clock that because I would just avoid the stairs. So I would never see a client on the stairs. You know, I'd... you know. So, no, I just... I just don't talk about it. No."

Even among partners we interviewed that had had a negative experience, they often were able to cite individuals that were supportive. For example 'Finn' who stepped down as a partner cited a "very supportive group leader" who had a family experience of disability. Apart from being a "nice bloke", he recounted how:

"He was naturally very tuned into and aware of the whole thing. Very empathetic around the whole thing. So I was lucky, in a sense that I had him, sort of quite early on. But then he stepped down and eventually left and I had a new group leader take over and she was aware of it, but never took any interest"

During the interview Finn concluded that in his view it is very difficult, even impossible, to make a reasonable adjustment apply to the partner role.

The absence of visibly disabled people in Partner roles was commented on frequently by interviewees. So much so that some viewed a 'cap' on their career progression because of

the very way Partnership was conceived. For example, Esther, who works primarily from home commented that:

“you know, this thing about promotion, there's no sort of role model that I can see for somebody who's been promoted to partner in my position, you know, somebody who isn't able to travel.”

There is a real need to improve the representation of disabled people in leadership positions in the legal profession. This is an area that needs to be focused upon to not only improve the utilisation of talent in organisations, but to ensure that opportunities are not being unnecessarily and unfairly restricted for this group. Adjustments to the criteria for partnership and a willingness to redesign job roles would go a long way towards this. Swapping out tasks such as networking with writing blogs and articles or utilising contacts gained through voluntary work, are effective in raising profile and bringing in business, were examples that were mentioned to us by interviewees.

‘Jennifer’ explained how the fact that her line manager was an equity partner was crucial to getting her reasonable adjustments put in place.

“here... nothing happens if an equity partner doesn't get behind it, but it... it can be difficult to make stuff happen if you haven't got someone to put their weight behind it.”

Unless and until disabled people are represented at all levels, organisational cultures will not be challenged effectively and change. We have seen some evidence of the impact of ‘presence’ in relation to other protected characteristics, in the profession. It has been a long battle, but the increased number of women in senior roles is becoming more significant. The position of disabled people is much weaker. They are starting from a lower point in terms of representation numerically, but lessons need to be learnt from other initiatives (see section on intersectionality).

### **13.3 Occupational Health**

In most large and in some medium-sized organisations it is common to either have an in-house occupational health advisor or external provider, from which recommendations on reasonable adjustments can be sought. The relationship between occupational health

services, employees and employers, nonetheless, can be complex. This sometimes results in mistrust and confusion that can be experienced on all sides. Most commonly, employees report feeling unsure what the role of occupational health is, if an employer can reject their suggested adjustments, or they complain that occupational health advisors are unwilling to provide clear unambiguous advice. This was the case for 'Eve' a young costs lawyer that we interviewed who was assessed for adjustments to her work:

“access to work recommended working from home one day a week, then I went to the occupational health and they said, “It’s really a business decision, we can’t get involved.””

In this case 'Eve' went back to her Human Resources (HR) department and asked for the implementation of recommendations, but felt her working needs were ignored:

“The actual explanation was HR said to me for the working from home they said, “This is a recommendation to you personally. It’s not a recommendation to the company.””

Similar incidents were recounted by disabled people where they felt they were being sent back and forth between HR and occupational health for assessments, which resulted in quite simple recommendations that were then rejected by HR or line managers. Thus, rather than starting from a positive position where assessments were being used to *facilitate* a disabled employee, many felt assessments instead served the purpose of undermining them. Essentially, this is the difference between adopting a medical and social model of disability. A social model of disability would focus on removing barriers with the end goal of facilitating inclusion and 'levelling the playing field'. A medical model simply establishes what is 'wrong' with someone and, in the context of the workplace, an employer then decides whether they think it 'reasonable' to accommodate that difference. The fact that the vast majority of common adjustments bear little or no cost to the organisation, for example, home working, travelling to work outside rush hours, in theory, should mean they are facilitated, but in practice they often rejected on vague grounds. We found it often depended on the personalities of individual workplace actors and not enough on legal rights. This dislocation of rights and practice needs therefore, to be further addressed.

#### **13.4 The role of HR**

Not all of those interviewed worked in organisations with HR departments, but a majority did. It was significant, however, that few interviewees, unless directly asked, ever

mentioned the role of HR in the management of their disability. 'Carol' who identified as having dyslexia and dyscalculia was one of few people that spoke positively about HR. She had disclosed at recruitment but the information had not been conveyed to her line manager, who subjected her to demeaning behaviour. Once she approached HR for support, they were quick to take responsibility for the breakdown in communication and responded by bringing Access to Work in to advise on appropriate adjustments. They also insisted that her line-manager attend appropriate training. This experience gave her confidence to request reasonable adjustments in the future:

"I don't feel out of line if I actually say, 'oh, well, hang on, I need this' I raise things with my supervisor"

HR were invariably seen as the place to go if there was conflict to resolve, rather than a facilitating agent. Their role in this sense was viewed as reactive rather than proactive. A dominant question emerged among those that did discuss their experiences of HR, which was: 'whose interests do they serve?' This is illustrated by reference to a quote from one interviewee:

"HR... can easily turn against you when the managers say to... Primarily they are there for the employer before the employee."

The view that the function of HR was to protect the organisation and its interests, rather than to support staff, was frequently repeated by disabled interviewees. In one instance an interviewee felt HR had been supportive, but questioned this initial judgement when he stepped down as a partner as a direct consequence of his disability, at which point he was told by HR that this "had been a good result for the business":

"I should have questioned her a little bit on it and I should have said so who are HR working for? ..... HR works for the business it doesn't work for employees, it works with a business. So if you read between the lines of the whole situation, and I sort of knew this but without ever having it confirmed, the firm were probably quite nervous about me in the same way I was quite nervous about them"

HR were more often than not portrayed as lacking relevant experience of disability even where active and vibrant ED&I initiatives were supported by HR for groups with other protected characteristics. There was an appreciation that HR could not be experts in every impairment and that they needed to seek advice, but many felt HR processes were

unsubstantial and underdeveloped in the area of disability and institutional knowledge was poor. For example, 'George' experienced periods where he functioned very well but then had relapses. He expressed frustration that HR could not 'cope' with what was an unstable impairment: "I don't think there's any great amount of institutional knowledge in terms of how to practically deal with this sort of thing." Another interviewee highlighted how, even in the large firm he worked for, there was a lack of clarity in terms of structure and processes for dealing with periods when an impairment might mean visits to hospital, absences, or working from home. He complained that policies lacked a 'level of flexibility'.

Barristers referred to the absence of any HR function in many Chambers, though we were told about one chambers that had "an unusual structure with a CEO and large staff team - set up like a business with a HR department". The International Bar Association #UsToo (2019) report, concluded that formal policies on bullying and sexual harassment while present "in more than half of workplaces – are not having the desired effect". They also noted that "Although training does have some positive impact, only one in five legal workplaces are educating their staff to prevent and properly respond to bullying and sexual harassment." (Pender: 2019:11). All of this suggests that policies, practices and training remain woefully under-developed in the legal sector.

The intervention of HR, however, was not always welcomed by some, even where this might have been well-intentioned. In the public sector, HR were described by one interviewee as "undermining". In this instance the interviewee said she felt "overwhelmed" by "helpful" or "well-intentioned" people from HR and was "perplexed of what to do with all these helpful people". This example illustrates why a balance needs to be struck between inclusion and 'othering'. It also demonstrates why it is so important to increase the *presence* of disabled people in organisations to avoid accusations of tokenism.

'Veronica' found herself being invited out of the blue to a meeting with HR. Her neurologist's letter stated that no cognitive function test had been carried out, but failed to add that this was because there was no reason to do so. She was then put through a 'demoralising' test that was actually designed for people with Alzheimer's.

"I was actually off work for seven weeks and part of me felt that there was quite a break down in trust and confidence in my employer and I even considered, er, the line of constructive dismissal. I did consider that."

Meanwhile 'Geraldine' was called into a meeting after three short disability-related absences had triggered the firms' disciplinary procedure. This was despite her informing HR in writing about her medical condition when she first joined the organisation, which HR then denied knowledge of. Even though her head of department tried to step in, she was told that since HR had started the process, it couldn't be stopped. It is now commonplace in areas like the public sector, which are likely to be more unionised, for HR departments to treat disability-related absences differently, and always outside any disciplinary procedures (TUC, 2016). We would urge all organisations in the legal sector to embrace this best practice.

A provision we found in larger private sector firms that is not often available in the public sector was, however, the availability of private health insurance as part of terms and conditions of employment. This proved beneficial to a number of people we spoke to. For example, 'George' described how this provided him with much needed financial security:

"When the bad news hit, just having a network and having things like medical insurance and peace of mind, it would have been much more difficult at the bar I think.... [or as] a paralegal"

Furthermore, Veronica, who had considered whether she had a case for constructive dismissal following her negative experience with occupational health and HR, decided against it:

"because I'm very much reliant on the permanent health insurance and effectively that won't [inaudible], um, and I don't know as any settlement that I would have got out of claiming constructive dismissal would have covered quite enough money to be honest."

Despite the comments by George, we did encounter one instance where a chambers had also taken out collective medical insurance for all its members, which enabled one barrister we interviewed to continue to practice having been absent for 2 years recovering from major surgery.

#### **14. Disability, Ill-treatment and Bullying**

The global IBA (Pinder: 2019) survey found significant levels of bullying in the UK legal profession with almost 60% of cases going unreported. It details the effects on victims: more than half of bullied respondents left their workplace, or are considering leaving. 1 in 7 have left, or are thinking of leaving the legal profession entirely (Slingo, 2019).

Our research found a range of disturbing instances of ill-treatment and bullying of disabled people. It was not unusual for interviewees to report ill-treatment that was associated with specific impairments, but bullying was also connected to misunderstandings or jealousy related to requests for, or granted, reasonable adjustments. Moreover, as a senior employed barrister told us, in such a competitive profession he felt his mental ill- health had made him susceptible to bullying. He referred to a particular colleague, who he described as “sensing a vulnerability about me”. Because of the effects of this bullying he had required time off work to receive psychiatric support to deal with the events, but despite reporting incidents, the behaviour of the bully had not been dealt with by his employer.

We also found that it was common for disabled people to be accused by senior personnel or peers of ‘being difficult’. One interviewee’s experiences, though at the extreme end of those reported, had a devastating effect on her psycho-emotional well-being. She described how she:

“Constantly had to fight for support... and was accused of ‘being difficult’”... “It was left for me to arrange things. It was left for me to be a more proactive person constantly saying this is what I need. ... I then developed anxiety and starting having panic attacks because I thought they were going to dismiss me and it was just a really stressful period. ... on reflection I got bullied. I had people writing BITCH on my designated work area because again that was something I had to fight for”... “when I complained to my Principal, he looked into it but he didn’t actually do much about it. It was a really unpleasant experience”

Through tenacity and determination this interviewee successfully completed her training contract, but was then unable to secure employment. Her confidence and self-esteem severely undermined, she continues to be determined to work:



“[I] do want to be able to have the things I need to make my life a lot better. If I can’t do that how am I supposed to live? What am I supposed to do? ... There’s nothing wrong with being on benefits but if you have my skill set, why would you be on benefits?”

### **14.1 Intersectionality**

In both focus groups and interviews, there were discussions about whether ill-treatment experienced in training or employment, was the outcome of a disability, or of multiple protected characteristics: most commonly ethnicity, gender or age. One person recounted how she had noticed few black or visibly disabled people in senior roles in the organisations she had worked in:

“as a black woman I’m used to... I’ve always known that I’ve had to work a lot harder than my white counterparts”

Adding:

“With having a disability, I have to compensate even more. That’s probably made me the way that I am in terms of always constantly wanting to do work or do more to overachieve perhaps as well”

She also felt there were disparities and division within the disability community and that people with some impairments were encouraged or accepted more than others:

“Then you see the disparity because other disabilities and other people who might be in your areas that they are being encouraged to do certain things, why is it that you’re not being encouraged? What is the difference in your disability to theirs?”

A female interviewee who went to lengths to hide her impairment despite it seriously affecting her daily life, commented that being a woman in the legal profession was already a disadvantage, but being disabled as well was incredibly difficult. By concealing her impairment she had tried to avoid or minimise disability related disadvantages but inevitably this meant she had not benefitted from the adjustments she was entitled to.

Commenting on this, she said:

“it’s bad enough, you know, being female... where you’re commitment’s constantly questioned if you’re, you know, too feminine, or might go off and have another child or something like that, but then, you know, to take up your empathy quota by also being disabled..... You never get anywhere”

Significantly, this interviewee also referred to instances where both gendered and ableist assumptions were made about her in a very routine ways:

“in an appraisal there was feedback... saying I was a bit nervous going into the meeting room, and you know, maybe I didn’t have enough gravitas, which is a sexually charged word anyway”

This kind of impressionistic comment could be interpreted as making both gendered and ableist assumptions. The fact was, as this interviewee went on to explain, the physical environment, in particular the glass doors that she had to negotiate to get into the meeting room, was the real source of her nerves, because of her limited sight.

A number of women referred to the ‘macho competitiveness’ of the profession and several commented that this contributed to a culture where they felt that sexual harassment would be tolerated:

“I went to [an event about] sexual harassment and there were lots of women saying that they just felt like it was a profession where you had to be tough all the time. That meant accepting people, like, bullying you or harassing you and... and just kind of carrying on with it”.

Several interviewees told us about instances where they felt they were being discriminated against, but were unsure whether this was because of their disability, ethnicity, gender or age. For example, a BME interviewee ‘Ben’ told us how he found himself in an interview being asked where his parents were originally from?! This led him to reflect that he was often unsure if he had been rejected for jobs or training contracts due to his race or disability. Like others we interviewed and the IBA (2019) report found, ‘Ben’ had reached the conclusion that there was no point in making a complaint about the ill-treatment or discrimination he encountered because he believed his career would be more harmed by such a complaint than anything else.

### **15. Disabled People’s Organisations (DPOs) and Networks**

The availability of networks and sources of advice and support for disabled people within the profession tended to vary according to their career path, attachment to an organisation and geographical location. The LDD of The Law Society is run by disabled people for disabled solicitors, paralegals, trainees and students in the profession and as the most well

recognised group, was mentioned by most of our interviewees. The LDD Committee co-ordinates its activities and represents its membership on a variety of Law Society Committees. It holds regular meetings and events and has initiated placements and work experience schemes in co-operation with law firms specifically targeted at disabled people. One common problem raised by interviewees outside of London, however, was the inaccessibility of events and, our findings suggest, the development of a greater regional presence would strengthen representation and participation. Those able to attend events found them useful and supportive, in particular they offered opportunities to meet other disabled people and share experiences and examples of good practice. The development of a more active on-line LDD discussion forum was suggested as one possible way to include geographically dispersed members, another was live streaming or recording some events so that remote viewing or participation improved accessibility. 'Astrid', for example, spoke about the benefits she got from her involvement with the LDD:

"I would always say to someone, 'Join a committee group, meet other people, network,' so you can see how people have coped, learn from other people because just because someone has a slightly different type of disability to you, their process of going about things might actually inspire you or might actually show you that there's another way. It could also show you this is what you could do and a better way to approach it as opposed to thinking it's a personal thing. It could be something that's quite universal..."

Other networks identified during the research, operated either independently or within or between firms. Firm based networks were more likely to be found in large and medium-sized organisations (for example, the Inter-law Diversity Forum). By virtue of their size we assumed these organisations were also more likely to have a professional HR and D & I presence. Where workplace networks did exist it was generally felt that disability was *the most* neglected characteristic. We also found groups that existed largely outside of firms that had been set up by disabled people in the profession to support disabled people in the profession, often with a specific impairment. These provided sources of advice, some services and forms of peer support, such as mentoring. The fact that they were run by disabled people for disabled people often meant these organisations were well trusted. However, such groups were usually based in large Cities or in London. City Disabilities is one such organisation that was praised for its mentoring system and a number of research

participants reported positive experiences from their encounters with Aspiring Solicitors, especially in relation to their work finding placements and training contracts.

Imogen's experience of a vibrant and active 'ability awareness network' in her workplace had been very positive. It provided her with practical support when she became ill but, she believed, was also a crucial component of the inclusive and open culture of her organisation, which she told us enables her and others to thrive. It exists alongside other staff networks and educates, engages and develops good practice, which she believed was embedded throughout the organisation. The network also provided opportunities to bring people together "to have fun" and she believed the success of the network stemmed from engaging non-disabled members in their activities. This included important visible buy-in and commitment from senior leaders, which ensured that messages about accessibility and inclusion were seen by visitors and employees alike and were incorporated into continuous learning.

We found very few similar networks in chambers, the regions and small law firms. Disabled barristers, in particular, felt strongly that they had historically lacked their own organisation to represent their interests. They have a voice through The Bar Council's Equality Committee, however, nothing equivalent to the LDD of TLS exists. During our research and, partly as a consequence of it, a new group was established by an aspiring barrister, called The Association of Disabled Lawyers (ADL). This fills an obvious gap in terms of representation and is interesting in that it exists, as an organisation, outside the professional Bar as a group organised by disabled people for disabled people, making it distinctive from the LDD.

We became aware that many chambers had a nominal ED&I person, though they may not always have been employed as a dedicated specialist in this role, or have a developed understanding of disability. Unlike small and medium sized City law firms, chambers, high street law firms and sole practitioners, rarely employed dedicated HR or ED&I professionals. We did, however, become aware of one London Chambers that employed a part-time dedicated Equality and Diversity Manager, with knowledge of disability, while undertaking the research.

One barrister who believed there was “strength in numbers” thought a group representing disabled barristers at the Bar. He alluded to the need for:

“a strong movement of disabled barristers who come together and fight for change, and included students coming into the field, and then kind of, yeah, pushing the Bar Standards Board and Bar Council... and the Inns, they really should be doing stuff because they have their... they're supposed to be, like, the support.”

Others voiced the opinion that disability as a protected characteristic was so neglected in inclusion initiatives at the Bar, there was little visible support or role models:

“We are about 30, 40, 50 years behind other minority groups. So, for example, were I to say to you I know what it's like to be a woman, I'm disabled, you'd feel insulted. But... but there's nothing bad about being a woman but by implication there is about being disabled... One of the reasons we're way behind the curve is there aren't so many of us who are visible. But a far more important reason is we're not able to unite. You can find another woman at work just walk into another office, they're fairly easy to spot... If nowadays I choose to disclose that I'm gay, and I don't need to but if I do, I choose to disclose that I'm gay, there's a whole social life, whole network built up around the gay community”.

And added:

...“People do not regard themselves as prejudiced....they regard themselves as realistic about the confines of the disability, something of which they have no experience whatsoever. That is the key thing. Disabled people are not permitted the expectation that they will have expertise in their own disability”.

Although not a network, LawCare was also praised by some interviewees as an excellent source of support and advice on mental health issues.

The absence of disabled role models in the profession emerged as significant and data collected from our larger survey suggests one reason for this is that so many disabled people conceal their impairment. One aspiring barrister told us that little support existed at the Bar for disabled barristers and she had been told by her Inns: “if they do have disabilities they keep them quiet”, other senior solicitors strongly believed had they ‘come out’ as disabled earlier in their career they would have not advanced. There exists a culture of fear in the profession, that disability is automatically equated with inability rather than positive diversity.

In interviews, we encountered significant cynicism about ED&I initiatives across the profession, though our survey responses were less critical. The view was frequently voiced that investment in ED&I by large firms was motivated by profit rather than by the objective to improve diversity and address engrained prejudices. As we have discussed elsewhere, we believe this may be a consequence of the dominance of the business case for diversity discourse within the profession. Accreditations and awards that firms achieve for their diversity initiatives were sometimes referred to disparagingly and it was frequently suggested that they require better scrutiny from groups of people they were intended to benefit. The issue of leadership emerged as significant, with a number of interviewees stating that unless a senior partner was genuinely dedicated to promoting diversity nothing would happen:

“there is a lot of kind of this culture of, you know, having the badges on the bottom of the letters when they send them out and... some of the things that they do are... important to be accredited with, but it's more than the accreditation; it's like the actual implementation of what it is and whether or not practically does it help anyone? Because saying that there's a support group there is great, it's all well and good, but if that support group is led by a senior associate then it might as well not exist because if it doesn't have partner support then nothing is ever, ever going to change. You can't go into a support group, speak to somebody about problems that you're having if they are not in a position to change it.”  
(‘Bryan’)

A number of ED&I initiatives in the sector was cited as important, but insufficiently tailored to disabled people as a distinctive group. For example, we were told by two disabled male participants that they attended returners workshops aimed at women coming back to the workplace following maternity leave, because there was no such equivalent event to support disabled returners. Interviewees we have cited previously in this report including ‘Eve’ and ‘Derek’ found networks and accreditations helpful in evaluating which employers supported flexible working initiatives and inclusive employment practices, but we suggest that much more attention needs to be given in firms to developing tailored disability networks led by disabled people.

Examples of mentoring through DPOs were provided. We spoke to a number of people who had been mentored through City Disabilities and the outcome had been very positive. One

had been relatively recently given the diagnosis of MS and had initially thought his career would never recover, but after being introduced to a partner with the same diagnosis, his outlook transformed:

“through them I was introduced to a guy who is a partner at another firm who has MS as well and I found that tremendously useful, the most beneficial part of that was seeing someone who had been working with the condition for 20 odd, pushing 30 years, and had a brilliant career and it hadn’t stopped him at all.”

However, ‘Nina’ referred to a mentoring experiences with another organisation that was less positive. She had been given an external mentor through a disability support group, but they had left the profession after acquiring a disability:

“she kind of just said, oh, sod it, I'm just going to be honest, I can't do it with my disability anymore because she was already working in law when she became disabled. But that... that then made me worry a bit, rather than the other way around.”

A few people, predominantly those with experience of working in the public sector, referred to their membership of a trade union, with mixed experiences. Naomi found that within the same union, two representatives took contrasting approaches and her experiences were vastly different. Oliver joined a union when things ‘started unravelling’ but told us “they didn’t even return my calls.” However, some interviewees felt that a union or subsection of a union specifically for the legal profession, could be a useful presence. Interestingly, there was particular support for organising a trade union among barristers.

We have previously referred to the importance of positive role models for disabled people and ‘Harry’ is one such example. He, nonetheless, confided that he had felt pressure to remain in work, because there were so few disabled role models for others coming into the profession:

“I just don't feel comfortable retiring before ordinary people do, so I feel I should work until at least I'm 60. I'm also conscious that, rightly or wrongly, for all sorts of reasons, it might be wrongly, I'm seen as one of the few disabled people who's got to the top of their profession”.

'Finn' also believed if there were more disabled people willing to step forward as role models that this could influence change, but he himself did not feel ready to be a role model, especially as someone who usually chose not to disclose his impairment.

Interestingly, commenting on those disabled people who had become visible role models he described them as "unusual individuals" and he didn't necessarily identify with them: "I'd say X, he's... I just call him exceptional and an exception."

"I feared someone saying, you know what, you shouldn't hold you back in any way, shape or form because there's people out there look at him, he's achieved. No one ever said that to me, but I've always been in fear of it... I think people like that they are, sort of, unbelievably driven, much more than the average person is."

Others believed disability to be the "last taboo" in the legal profession and, as such, a lot of people felt unable to "come out" and positively identify as a disabled ambassador. For example, 'Nina' considered herself to be a poor ambassador because she finds it hard to speak up for herself. However, she found seeing other disabled people in law beneficial, but felt a wide variety of different people's experiences needed to be highlighted because "nobody's the same and what works for one may not work for another".

'Theo' went to great lengths to convey the point that although he has taken part in high profile work to highlight disabled people in the profession, he doesn't feel that he is 'remarkable' in any way:

"I normally take great exception to being called exceptional or something like that."

He credits his commercial success with being good at working with people, which benefits clients and also enables him to secure the support he needs:

"And I think, you know, if you come across as being reasonable in your requests, and talking about how... how things affect you, and being open, um, you know, that can only foster a sort of better working relationship."

Not everyone agreed that having disability specific staff networks was the ideal solution.

'Carol', for example, felt ED&I should be an integral part of the business:



"I think if it can work, it works a bit better than having specific groups. Because there are so many diversity factors that if you were to try and have a group for everything, it does create a them and us situation and makes people feel more segregated rather than less."

### **16. Professional Equality, Diversity and Inclusion initiatives**

We found criticism of what were seen as 'tick box exercises' on diversity, in the profession. These tended to record the mere presence of different groups with protected characteristics, rather than where they were situated in terms of seniority. Largely perceived as exercises in 'compliance', many felt they failed to provide any evidence of real change or progress. Some people were cynical that collecting this type of basic data did nothing to identify what problems disabled people faced and instead just contributed to "impressionism" or image, aimed at satisfying external clients. This cynicism, some believed prevented "honest conversations" about enduring or neglected inequalities. Disability was seen as falling into these categories, forgotten about because other inequalities based on gender, socio-economic background, and race were viewed as more "newsworthy".

Those who worked in the public sector were aware of the use of Equality Impact Assessment tools, but also felt these were often conducted to meet compliance expectations and did not fully involve groups with protected characteristics in ED&I action plans. Formal policies were frequently viewed as ineffective because of an absence of "institutional knowledge" to enact them. Referring to ED&I networks that had been set up by, or for other groups (women, BME and LGBTI+), many interviewees felt there was a better institutional and professional basis to share knowledge of good practice than there was on disability. 'George' thus reflected on what he described as the "nuanced" character of much ED&I work in organisational settings:

"it's fairly easy to switch off when you hear an equality and diversity initiative because you're like, "I'm not racist. I don't discriminate against women. I don't discriminate against gay people so whoever this is aimed at, it's not me because I'm doing fine..... In one sense it's kind of fair enough, but it's also I think that unconscious bias training that has caught on recently, is very good in making you realise it's not that simple".

Adding that he "was frustrated with disability being boiled down to wheelchair users".

‘Harry’, who felt he was coming to the end of his career, reflected on what he felt had and had not worked in the legal profession:

“What is needed is the return of the political correctness that saved me in the mid-1990s. ... in no other way will you encourage people who are in a hierarchical profession, who enjoy power over those below them, to obey. That's not going to happen. So what else?... I would like to see an end to this plethora of rubbish awards that are given to people for their paper policies. I participated in one recently just to make sure it wasn't given to firms that I knew, as a matter of reality, didn't deserve it, which I managed to do. But I hated it... This... we should stop this absurd emphasis on external view and visible metrics....we need to invest in diversity staff more. By that, I don't mean more diversity staff, I mean diversity staff who aren't trained in their own Shangri-La utterly irrelevant discipline, aren't in their internal diversity market where everybody knows everybody else and everybody scratches everybody's else's back and swaps jobs. We need genuine business people able to speak the language of genuine business people in diversity”.

An initiative that did come in for praise was ‘reverse mentoring’, which was highlighted as an extremely effective way of educating a senior colleague about the challenges of navigating an inaccessible working environment. ‘Veronica’ described how she had found her mentee “incredibly positive” and action and change from HR had been one of outcomes demanded by the partner as a consequence. ‘Xander’, who currently works in the public sector also saw reverse mentoring as an important tool for supporting disabled people into leadership positions. We did, nonetheless, speak to some who didn’t want to become ‘the’ disability person that everyone came to for advice and this also needs to be respected.

The use of ED&I in the procurement process as a lever for change was raised by a number of interviewees, though there was little agreement on whether this was an effective tool for disabled people. A number of people separately made the point that the focus was very much on demonstrating ED&I around gender, rather than any other protected characteristic: reinforcing the perception that the profession had its own hierarchy of priorities on inequalities:

"When you get, you know, invitations to tender for work, will be full of questions around what are you doing around diversity? And then they expect you to tell them all about your initiatives. It usually applies to women”.

“In this firm when people talk about diversity there are really talking about gender”.... The firm campaign to attract more women. Senior appointments in the firm are all driven by quotas on the board”..... "it's trendy"...."so disability absolutely isn't trendy in the same way. I'm sensing now, in this firm, race is starting to become a little bit trendy.... Because the board have kind of like done women they are now moving on to BME”.

The feeling that disability was a neglected and misunderstood aspect of ED&I work is perhaps best summed up by reference to these two quotations from interviewees. ‘Felicity’, ended her interview by poignantly saying:

“I wonder whether, you know, I should encourage other people with disabilities coming through the system...to bother with the legal profession. I think there are so many things their energy could be used more efficiently, which are similar skills to lawyers, but where you don’t have this kind of Dickensian approach to disabilities”

Whereas ‘Harry’ found it very difficult to conceal his disgust at the way he had seen the profession treat disabled people and he makes a really important point, that for genuine change to occur, disability needs to be accepted in the profession:

“I've seen the most... revolting instances of young people who are just trying to find their feet, in their first job. They're taken on by an employer and they're encouraged to write articles about how good their employers are about their disabilities. The subtext is ‘my employer has been so good about disability they've almost forgiven me for it’..... They see themselves as disabled, they are seen as disabled, and no one ever says let this poor sod see himself as a lawyer and just get on with the job. Stop making a bloody issue of it. Just let him get on with his job. We've all got stuff to do, and we've all got difficulties, stop making such a bloody great thing of his....”

### **17. Time for Positive action?**

During interviews and focus groups, some of the discussions we had with participants about the way forward for the profession, touched on the role of positive action or positive discrimination. Research participants frequently referred to the way disability in the profession had been neglected in diversity and inclusion work and how the journey towards understanding the barriers faced by disabled people had, in many respects, only just begun. The example of women in the profession and the painfully slow pace of change they had endured, was often referred to. This slow pace of change often provided justification for the

argument that positive action for disabled people was required, though a minority of those we interviewed were concerned that positive action could lead to ‘tokenism’ or to disabled people being patronised and stereotyped as “not good enough”:

“I’d worry about people, disabled people, becoming tarnished with the perception that they weren’t there on merit and potentially not being given best work, or work with best clients, best partners, so I think if it were anything like that, it would have to be managed very carefully” (George).

Some people we interviewed had benefited from positive action measures and did not share such concerns. Stephen, for example, who joined the profession through a scheme targeted at attracting more disabled candidates did not view this as tokenism, but rather as providing opportunities and creating chances for disabled people because previously there had been few:

“You have got enough disadvantages thrown at you in life. Why not have something that gives you an advantage?”

Our own view is that, given the magnitude of the change required, positive action is essential if timely change is to occur in the profession. Furthermore, evidence we highlight in this report suggests that a person’s impairment or health condition is not the key limiting variable, it is practices, traditions and other people’s attitudes and misconceptions about disabled people, that is. At no time did we encounter disabled people who could not do the training, or their job. Rather, they often referred to the arsenal of qualifications they had had to complete to be taken seriously as a candidate worthy of competing with their non-disabled peers, if, of course they were allowed the opportunity (sometimes literally), to get through the door.

The image of a ‘shackled runner’ has been used by diversity academics to challenge the dominant liberal view of equal opportunities (Noon, 2011) and illustrate what can be a failure to acknowledge the importance of ‘difference’. This image, powerfully illustrates how, when entering a race, some participants carry with them inherent disadvantage. They arrive at the starting line having already travelled twice as far to qualify, having not had access to the same advantages as other participants. The shackles on their legs being a representation of this disadvantage. This was an analogy that applied to many of the

disabled people we spoke to, who wore metaphorical shackles because the ableist workplaces they occupied saw no reason to grant them requested reasonable adjustments. This analogy demonstrates why a genuine appreciation of diversity must acknowledge difference and is why disability law differs from other discrimination law in the UK. Thus, instead of thinking of equality as 'sameness' (treating people symmetrically) the law acknowledges that disabled people must be treated differently (asymmetrically) (Foster with Williams, 2010). If such differential treatment means that positive action or discrimination is required to address the substantial disadvantages experienced by the disabled person, then this is permissible, but often, simply means providing low cost appropriate and reasonable adjustments, which our report suggests, is currently not routinely happening.

A number of suggestions were put forward by research participants as to how, and in what form(s), positive action could be implemented in the profession. Some argued for competence based quota systems and for sanctions to be placed on employers that refused to participate. Others believed that services needed to be introduced that were tailored towards including disabled people, particularly at recruitment, including personalised support, funding for adjustments, scholarships and robust careers advice. The application processes used by the profession were the subject of some criticism. Not only did research participants highlight elitism and ableism among recruiters and agencies, but they raised concerns about proposals to increase the use of psychometric tests and employ providers outside of universities to operate examinations/assessments. The significance of this is that the majority of disabled people we interviewed and surveyed found their experiences of accessibility and inclusion at University more positive compared to post- university, professional experiences.

The wider infrastructure and attitudes in society towards disabled people were also highlighted by disabled people as important because, as one interviewee argued:

"If the government doesn't do things to help you, to support that, because there are cuts to access to work, there are cuts to benefits, there are cuts to transport even. How do you get there? ... Where's the infrastructure for it? Again, it's that constant thing of you're complaining. Where are the toilets, for example?" ('Astrid').

A number of interviewees also believed the support of big name firms to lead change on disability in the profession, was required. There was a feeling that law firms followed diversity trends and several people referred to the impact that Clifford Chance (a 'magic circle' firm) had had, as the first high profile firm to produce a disability pay gap report. Some cynicism was voiced that disabled people could sometimes be used to promote the image of a firm and among big London firms, it was argued that money to fund adjustments wasn't an issue anyway. Indeed, we interviewed a number of successful solicitors working in large and medium sized law firms where expensive physical adaptations to buildings had been made with little or no resistance. Interestingly, however, although we found examples of physical visual adaptations being facilitated, we came across a number of people in large firms who requested a personal assistant as a reasonable adjustment, which was dismissed as unreasonable. Perhaps it is easier to 'justify' expenditure on built environment that has the potential to benefit many, rather than individual adjustments that will benefit one person? So called 'softer adjustments' that often cost nothing or less, financially, always appeared more difficult to secure. These included changes in the behaviour or practices of the people working with disabled people: what we refer to as 'deep' rather than a 'surface' changes. One interviewee thus commented that:

"I think the way they see it is if they can discharge their legal obligations under the Equality Act by throwing money at it, they'd be more than thrilled." ('Jennifer').

A recurrent theme that emerged was the way in which the profession had made advances in talking about stress and mental health. Reference was made to initiatives by firms to highlight mental well-being and the championing of mental health awareness by senior personnel. Among barristers there was also a recognition that the Bar Council had collected important data highlighting the effects of mental ill-health and the work of Lawcare was widely cited and acknowledged as important. However, most disabled people believed that while the stigma of progressive mental health initiatives had been challenged, the link between disability and mental ill-health had been insufficiently explored:

"Interestingly, mental health has reasonably high profile in the firm. And I think it's absolutely vital to make a link between mental health and disability because, to me, the two go hand in hand. I would say that every... Every disabled person, you know, will be affected by mental

health issue at some point and they may vary in extremes, but certainly my experience of having over the last 10 years, it does affect your mental health” (Finn).

Discussions in focus groups, with our Research Reference Group and with the LDD also touched upon the place of disability in the burgeoning ‘health and well-being’ agenda, which has gained increased prominence in the legal profession. Disabled people told us they often felt uneasy about this agenda and its emphasis on health, which they interpreted as needing to achieve some sort of standard of ‘perfect health’. Many wondered where they fitted and some expressed the view that such initiatives reinforced rather than challenged perceptions of what constitutes an ‘ideal’ lawyer: an ‘ideal’ that excluded them. The focus on mental or emotional ‘resilience’, also suggested to some that there was a desired benchmark, or norm. It often focuses on how individuals can cope with the pressures of work (including ill-treatment), rather than the causes of stress and other negative behaviour (Foster, 2018). For example, there is a lot of evidence to suggest that long working hours, difficult working conditions and stress are the cause of mental ill-health but unless unhealthy working practices are addressed and reformed well-being initiatives aimed at individuals may simply act as metaphorical ‘sticking plasters’ (Foster, 2018). Most of all, many disabled people simply failed to identify with the well-being agenda and felt it marginalised the importance of recognising that disability is an everyday reality for many in the profession. Positive action in this area is, therefore, required.

## 5. Summary of Survey Findings

### 1. Introduction

We intentionally reported our data gathered through interviews and focus groups with disabled people in the legal profession first, so that their voices and their priorities would shape the way we reported our findings. Too often, research findings can be dominated by the priorities of the researchers, rather than the group being researched and we have been mindful of this throughout and, helped by the objectives and philosophy of co-production. Ultimately, the key aim of this research was to produce a report that reflected the perspectives of disabled people working in the legal profession in England and Wales. Something that has never been attempted before. We were overwhelmed by the positive feedback we received from our Research Reference Group and the LDD on earlier drafts of the report, so we felt our approach, which has left the quantitative survey data until last, is well justified. Some may question why we used different data collecting methods at all, since other reports in the sector have often utilised just one. The nature of disability as a characteristic and the continued belief in the profession that concealment is the best career strategy, suggested to us that we had only reached a proportion of potential participants in the project. We wanted to reach as many people as possible and encourage their participation and we were aware that larger samples look more authoritative in presentations and reports!

We present the statistics in summary form for the reasons stated above. Please, if you have turned to this section because you believe it will provide an easily accessible snap shot of our findings, with a larger sample, think again. It is not enough for the profession to know **how many** people have had particular experiences, it is much more important to understand **why** these experiences have occurred how they have been **experienced** and **what action** can be taken to prevent disadvantages and waste of talent from recurring. If you are tempted to take a short cut we advise you go back and look at some of the direct quotations from interviewees and include these in any presentations or reports. It is essential that lived experiences need to be understood, acknowledged and addressed.



Analysis of the qualitative data we collected from focus groups and interviews provided the basis for two surveys. One was designed for barristers, with n=47 valid responses, and a second for all other legal professionals, to which there were n=241 valid responses.

## **2. Form of impairment**

Our research was guided by the social model of disability, as such, we were less interested in the medical diagnosis someone had received and more interested in the way that someone's impairment affected their day to day interactions with society, including the workplace. The question we asked about form of impairment was, therefore, interested in whether it was visible, non-visible or both. Being disabled can have a psychological and emotional impact on an individual, so the social model while interested in how society reacts to an individual as a visibly disabled person, is also interested in how, for example, negative *social* stereotypes can influence the way disabled people are treated by others and how this affects their feelings about their self-worth.

Of the barristers surveyed, 66% reported they had their impairment when they started training. 72% responded that they had an invisible impairment and 19% have visible and invisible impairments. Just 8.5% had only visible impairments.

The data for solicitors shows that 59% had their impairment when they started training. 59% of respondents have an invisible impairment and 31.5% have visible and invisible impairments. Just 8% have only visible impairments.

This is important because for both groups, greater than 90% of disabled legal professionals have invisible impairments that may not be known to employers or colleagues unless individuals choose to disclose. Without disclosing, individuals may not be able to access support or reasonable adjustments and will be carrying the strain of 'self-accommodating' and concealing, as demonstrated in the interview data. Interview data identified individuals who had disclosed visible impairments but were afraid of discussing issues such as fatigue with their employers, meaning that at best only some needs were being met. Additionally, impairments often fluctuate, meaning that reasonable adjustments may themselves need to

be flexible and implemented as and when needed to accommodate unpredictable changes that impact on how an individual can work.

66% of Barristers and 80% of solicitors/paralegals reported a fluctuating impairment with 79% and 85% respectively also experiencing additional fatigue and/or pain.

Our interview data demonstrated that most employers and workplaces are not equipped to accommodate adjustments where the effects of an impairment vary or are unpredictable.

### **3. Disclosure**

Of those that had completed an anonymous equality monitoring survey, only 55% of barristers and 60% of other legal professionals always declared they were disabled. This reinforces interview and anecdotal evidence that significantly more disabled people are working in the legal profession than figures indicate.

In understanding why people do not disclose, the survey data offers additional insights to the interview data. Individuals who disclose at various points in an application for training/pupillage, or for a job, are frequently uncertain as to whether or not disclosure had an impact on the outcome.

#### ***3.1 Solicitors/paralegals:***

Respondents experienced a mix of positive and negative responses from employers to disclosure at different points in the application process. 28% experienced a negative response from employers when disclosing during the process of applying for a training contract or a job, with 32% experiencing a negative and unsupportive response when disclosing after being offered a job.

When applying for training, only 8.5% were confident that disclosing would not be detrimental to their chances of gaining a training contract.

#### ***3.2 Barristers:***

When applying for pupillage or work experience, 33% and 20% experienced a negative response when disclosing they were disabled on a CV /application or after the offer of a place, respectively. When seeking employment or tenancy, 20% and 26% experienced a negative reaction when disclosing on a CV/application, or after an offer. As with solicitors, the majority were unsure as to whether or not disclosure influenced the outcomes which indicates that clear gestures of support were not forthcoming for most applicants. These figures point to an urgent need for employers and chambers to reassure applicants that disabled people are welcome and that disclosure will result in an individual being treated fairly and offered support and not be stigmatised or discriminated against.

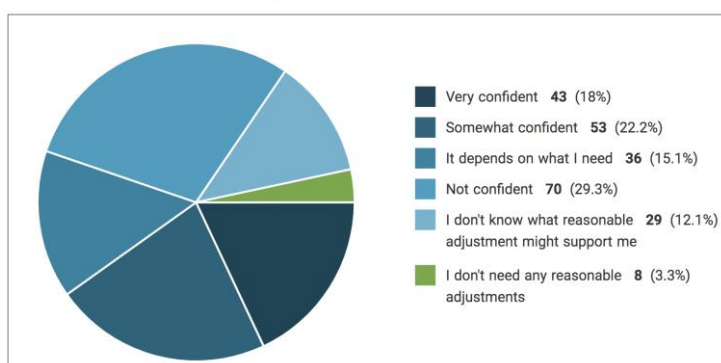
#### **4. Requesting Reasonable Adjustments**

81% of barristers and 86% of other legal professionals who have requested reasonable adjustments or support say that the process has created stress and anxiety for them.

##### **4.1 Confidence to request RAs (solicitors/paralegals): [pie charts to be redesigned]**

Fewer than 40% of solicitors/paralegals are confident to request reasonable adjustments at work and over one tenth don't know what adjustments could be made available to support them. Employers should do more to promote common reasonable adjustments and ensure a clear and easy to access process is in place for discussing and requesting accommodations.

How confident did/do you feel to request reasonable adjustments at work?



Additionally, 68% frequently or sometimes encounter difficulties securing access or reasonable adjustments to work or attend events outside of the usual workplace.

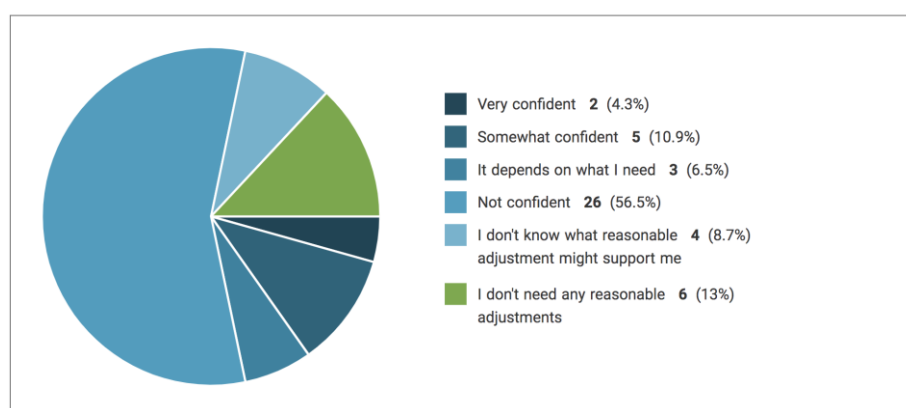
An open comment box revealed a number of similar experiences of requesting reasonable adjustments. Confidence to request varied depending on the type of adjustment needed, possible cost, perceived ‘inconvenience’ to others, whether previous requests have been met and overall workplace culture. Requests for changes to promotion criteria, hours/targets, or for a parking space, had been refused. Some responses indicated that often small requests were also overly scrutinised or ignored.

“It depends on the attitude of the person/people/department to whom the request must be made, your relationship with them, and the size/perceived difficulty of the request; on whether I would be viewed as a trouble maker for making the request; impact on others around me vs impact on myself.”

Numerous comments made reference to fluctuating needs which they found hard to explain to colleagues.

“I wanted to be able to work from home depending on how I felt. My old company were great, but we merged with a new company who were set against such flexible working. As we were going through a restructure I didn't want to highlight the fact that I needed this adjustment, but I asked anyway, with a rather hilarious response back. They said I could work from home one day a week, but would need to reassess the situation every three months. I did point out that my disability wasn't going to go away!”

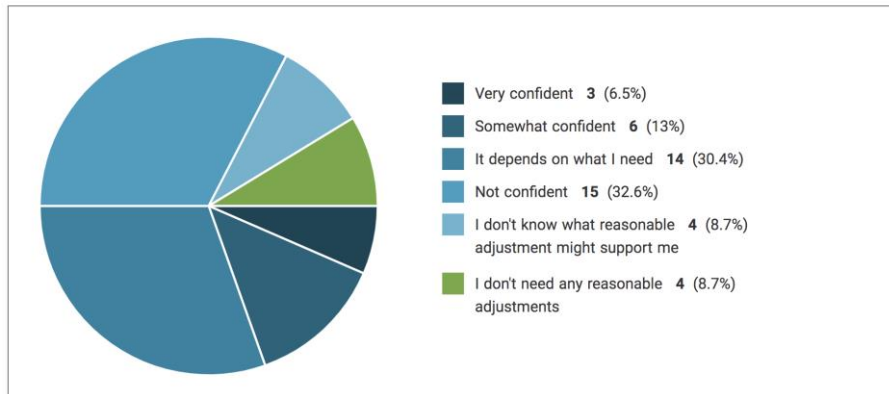
How confident did/do you feel to request reasonable adjustments in other working environments such as courts?



#### 4.2 Confidence to request RAs (Barristers):

Confidence to request reasonable adjustments is much lower for barristers (<20%) than other legal professionals. Confidence to request reasonable adjustments further decreases in the courts or working environments outside chambers.

How confident did/do you feel to request reasonable adjustments within your barristers' chambers or at work, if employed?



Success in securing different types of reasonable adjustments is variable, as indicated throughout the interviews. Those responding to the surveys indicated the level of success they'd experienced with requests for adjustments. For both groups, most commonly requested were flexible working and working from home. At best, less than half of those requesting these forms of reasonable adjustments had these requests granted in full. A partially implemented adjustment is arguably insufficient and still puts stress on an individual to self-accommodate and can compromise their ability to get the job done.

Changes to billable hours and targets for both groups were less likely to be requested or met. Changes to jobs roles or tasks were requested by just under a third of both groups, but only fully implemented for 5% and 6% of barristers and solicitors respectively. This will likely have a detrimental impact on future career progression.

Comments from barristers identified physical barriers including the requirement to take away large numbers of folders after a case has finished and the need to lift heavy bags onto tables for searches at the entry point.

It was also noted that there is an unreasonable belief that barristers are superhuman.

“This is a real expectation that things can be turned around quickly with no notice. It is impossible to work like this with a disability or with a family.”

Success getting RAs in place (solicitors):

	<b>Requested and put into place (%)</b>	<b>Requested and partially put into place (%)</b>	<b>Requested and not put into place (%)</b>
Flexible working	31	17	15
Working from home when required	29	20	15
IT & communications technology	27.5	12	12
Physical adaptations	18	10.5	9
Changes to job roles/tasks	6	12	12
Provision of PA/other support	4	6	8
Changes to billable hours/targets	3	8	11
Disability awareness training for colleagues	3	3	11

**Success getting RAs in place (Barristers):**

	<b>Requested and put into place (%)</b>	<b>Requested and partially put into place (%)</b>	<b>Requested and not put into place (%)</b>
Working from home when required	31	22	11
Flexible working	18	23	18
Support from chambers/clerks to negotiate external deadline and access requirements	12	9	14
Allocation or organisation of cases/caseload to accommodate requirements	7	16	20
IT & communications technology	5	9	12
Physical adaptations	5	7	7
Changes to job roles/tasks	5	10	17
Disability awareness training for colleagues	5	2	14
Provision of PA/other support	2	2	10
Changes to billable hours/targets	2	5	12

Mechanisms to improve support from clerks to enable disabled barristers to manage caseload and external deadlines and access requirements is an area to give consideration to.

## **5. Support from colleagues**

### ***5.1 Solicitors/paralegals:***

The level of support from different people (colleagues, managers, partners, HR) is highly variable, suggesting that policies and leadership are not translating into consistent and reliable levels of support for individuals.

Support from HR although variable, comes out more positively than suggested by the interview data. Access to Work had not been used by more than two thirds of the survey respondents with a fairly even mix of good and poor experiences from those who had.

In workplaces that showed a high level of trust, individuals were more likely to secure the reasonable adjustments they requested and more likely to indicate good or excellent support from colleagues, line managers, partners and HR, in that order.

The contrast was stark with those reporting low levels of trust in the workplace, who were very unlikely to secure reasonable adjustments and reported poor or extremely poor support and leadership on diversity and equality issues.

### ***5.2 Barristers:***

Variability of support was also a feature of the barristers' responses with the caveat of smaller numbers responding. Support from clerks appears to strongly correlate with requests for reasonable adjustments being met, improved support in court and from judiciary, high level of trust in the workplace, and leadership from senior barristers. This indicates a significant role for clerks as well as heads of chambers in enabling disabled barristers to get appropriate support in place.

## **6. Ill-treatment**

We asked survey respondents about their experiences of ill-treatment in the workplace. We used the broad term ill-treatment, because it enabled us to identify and probe a range of



overt and subtle ways in which disabled legal professionals may experience attitudinal barriers to their careers. This terminology is also consistent with the British Workplace Behaviour Survey (BWBS) and UK Workplace Bullying and Harassment in Britain (WBHB) surveys reported particularly in Fevre, Robinson, Jones and Lewis (2008) and Fevre, Lewis, Robinson and Jones (2011a, 2012: 30-102). Foster and Scott (2015:2) usefully summarise four key conclusions of relevance to disabled employees in this literature. First, disabled employees and those with long-term illnesses were more likely to report negative experiences at work than other groups with 'protected characteristics' (Fevre et al., 2008; Fevre, Robinson, Lewis and Jones, 2013). Second, the type of disability and negative behaviour they experienced was significant with those identifying as having a psychological disability or illness most likely to report experiencing negative behaviour. Third, reasons for negative behaviour are varied and complex. Finally, and perhaps most significantly: 'the relationship between disability and negative behaviour is strong and pronounced, even holding constant other relevant demographic, attitudinal and workplace characteristics' (Fevre et al, 2008: 8; Foster and Scott, 2015:2).

### ***6.1 Solicitors/paralegals:***

Among solicitors and paralegals surveyed 60% reported experiences of ill-treatment in the working environment. Of these, 80% believed the ill-treatment was in relation to disability. Nearly 50% experienced ill-treatment from both repeat perpetrators and separate perpetrators. 37% never reported ill-treatment (42%, sometimes and 21%, always)

The most common forms of ill-treatment reported by solicitors and paralegals are:

- Poor attitudes/lack of understanding
- Discrimination
- Refusal of necessary reasonable adjustments
- Overbearing supervision/constant unproductive criticism
- Bullying
- Exclusion or victimisation

## **6.2 Barristers:**

Of the barristers surveyed, 45% reported experiencing ill-treatment in the working environment, lower than incidences reported by solicitors and paralegals. Of these, 71% believed the ill-treatment was in relation to their disability. Noting the smaller sample size, 35% experienced ill-treatment from both repeat perpetrators and separate perpetrators but were more likely than solicitors/paralegals to experience ill-treatment from the same perpetrator (39%).

It is significant that far fewer barristers reported ill-treatment than solicitors/paralegals, with 54% never reporting (37.5%, sometimes and 8.3%, always). This may point to a number of factors, including fear of repercussions of raising a complaint, or fewer obvious opportunities/options available to seek redress. We anticipate a correlation between the presence of a specialist HR role and formal reporting procedures for raising complaints about different forms of ill-treatment. Since characteristically, HR functions are more usual in large and medium sized employing organisations, this may account for the difference responses between the 2 surveys.

The most common forms of ill-treatment reported by barristers are:

- Poor attitudes/lack of understanding
- Ridicule or demeaning language
- Refusal of necessary reasonable adjustments
- Bullying
- Overbearing supervision/unreasonable performance targets

The higher reported incidences of ridicule or demeaning language at the Bar is significant and may point to the nature of discourse in the profession generally.

## **7. Factors influencing career progression:**

Survey respondents were asked to identify factors that had contributed to positive or negative experiences, opportunities and an ability to progress their career. There were

some differences between the two groups with long working hours in common as a negative and the presence of mentors and other disabled professionals as a positive.

**7.1 Positive factors: Solicitors/paralegals:**

- Seniority and length of service
- Medical insurance
- Presence of a mentor
- Visibility of other disabled professionals

**7.2 Positive factors: Barristers**

- Seniority and length of service
- Visibility of other disabled professionals
- Presence of a mentor

**7.3 Negative factors: Solicitors/paralegals**

- Presenteeism
- Long working hours
- Being new to career/condition
- Expectation to network
- Limited opportunities or discouragement re: progression

**7.4 Negative factors: Barristers**

- Long working hours
- Impossible expectations of solicitors, clients, judiciary
- Lack of accessible travel options
- Being new to career
- Expectation to network/presenteeism

**8. Progression**

56% of solicitors/paralegals surveyed and 71% of barristers did not feel that they have the same opportunities for career progression as their non-disabled colleagues.

52% of solicitors in applicable roles and 42% of barristers have felt pressured into moving into non-fee earning and non-client facing roles, which will limit opportunities for progression and demonstrate reduced expectations or misconceptions by colleagues. Concerns about the accessibility of employers or other working environments has limited opportunities available to 60% of solicitors when applying for jobs. Significantly, 38% of respondents reported that they chose not to apply for other jobs (which could benefit progression) because they did not want to go through the process of requesting adjustments, 10% feared not being able to secure the level of support needed and 28% indicated they would only apply to other organisations they know are disability-friendly.

### **8.1 Training/early career/pupillage**

We sought to map out the routes taken to enter the legal profession and how accessible these had been. As noted in previous sections, the experiences of receiving support and adjustments at University was generally good, a finding supported by the survey data. However, it should be noted that some individuals did find university very inaccessible. However, for both groups, the survey identified issues related to the accessibility of work experience and training, which corresponds with interview data on the difficulties of getting into the legal profession.

### **8.2 Barristers:**

66% of the barristers surveyed reported that they had had their impairment when they started training. Overall, we found poor experiences (lack of accessibility) outweighed good in relation to work experience, pupillage, paralegal work and the BPTC. Whereas, overall, good experiences outweighed poor ones in relation to University undergraduate courses and the CPE/GDL.

Two thirds of respondents had used pupillage gateway when applying for pupillage, with most finding it to be of average accessibility. Just three individuals considered pupillage gateway to be inaccessible. This fares much better than solicitors' experiences of using recruitment agencies for applications. Comments about the pupillage gateway suggested providing more space to explain extenuating circumstances and contact details for

chambers if there were questions regarding access, would be helpful. Timing of the interview stages coinciding with BPTC exams was also noted as creating difficulties for one person.

When asked about their first experience of being supervised in a pupillage or work experience role, those who concealed their impairment were more likely to struggle than those who disclosed. However, disclosure did bring a mix of positive and negative responses. Slightly more respondents reported that their first experience of supervision had decreased their confidence to disclose their impairment in future. One respondent commented:

“I have been told that if I am unable to undertake work without reasonable adjustments then I am not up to being a barrister and should re-assess.”

### ***8.3 Solicitors/paralegals:***

Among this group surveyed, 58.2% of respondents had their impairment when they started training.

Overall, poor experiences outweigh good ones during training contracts, paralegal work and work experience, a similar picture to those seeking to enter the Bar. In contrast, overall good experiences outweigh poor on the GDL, LPC, CILEx route and the University of Law/BPP.

When asked about their first experience of being supervised in a training or work experience role, 39% experienced a positive and supportive response from their supervisor following disclosure. However, 29% and 24% experienced lack of understanding and negative/unsupportive supervision respectively.

Where individuals chose not to disclose, 51% were able to fulfil their role with some difficulties and only 16% without any difficulties. Not disclosing you are disabled appears to place individuals at a disadvantage, reinforcing findings from interview data.

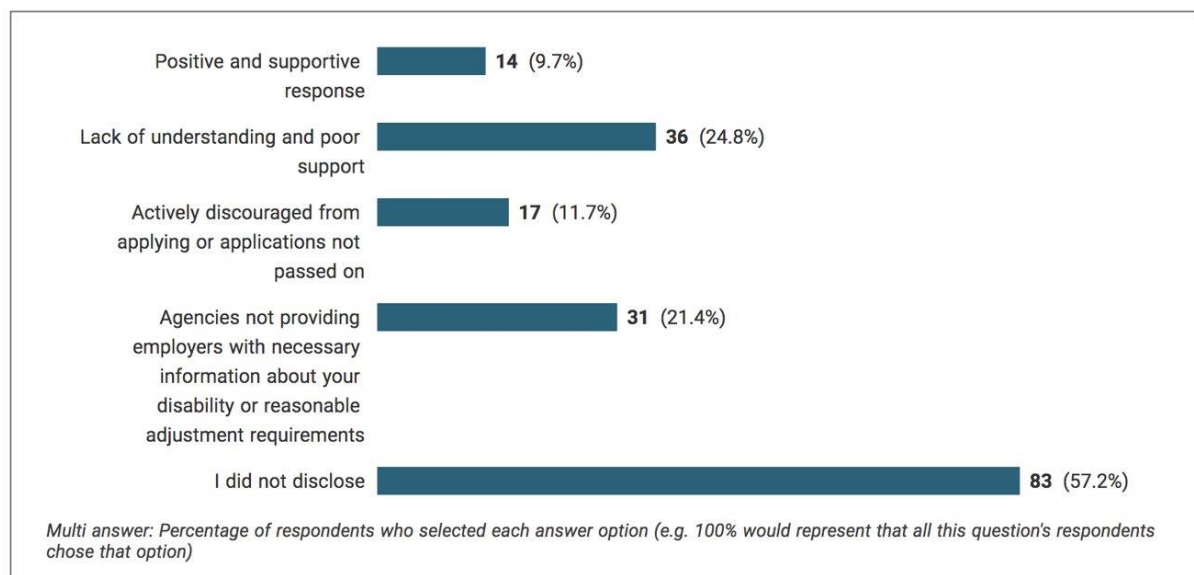
## **9. Recruitment**

Reinforcing findings from qualitative data, 68% of solicitors/paralegals and 77% of barristers found it difficult to obtain information on the accessibility of workplaces or Chambers, respectively.

Use of recruitment agencies is low for barristers (20% have used one). Only one barrister using a recruitment agency disclosed their impairment, resulting in a poor experience.

Among solicitors and paralegals 62% have used recruitment agencies, but the majority did not disclose their impairment. Where individuals did disclose only n=14 reported a positive and supportive response. n=84 responses indicate a range of poor responses from lack of understanding, active discouragement or information on impairment or reasonable adjustments not being passed on. [note, this was a multiple choice so some may be scoring numerous experiences of agencies]

If you have used recruitment agencies and disclosed your disability or health condition, did you experience any of the following? (apply)



## **10. Networks and D&I functions**

### ***10.1 Solicitors/paralegals:***

In this group 42% said they had worked in an organisation with a dedicated D&I function and, of these, only 33% felt that they gave sufficient emphasis on disability issues and just 29% understood the reality of disability in the workplace. This points to a significant proportion of those working in the legal profession who do not have, or are not aware of, specific D&I functions. As such, disabled people in the profession are lacking mechanisms for support and information to improve their experience in the workplace. However, it should also be noted that where D&I functions did exist in organisations there was a level of scepticism about the effectiveness of their role, with 41% of responses indicating a belief that D&I functions existed primarily for Public Relations purposes.

27.5% surveyed reported positive experiences of being supported by (internal or external) networks and 26% indicated negative experiences of engaging with networks: suggesting there is clearly much work to be done to improve confidence in the 'D&I machine'.

### **10.2 Barristers:**

Disabled barristers seemed to have less access to dedicated networks than solicitors/paralegals, with only 19% indicating positive experiences of being supported by networks and 15% reporting negative experiences of engaging with networks.

Only 11 barristers had worked in Chambers/organisations with a dedicated D&I function. Of these, respondents believed most did not place sufficient emphasis on disability issues and none understood the reality of disability in the workplace. Again, this points to most individuals lacking places to go to seek information and advice and suggests a need for the Bar Council, BSB, Inns and Circuits to co-ordinate efforts to provide more signposting for disabled people at the Bar.

### **10.3 Courts:**

Our survey asked a specific question about barrister's knowledge of the Equal Treatment Bench Book being used in Court. 63% had no knowledge of the ETBB and among those who reported they knew it had been used, the majority of instances were in the context of the needs of litigants. Only 14.3% reported instances of it being applied to those working in the

courts (n=5). It seems to us to be a missed opportunity to improve access and inclusion in the Courts for both litigants and those working there.

#### ***10.4. Circuits/Inns:***

Very few individuals had utilised Circuits for support or advice relating to disability issues. All were variable in the support given (most weighted towards poor support). The most used Circuit was the South Eastern Circuit.

In comments boxes it was suggested that Circuits could do more to work with Courts and staff on improving awareness and access. Websites should contain more information on access and disability and the support that can be made available.

“I would be concerned to ask for fear of risk to reputation”

A similar picture emerged for those using Inns. A majority of respondents had used Inns but the level of support on disability and access was poor whilst studying and post-pupillage. There was a mixed picture on the accessibility of qualifying sessions, weighted towards poor. Suggestions for improvement included better pastoral support, targeted schemes and mentoring for disabled students and disability equality training.

### **11. Roles/Sectors**

In both surveys, disabled respondents were asked about the level of difficulty they faced in fulfilling their role on a scale of no difficulty to some or many difficulties to harming their health.

#### ***11.1 Barristers:***

Barristers in a range of roles (employed, self-employed, QC and Judiciary) and working across most sectors, largely reported that they could fulfil these roles with some difficulties. Very good or very poor experiences in different sectors were experienced by a small number of individuals: but we could not extrapolate further from these examples, due to the limited sample size.



Chambers of different sizes showed a similar picture, with most respondents having worked in Chambers with fewer than 30 barristers. Those working in the courts, other public sector or third sector settings also largely reported being able to fulfil their roles with some difficulties, but were also more likely to report experiencing many difficulties in fulfilling their role than those based in chambers.

### ***11.2 Solicitors/paralegals:***

When broken down to sector level, small response numbers should be treated with caution. For most sectors, we found a bell curve of experiences, with the majority able to fulfil their role with some difficulties. For solicitors/paralegals, across all sectors, sizes of workplace and areas of law, there were a number of reports of poor experiences in being able to fulfil their role. Those working in medium or large private sector were more likely than small private sector to report experiencing many difficulties or harming their wellbeing in those workplaces.

Especially given small response rates when split into categories, no sectors or roles stood out as being significantly better or worse than others. The overall picture shows a mix of experiences wherever people work, again pointing to the lack of consistency in policies and working cultures. The real detail of people's experiences is demonstrated through the interview data.

## **Recommendations**

### **A) Disability, Background & Career Aspirations**

1. We recommend the profession engages in significant outreach work with schools, universities, parents and careers advisors, to attract disabled people to the profession. There are established schemes that provide work experience in the legal profession to young people from different socio-economic backgrounds. Schemes specifically designed to engage with disabled people considering careers in the legal profession would provide opportunities to develop confidence and advocacy skills, while providing much needed work experience.

2. We recommend the profession works more closely with Disabled People's Organisations (DPOs) both inside the profession (e.g. the Lawyers with Disabilities Division (LDD) of the Law Society, The Association of Disabled Lawyers (ADL) and allies, City Disabilities, Aspiring Solicitors, Inter-law Ability Network, Lawcare), outside the profession (e.g. Disability Wales, Inclusion Scotland, Disability Action N. Ireland and Disability Rights UK) and Universities, to tap into established knowledge and expertise. The valuable knowledge and experience of accessible and inclusive practices held by such groups are transferable to training and employment settings.

### **B) Securing Training and Employment: The Application and Recruitment Process**

1. Our findings suggest employers/recruitment agencies in the legal profession are, at best, 'risk averse' when considering disabled applicants for training or employment and, at worst, discriminating against them. We recommend that more firms/organisations facilitate placement and work experience opportunities for disabled applicants, to improve organisational and employer understanding and challenge negative stereotypes and misconceptions. We also recommend the introduction of reserved work experience and training places for disabled candidates, at least in the short term. We believe only a radical

positive intervention can begin to address the current 'uneven playing field' that disadvantages disabled applicants.

2. We recommend that employers and their representatives improve their understanding of the variety of reasonable adjustments available, the majority of which are inexpensive or cost free. We found the profession wedded to traditional ways of working and the widespread current practice of trying to fit a disabled person into a standard job role must cease. Job re-design to accommodate common and well-recognised reasonable adjustments needs to be placed at the top of D&I disability agendas and properly integrated into workload models. The Equality & Human Rights Commission (EHRC) provides guidance on commonly accepted adjustments that can be facilitated by employers - <https://www.equalityhumanrights.com/en/multipage-guide/reasonable-adjustments-practice>. We recommend that, at a minimum, every advertisement, invitation to visit or attend an event, offer of an interview, work experience, training or a job, should include a link to or details of commonly accepted reasonable adjustments available and provide a well-signposted opportunity to make further requests for consideration. Few organisations these days would hold an event that served food without asking about people's dietary requirements; it needs to become as commonplace to ask people if additional adjustments are required.

3. Conversations about reasonable adjustments appear to be difficult and stressful for both disabled people and employers. We recommend that as a first step, asking everyone at recruitment and in regular appraisals "what adjustments would help you to realise your full potential?" would begin to open up conversations. Posing this question to all staff also reduces the stigma or 'special' status associated with requesting adjustments and can help identify practices of benefit to other groups in the workplace.

4. We recommend urgent action is taken by the profession to address our finding that disabled people are experiencing significant problems in interactions with external recruitment agencies. The EHRC states: "you are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or applicant faces". Our research suggests this duty is currently not being fulfilled and requests for adjustments

are being ignored, are deemed too difficult to make, or disabled people report being 'screened out' of opportunities. We recommend that where recruitment is contracted out, employers/organisations ensure providers have undergone appropriate disability training and that disability equality audits of recruiters are regularly undertaken.

5. We recommend that research is extended on the impact of the use of artificial intelligence (AI) in recruitment and selection processes on disabled people. Emerging evidence suggests there is a need to identify potential bias in AI data sets that use ableist assumptions and criteria, which filter out disabled talent. Metrics and algorithms must be free from bias, non-discriminatory and compliant with human rights law (see for example: Marston-Paterson, 2019).

6. Disabled applicants are currently forced to carry out their own research into the accessibility of prospective employers when this information should be publicly available. We recommend the profession and recruiters adhere to providing minimum details for service users and employees on accessibility and how to request adjustments on their web sites. Details should include a named and trained organisational contact person and a clear and accessible guide to requesting and securing reasonable adjustments. This guide should also detail procedures for raising complaints internally and within the wider profession (e.g. with regulators). Where information is not available this should be investigated because there is a greater risk that a failure to make a reasonable adjustment will occur.

7. We recommend that the profession involves disabled people and their representative organisations in a full evaluation of the current accessibility of training, recruitment and application processes, including the current and future use of technology in these processes.

### **C. Career Paths and Progression**

1. Service providers and employers have an anticipatory and continuing duty to make reasonable adjustments. This duty is one that should benefit disabled clients, trainees, employees and legal practitioners. We recommend the regulators clarify the duties of legal

service providers and employers to make reasonable adjustments and periodically Equality Impact Assess compliance with these duties.

2. Attitudinal barriers can be difficult to address and unconscious bias can, unintentionally, be disabling. We are aware that unconscious bias training is undertaken in the profession. Specific training on disability and unconscious bias, however, remains under-developed. The Employers Forum on Disability 'time to talk' campaign and the work of Lawcare on mental health have opened up conversations about well-being in the profession, but these need to extend to disability more generally. We found mental ill-health was a common effect of ill-treatment related to being disabled. We recommend the profession better signposts existing resources available from the range of DPOs and government agencies such as Access to Work, the EHRC and ACAS. We also recommend the introduction of reverse mentoring schemes, where disabled people mentor senior legal personnel.

3. Employers need to acknowledge that the uneven balance of power between an employee and employer inhibits requests for workplace adjustments. We recommend proactive campaigns are undertaken by professional associations and employers to ensure that reasonable adjustment policies are visible, transparent and accessible. Positive experiences of adjustments were more likely to be found in organisations where dedicated trained disability advisors were present. Our findings suggest a significant number of disabled people are too frightened to request adjustments and choose instead to conceal they are disabled. Monitoring the number of requests for adjustments following a campaign would be one way of evaluating its success.

4. We recommend a review is undertaken of the way in which reasonable adjustments are applied to performance and appraisal processes across the profession. Findings indicate that there is currently a poor understanding of the ways in which standard criteria used to measure performance can put a disabled person at a substantial disadvantage. In such cases an adjustment may be appropriate.

5. We recommend the introduction of a 'disability passport' scheme, similar to the one recommended by the TUC and modelled on BT (<https://www.tuc.org.uk/reasonable->

adjustments-disability-passports). This would help address the common problems of ensuring agreed adjustments are appropriately recorded and transferable when someone moves around within an organisation. This can be particularly important where line managers or supervisors are likely to frequently change.

6. The disadvantages experienced by disabled people in the profession detailed in our report are likely to be reflected in pay and remuneration (see recent reports on the disability pay gap published by the TUC and Office for National Statistics:

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/articles/disabilitypaygapsintheuk/2018>). We recommend that the profession be the first to introduce a system of disability pay gap reporting to demonstrate its commitment to understanding and addressing current and historical disadvantages experienced by disabled people.

7. We were told by disabled people in the profession that they wanted to see more disabled role models and mentors. It is important that disabled people in senior roles feel comfortable to reveal their identity and that attention is given to the 'pipeline' for talented disabled people to progress. We found senior disabled people leaving the profession prematurely, or feeling pressurised to 'step down' from senior roles. We recommend organisations and the profession research and review retention, exit, and promotions policies and procedures, to ensure that reasonable adjustments are being appropriately applied in these contexts.

8. We recommend that the profession also reviews how reasonable adjustments are used in sickness absence reporting procedures, disciplinary and performance criteria, because of their common use as indicators for promotion. 56% of solicitors and paralegals we surveyed believed their career and promotion prospects were inferior to non-disabled colleagues. We believe this is a consequence of a poor understanding of how reasonable adjustments apply to a range of policies, practices and criteria among both employers and disabled people.

## **D) Disability & Working Practices**

1. We recommend an audit and equality impact assessment of existing and alternative workload allocation models and performance management systems. This would evaluate their transparency, equity and ability to incorporate agreed reasonable adjustments, without detriment. We identified the continued attachment of the legal profession to billable hours as requiring particular scrutiny, as a practice that disadvantages disabled people.

2. The greater availability of flexible, part-time and remote working and training contracts is central to the inclusion, retention and advancement of more disabled people in the profession. However, availability needs to be comprehensive and less dependent upon status. We recommend that organisations establish flexible working and leave policies that are specifically designed for disabled people. Flexible forms of working and disability leave are well recognised reasonable adjustments but policies must make a clear distinction between disability adjustments and the right of other groups to request flexible working or leave (usually parental leave). Disability Leave is usually categorised as leave to attend a medical appointment, or undergo treatment or rehabilitation. While we found parental leave provisions were relatively well understood, the concept of disability leave on comparable terms was not.

3. We recommend that specialist services such as Access to Work or occupational therapy (as opposed to health) practitioners are more frequently consulted, to provide guidance to employees and employers. A greater understanding of these services would benefit employed and self-employed disabled people, who often report isolation because of the absence of a professional HR function.

4. We recommend organisations recognise that disabled people themselves are usually best placed to articulate what they require.

5. We recommend a more thorough and balanced assessment is undertaken throughout the profession on how technology can facilitate more accessible working practices. Parts of the

profession are wedded to practices that rely on physical presence that can disadvantage disabled people. Any such review must also consider how technology might also inhibit accessibility.

6. We recommend that greater attention is paid to all aspects of the accessibility of legal working environments, including courts, chambers and meeting rooms (that may also be used for networking). While we acknowledge that some historic buildings are difficult to adapt, we found that because the presence of disabled people in the profession remains largely unexpected, and our research confirms are often invisible, they are insufficiently catered for. A prerequisite for inclusion is anticipation. We recommend that chambers and courts, in particular, conduct further research and develop more comprehensive policies in this area.

### **E) The Role of Key Personnel and Workplace Adjustments**

1. We recommend the provision of widespread training and availability of information sources to educate and train key personnel in the area of disability management.

2. We recommend that organisations establish a central fund for reasonable adjustments, so that decision-making by line managers is based on the effectiveness of the adjustment, not primarily on financial considerations that may affect devolved budgets.

3. We recommend that a senior person in the organisation holds the responsibility for overseeing reasonable adjustments and workloads and is fully trained and appropriately supported and rewarded for this important role.

4. As part of our recommendation to report on the disability pay gap, the obstacles faced by disabled people in, or seeking senior roles in organisations, requires further scrutiny. We found only rare examples of reasonable adjustments being applied at senior or partnership level and an unchallenged belief that they could not be applied, despite their successful application in other professions. We recommend further research is required in the



profession to identify the complex issues surrounding the promotion, retention and seniority of disabled people in the profession.

5. We recommend an expansion of the professional HR and D&I role (where it exists) to develop work and commit resources to address what appears to be a hierarchy of equalities concerns in the profession, in which disability is perceived to feature at the bottom.

#### **F) Ill-treatment, bullying and discrimination**

1. A zero tolerance policy is needed to address ill-treatment and bullying of disabled people in the workplace. However, this must be underpinned by a more developed understanding of the ill-treatment that disabled people often experience in their day-to-day living and the impact that has on their lives, their well-being, confidence and their ability to work.

2. Clear disciplinary policies and reporting procedures need to be established on what constitutes ill-treatment in relation to disability and how it can be reported. We recommend that the professional associations (e.g. The Law Society, Bar Council and Cilex) and regulators establish a working party to develop further guidelines for both employers and disabled people in this area. This needs to include the wider definition of ill-treatment as unacceptable behaviour, because there is some uncertainty about what constitutes discrimination. It is essential that the profession addresses our finding that currently a lot of fear is attached to reporting ill-treatment related to disability.

3. We found a strong link between disability and mental ill-health. Mental health could be the cause of disability or a consequence of it. We recommend a review of mental health initiatives in the profession to ensure that they adequately address disability issues and are made accessible to disabled people.

4. Disabled people are often the 'forgotten' group in D&I initiatives and this exacerbates the isolation of disabled people. We recommend the profession works closely with groups representing disabled people to actively identify and address ill-treatment and isolation. This includes remote support and the development of more events/networks outside of London.

## **G) The Role of Disabled People's Networks and Organisations**

1. The profession needs to ensure that disabled people's voices are sufficiently represented in policy-making and considered when developing new practices. This can only be achieved if disabled people's networks that are run by disabled people are more representative, better resourced, supported and acknowledged.

2. The profession needs to acknowledge that outside of London, professional and inter-firm networks established to represent disabled people are extremely under-developed and under-resourced. We recommend establishing and resourcing regional networks and developing virtual network communities, which would help disabled people who find networking as an activity disabling.

3. There has been an historic absence of any real network dedicated to disabled people working at The Bar. The establishment of the Association of Disabled Lawyers (ADL) as an outcome from this project has begun to help to address this and we recommend this is supported.

4. Disabled people themselves are often the best people to ask about appropriate adjustments and this brings us back to a theme mentioned earlier in this summary, one of trust. We recommend that employers trust and listen to disabled people and exercise the same imagination that most disabled people employ in their everyday lives. Being disabled does not mean that an employee is less intelligent, committed, or productive. It often means they have travelled further to get where they are through determination, ambition, tenacity and problem-solving skills that are well suited to a successful career in the legal profession.

## Glossary of Terms Used in the Report

### **The social model of disability**

The UK social model of disability is used throughout this report because it is the preferred terminology of the disability rights movement. SCOPE provides a useful description of the social model of disability:

“The model says that people are disabled by barriers in society, not by their impairment or difference. Barriers can be physical, like buildings not having accessible toilets. Or they can be caused by people's attitudes to difference, like assuming disabled people can't do certain things”.

This report uses social model language throughout, but during the research we were aware that not everyone had come across the social model of disability and, we therefore, used language that was accessible to as many people as possible. This included the use of terminology in the Equality Act, which refers to long term medical conditions that affect day to day living.

### **Ableism**

“Ableism refers to a network of beliefs, processes and practices that produces a particular kind of self and body (the corporeal standard) that is projected as the perfect, species-typical and therefore essential and fully human. Disability then is cast as a diminished state of being human. (Campbell, 2001:44). The Encyclopedia Britannica defines ableism as a: “type of discrimination in which able-bodied individuals are viewed as normal and superior to those with a disability, resulting in prejudice toward the latter”. Ableism leads to stereotyping, prejudice, discrimination, and social oppression of disabled people and, like other "isms" such as racism and sexism, describes discrimination towards a social group, but in this instance it describes how certain ideals and attributes are valued or not valued (Wolbring, 2008). Furthermore, ableism obscures the role of social environments and institutions, causing people to “falsely treat impairments as inherently and naturally horrible and blame the impairments themselves for the problems experienced by the people who have them” (Amundson & Taira, 2005: 54).

### **Social and relational capital**

When discussing social mobility or factors influencing careers, sociologists often make reference to social or relational capital. **Social capital** denotes those factors shared by members of a particular social group, which can include one's social class or background, a shared identity or a shared understanding of values. Social capital is often difficult to define and taken for granted, however, one's social, educational and cultural background can provide access to a range of experiences and networks that are often taken-for granted but advantageous. **Relational capital** is often regarded as a dimension of **social capital** and includes intellectual capital and personal relationships such as trust, obligations, respect and reciprocity.

### **The performance of law**

By 'the performance of law' we mean those expected behaviours, rituals and traditional expectations associated with being a legal profession. Among barristers performance is particularly important in the court room, but for all legal professionals there are norms of behavior that often govern exchanges with other legal professionals, some of which may be inaccessible and (intentionally or unintentionally) ableist.

### **The 'ideal' worker**

"Historically, both employers and the State have been interested in defining, scientifically and empirically, a generic 'ideal worker' and a 'one best way' of working" (Foster and Wass 2013: 705). Perceptions of the 'ideal' employee and the qualities they possess may vary over time and according to the tasks being performed, but the 'ideal' often reflects the dominant values and prejudices of a society in that time and place in history. Foster and Wass (2013) have argued that the importance of this 'ideal' is the way in which it shapes and has shaped accepted norms around job design. Upon closer examination these are often gendered and ableist but can be left unquestioned and unchallenged. In the report we make several references to what we perceive to be a poverty of imagination in job design in the legal profession, primarily shaped by ableist assumptions, job design and traditions that arose from the non-disabled norm that has meant disabled people are unexpected.

### **Misplaced paternalism**

We use the term 'misplaced paternalism' in the report to denote thinking or actions by people in authority, which they assume will 'help' a disabled person but can have the opposite effect by excluding them from opportunities. In the context in which we employ the term, 'misplaced paternalism' refers to situations in the legal profession where disabled people reported not being given responsibilities, roles, or tasks by someone senior, often on the basis that this would be a 'burden', when in fact this intervention prevented them from pursuing career opportunities and advancement. An example of 'misplaced paternalism' might be a manager deciding not to allocate an administrative role to a disabled employee on the assumption that it could be stressful, but later the disabled employee finds out the reason they have failed to advance is due to their lack of administrative experience. Another way of interpreting such an action might be conscious or unconscious bias in the allocation of roles (and opportunities).

### **Othering**

Defined by the Oxford dictionary as "Placing a person or a group outside and/or in opposition to what is considered to be the norm." In a workplace context, disabled people can be 'othered' as different and inferior to non-disabled people, thus marginalising them and enabling discrimination to occur.

### **Self-accommodation**

This term is more commonly used in the United States (US). It refers to situations, including those in the workplace, where disabled people either choose not to disclose and instead make their own adjustments, or do disclose, but appropriate workplace adjustments are not provided for them. We found self-accommodation most prevalent where a legal professional was self-employed, but we also found it was common in situations where there was fear of disclosure, or of requesting certain adjustments. The latter included adjustments commonly accepted as reasonable by the EHRC e.g. travelling between home and work outside of rush hours or avoiding public transport. We also encountered a number of disabled legal professionals paying out of their own funds for personal assistants where the provision of this adjustment could have been reasonably funded by an employer or an employer with the addition of Access to Work, but this had been refused.

### **Self-policing and psycho-emotional disablism**

'Self-policing' this is a sociological/psychological term that denotes a degree of emotional or psychological *self*-regulation, or *self*-control. This is closely associated with psycho-emotional disablism, a term first used by sociologist Carol Thomas (1999; 2007), who made a distinction between 'structural disablism' or disabling barriers that operate at a public level (e.g. inaccessible buildings/spaces) and psycho-emotional disablism, which operates at the private level, restricting who people can be. The latter can include dealing with hurtful or ignorant comments, or internalising the negative attitudes held by others because of their careless or offensive behaviour. Such actions have a private effect, essentially undermining a person's psycho-emotional well-being and their very sense of self. Whereas much attention has been given to physically inaccessible environments in discussions of disability, the long-term consequences of psycho-emotional disablism has been overlooked. Mental distress is usually portrayed as a very individual experience and, as such, some have argued, has been difficult for the disability movement to accommodate within a social model of disability (Reeve 2012).

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## **About The Researchers**

### **Professor Debbie Foster (Cardiff Business School, Cardiff University)**

With an academic background in the Sociology of Work and Employment, Debbie has been Professor of Employment Relations and Diversity at Cardiff Business School, Cardiff University, since 2016. Her work originally focused on industrial relations in the public sector, but Debbie became increasingly interested in diversity and inclusion in employment following a long term illness and lived experience of disability.

Debbie has published widely in international journals of business, management and employment relations. Workplace disability and inclusion concerns had received little mainstream attention in the academic diversity literature when she began her research journey. Research projects Debbie has led or participated in include an ESRC funded study of how employees negotiate workplace adjustments. A study of Trade union Equality Representatives in Wales and their representation of disabled employees (with Wales TUC). A European Union funded project on employment relations and work accommodations in Estonia, Hungary and Poland and, most recently, 'Legally Disabled?' : The Career Experiences of disabled people in the Legal Profession in England and Wales.

Passionate about co-producing research with groups that represent disabled people's interests, Debbie has embraced involvement in the DRILL project. DRILL is a unique research collaboration between academics and disability rights organisations in Wales, England, Scotland and Northern Ireland, funded by The National Lottery. Debbie served as a member of the Welsh National Advisory Group of DRILL, has been a mentor for Disability Rights UK and a member of the Equality and Diversity Forum Advisory Network (now called 'Equally Ours').

<https://www.cardiff.ac.uk/people/view/610389-foster-deborah>

### **Dr Natasha Hirst**

Natasha is a freelance photographer, journalist and researcher, specialising in disability. As a disability activist and trade unionist, Natasha has been involved with a variety of campaigns on disability and gender rights over the last twenty years. She formed part of the delegation

of Disabled People's Organisations to Geneva in 2017, submitting evidence to the UN Committee on the Rights of Disabled People and documenting the work of the delegation. Born deaf, Natasha is also a passionate advocate for the education of deaf children. She served on the board of Disability Wales and the Wales Committee of the Heritage Lottery Fund. She has been involved with numerous research and policy projects including the inclusion of disabled people in the Wales-Africa sector, direct payments and Public Value Forums in Wales.

Before starting her freelance career she worked across public, private and third sectors in a range of roles, including Equality Officer for the Wales TUC and constituency researcher for the former First Minister of Wales.

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