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# **Disability in the labour market: An exploration of concepts of the ideal worker and organisational fit that disadvantage employees with impairments**

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## **Abstract**

The adverse employment effects that attach to disability are empirically well-established. They are large and persistent. This is a conceptual paper that investigates the source of this deep and enduring employment disadvantage. Debate begins by examining the origins of ideas that have shaped approaches to work study and have influenced concepts of what constitutes an ideal worker. Drawing on feminist critiques of organisational analysis that have highlighted the gendered character of processes, practices and values, it explores the relatively neglected position of disabled employees. With reference to transcripts from four Employment Appeal Tribunals brought under the Disability Discrimination Act, it illustrates how standard jobs, designed around ideal (non-disabled) employees, create a mismatch between a formal job description and someone with an impairment. We suggest this mismatch is central to the organisation's resistance to implementing adjustments and also to any radical approaches to include impaired employees in the workplace.

## Key words

ableism/disability/feminist critiques/ideal or standard worker/job design /organisations

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. As Rose (1988: 26) argues, ‘At the core of any theory of industrial behaviour lies an image of the typical worker’.

This paper has two central objectives. The first is to explore the extent to which a concept of an ideal, typical or universal worker has been promoted in managerial ideas, shaping approaches to work study and organisation. By identifying a universal norm prior to, and as a foundation for, job design, our approach differs from previous ideas-based studies of disability and work that have focused on stereotypes which reduce disability to bodily impairment and inability (Edwards and Imrie, 2003: 247; Hall, 1999: 146), managerial misconceptions which overstate both the level and effects of impairment (Honey et al., 1992: 73-5 and chapter 7; Lester & Caudill, 1987) and the capabilities required for a job (Morrell, 1990: 10). The second objective is to illustrate how employers’ and managers’ behaviour, when premised (through job design) upon notions of what a typical or ideal employee should be, disadvantages a person with an impairment.

We begin by examining evidence that suggests that the magnitude and persistence of the disability-induced employment penalty is substantial and normally outweighs the effects of other variables associated with employment disadvantage - gender, motherhood, lone parenthood, ethnicity, class or education (Berthoud 2008; National Equality Panel, 2010, Parekh et al., 2010:78-9)<sup>1</sup>. The ideas that have shaped conceptions of the ideal or standard worker in the minds of employers are then explored. These include ‘objective’ or ‘scientific’ work studies and job design that have standardised work roles and management practices and have *abstracted* and *disembodied* the worker from the job, with significant consequences for

disabled employees. Sociological critiques that have challenged the assumed 'neutrality' of organisational culture and values from a feminist perspective (Acker 1990; Billing 1994; Ferguson 1984) are then examined for their potential relevance in explaining the relatively neglected workplace disadvantage experienced by disabled employees.

The positive duty on employers to make 'reasonable' workplace adjustments for disabled employees was introduced in the UK Disability Discrimination Act (DDA) 1995 (now the Equality Act (EqA) 2010). The importance of the DDA, we shall argue, is that it directly challenged the match between an employee and a given job specification. It was predicated, however, on the assumption that employers would recognise the ableist values attached to the notion of an ideal worker around which jobs and production systems had been traditionally designed and understand the need for, and agree to, functional, task, person and organisational flexibility.<sup>2</sup> Evidence we present from four Employment Appeal Tribunals (EATs) adjudicated on the 'reasonableness' of workplace adjustments questions these assumptions. First, we show how employees with impairments are disadvantaged by specific, inflexible and multiple-task job descriptions and secondly we show how employers (and the judiciary) seek to resolve the contradiction between the constraints imposed by a chain of production, organised around a set of standard fits between an ideal employee and the job, and requirements under the DDA to make adjustments.

### **Trends in impairment and employment disadvantage**

Around 30 per cent of the working-age population report a long-standing illness or disability, of which 56 per cent report a limitation either to their activities of day-to-day living or their ability to work (Labour Force Survey (LFS) 2011 Qtr 2). Trends in the prevalence rate of reported impairment and disability have steadily risen over the last 30 years across developed

countries, seemingly independently of reported improvements in health and advances in medicine and rehabilitation. This is described by the OECD (2007: 11) as the ‘shared paradox’. There has also been an increase in the employment rate gap between those who report disability and those who do not (Berthoud 2011). This is a second paradox since the employment rate for those reporting disability might be expected to rise as those at the margin of the classification are included. The shift away from manual labour towards service sector work (Newell, 2007) together with the increasing use of part-time employment, flexible working and less physical jobs (Miller et al., 2004) might also be expected to favourably influence employment rates for those with impairment. . Studies extending into the twenty first century report a levelling off in the employment gap and even a narrowing (Jones, 2006). This trend reversal is taken up in the Black Review (2008) which records a 10 percentage point increase in the employment rate for those reporting disability from 38 per cent in 1998 to 48 per cent in 2007. While these figures have been contested (Jones and Wass, 2011; Meagre, 2011), what is indisputable is that the disability-induced employment gap (44 percentage points in 2010, see Jones and Wass, 2011) is the largest and most enduring amongst all disadvantaged groups.<sup>3</sup>

The DDA differed from previous UK liberal-based equality legislation by recognising that disabled employees may need to be treated *differently*, and in some circumstances more favourably (Dickens, 2007; Foster with Williams, 2011). Evidence suggests that the concept of difference, central to the legislation, has nonetheless, been poorly understood by employers and managers (Foster, 2007, 2010; Meagre et al 1998; Woodhams and Danieli, 2000). Employment Tribunal (ET) claims, brought by employees under the DDA, provide valuable insights into why this may be. They expose employer’s assumptions, ideas and behaviour, illustrating how people with an impairment are disabled and excluded as a

consequence of inflexible job descriptions and management attitudes based upon notions of a typical employee.

### **The historical search for efficiency through science: the standardisation of both jobs and employees**

Early attempts to define an ideal or typical worker can be found in the work of management theorists, collectively referred to by Rose (1988) as ‘productivists’ or ‘technocrats’. Their application of scientific principles appealed across the political spectrum. In the Soviet Union the state idealised strong, healthy, productive, male workers through the image of Stakhanov (Bedeian, 2007). In the West, Taylor’s Schmidt - strong as an ox, but usefully stupid enough to not question instructions - symbolised the ‘first class man’ of capitalist production (Rose, 1988).

The legacy of productivist theories can be found in the modern workplace. They underpin techniques for deriving standard times, methods, job content, job descriptions, workflow, performance and remuneration (Hales, 2001:52). ‘Objectivity’ and ‘rationality’ apply to all aspects of an organisation’s operations: from the recruitment, selection and promotion of employees, to the formulation of job and person specifications. Separate processes of administration and management evolved out of the separation of conception from execution, leading to a search for the ‘ideal’ bureaucratic organisation (see Weber 1964). Jobs were structured into specific roles and, implicitly at least, ideal candidates recruited to fill them.

The transformation of work from pre-capitalist, rural, co-operative and community-based enterprises, where individuals contributed according to their ability, to factory-based

organisation has, in the disability studies literature, been identified as a significant turning point in the devaluation of the impaired body (Abberley, 2002; Oliver 1990). Gleeson (1999) argues that changes in the organisation of work and the commodification of labour heralded the establishment of able-bodied norms. Work outside the home was subject to rules governing attendance, and speed, dexterity and strength became ideals of the abstract job, meaning disabled people found it increasingly difficult to sell their labour power. Abberley (2002) argues that capitalist social relations rejected impaired labour, whilst also refusing to take responsibility for illnesses caused by lack of health and safety and over-work. Similar criticisms can also be found in the feminist organisational sociology literature where capitalism is portrayed as abdicating responsibility for women's reproduction and health by privileging 'economic organizations over other areas of life', (Acker,1998: 199).

In Ford's autobiography, he sees mass production technology, and its capacity to breakdown a process into single specialist tasks, as providing unlimited opportunities to accommodate individual impairment. Post-Fordist principles, however, emphasise jobs designed around multiple-tasking, inter-changeability and team-working. When designed around a typical worker, such complex jobs are more likely to disable an impaired employee. Two EAT case studies that we present illustrate the devastating impact of work re-organisation along lean lines on disabled employees. More generally, Green (2001; 2008) combines a review of case studies and his own secondary analysis of large scale survey data and reports a strong intensification of work effort and job complexity over the course of the 1980s and 1990s. Work intensification and maximum inter-changeability of staff across multiple tasks and processes are both key to fulfilling 'tight-flow' production schedules (Tomaney, 1990) and the drive to increase capital utilisation. Jobs become both more complex and more tightly designed and increasingly employees report working harder and

faster. The 'porosity of the working day', those periods during which the body and mind can rest, is reduced (Green 2001: 57) with the consequent effect being stress at work. The argument presented in this paper is that the heightened occupational stress reported by those in work may also be linked to the high and enduring employment disadvantage for those with impairment, despite the presence of the countervailing factors reported above.

### **Feminist critiques of organisational theory: implications for disabled employees.**

Feminist critiques of organisational theory and bureaucracy challenged traditional productivist assumptions. For example, Dorothy Smith (1979:148) argued that organisational sociology was grounded in the working worlds of men and that organisational values and culture are gendered. Kathy Ferguson, moreover, questioned the 'rational' or 'neutral' form of bureaucracy as an organisation, describing it instead as the 'scientific organization of inequality' (cited in Billing 1994: 3). The gendered and embodied nature of work have also been explored by writers such as Acker (1990:139) who articulated new ways of looking at both organisations and the gendered processes embedded in them:

most feminists writing about organizations assume that organizational structure is gender neutral; on the contrary, assumptions about gender underlie the documents and contracts used to construct organizations and to provide the commonsense ground for theorising about them. Their gendered nature is partly masked through obscuring the embodied nature of work.

With reference to Ferguson (1984) and Kanter (1977), Acker argued that debates about organisational structure and gender had given the former too much attention. Organisations



should instead be viewed as gendered processes where ‘advantage and disadvantage, exploitation and control, action and emotion, meaning and identity, are patterned through and, in terms of a distinction between male and female, masculine and feminine’ (Acker,1990: 146). Gender is not simply an addition to ongoing organisational processes it is, rather, an integral part of them. Using the example of job evaluation schemes to illustrate how organisational logic has a material form, Acker (ibid: 147-8) demonstrates how what is a seemingly neutral practice, is a management tool to rationalise organisational hierarchies and set so-called ‘equitable’ wages in an inherently gendered way. Job evaluation systems provide a window into a common organisational mode of thinking and practice. However, when looking through this window one should recognise that such modes of thinking also reflect judgements that reproduce managerial values:

‘rules are the imagery out of which managers construct and reconstruct their organizations’ they are ‘not simply a compilation of managers’ values or sets of beliefs, but are the underlying logic or organization that provides at least part of the blueprint for its structure’ (Acker, 1990: 147-8).

Gendered organisational processes sustain inequalities in income, cultural images and identity. By challenging established management and organisational theory, feminists exposed dominant or idealised values that served to exclude women, leading to an exploration of alternative styles or modes of working (see Billing, 1994), of relevance to disabled employees. Returning to the example of job evaluation schemes, Acker makes the important point that this is a process that evaluates ‘jobs, not their incumbents’ with the consequence that the job is separated from the person: ‘an empty slot, a reification that must continually be reconstructed’ (Acker 1990, p. 148). Jobs thus become abstract categories

existing independently of human incumbents and do not have a gender. On this organisational logic, Acker concludes that ‘filling the abstract job is a disembodied worker’ (Acker, 1990: 149): a worker who is more likely to be male, because men are better able to cede all non-work activities to a partner and work-full-time. The concept of a disembodied abstract worker that excludes women ‘who cannot, almost by definition, achieve the qualities of a real worker because to do so is to become a man’ (ibid), we argue, can equally be applied to employees with impairments. If adjustments are required to enable a worker to perform a job, this variation to the standardised criteria would inevitably conflict with established organisational logic. The worker with an impairment is, therefore, effectively *disabled* as a consequence of dominant organisational ideas.

Gender is now accepted as a legitimate dimension in studies of organisational processes, power and practices (Alvesson and Billing, 1992; Calas and Smircich, 2006). Similar debates concerning disabled employees, nonetheless, remain conspicuous by their absence. Disability is relatively neglected in analyses of the position of other ‘protected’ groups of employees. Sexuality, race, class and gender and how they intersect have been the focus of feminists in organisation studies, as illustrated in the May 2010 special issue of *Gender, Work & Organisations* (see in particular, Holvino, 2010), but disability is absent. As far back as 1990, Joan Acker (1990:154) asked: ‘Is the abstract worker white as well as male?’ Suggesting that control processes in organisations maintain other forms of stratification which, she speculates could include race, class and sexuality. However, with regard to age and disability, Acker (2006: 445) says: ‘that although these other differences are important, they are not, at this time, as thoroughly embedded in organising processes as are gender, race, and class’. This comment came ten years after the DDA. One potential explanation for the neglect of disability as a form of stratification and disadvantage might be the continued

under-representation of disabled people in the work place.<sup>4</sup> If impairment does limit ability, flexibility or efficiency, we further speculate that the gap between the ideal person outlined in a standard job specification and the person with an impairment may in some sense be perceived as being real, thereby ‘legitimising’ discrimination against a disabled employee.

It is the abstract measurements of efficiency and productivity, of job design and ‘ideal’ worker behaviour that make up part of established organisational logic and management ideology which excludes people with impairments. In reality, this logic may not constitute the ‘best’ or most ‘productive’ way of doing a job. Nevertheless, these ideas are rarely questioned. In some employment contexts it may be the case that a disabled person can not genuinely perform a task: a scenario less likely to occur as a consequence of a persons’ class, sexuality, race, or (in most but not all circumstances, e.g. physically demanding work), gender. However, as Acker’s example of gender and job evaluation demonstrates, there are ways of looking at a job and acknowledging that there is ideological baggage that accompanies it, for example, that it is designed around a male norm. Similarly, legislation aimed at addressing disability discrimination, by promoting the concept of workplace adjustments, asks employers to consider what aspects of an established job role can be altered to accommodate a disabled person.

The social model of disability is the dominant explanatory framework in UK disability studies and focuses on social structures and processes that disadvantage and exclude disabled people, rather than individuals and their medical conditions. It views the sources of disability as economic, political, cultural and attitudinal (Oliver 1996; Shakespeare 2006:10-14; Thomas, 2007) and the distinction it makes between ‘impairment’ and ‘disability’ highlights how social structures, practices and stereotypical ideas serve to exclude, marginalise, or

disadvantage (Oliver 1996:30; Shakespeare 2006:10-14). Disabling practices and ableist assumptions, like those shaped by gender, can be seen to be embedded in organisational processes and wider society. However, while feminists have been comfortable exploring the embodied character of work, which has helped to obscure and to reproduce dominant gender relations (Hochschild, 1983), disability theorists have been less so. Impairment has been difficult to reconcile with the social model. In an effort to incorporate impairment into the social model, Thomas (1999) developed a concept of psycho-emotional disablism which can usefully be applied to the workplace. This posits that non-disabled people, often unintentionally, though sometimes intentionally, are offensive to those with impairments through actions, words, symbols and images. Recognising that social barriers can place concrete obstacles in front of disabled people, Thomas argues they can also serve to undermine the confidence and self-esteem of disabled people and ‘place(s) limits on who they *can be* by shaping people’s “inner worlds” or sense of “self” (Thomas, 2007:72). In this respect psycho-emotional disablism recognises the individual dimension or impact of disabling practices and processes (whilst trying not to medicalise them). Importantly, however, barriers remain social or organisational.

## **Data and Methods**

Our empirical investigation analyses secondary data from Employment Tribunals (ETs), where claims against employers for discrimination or unfair dismissal under the DDA/EqA are heard. Where the decision of the ET is challenged by either party, the case goes to an EAT, when transcripts of the decision become publically available. Thirty EATs were selected from those reported between June 2008 and December 2010 using key search words ‘EAT and DDA and adjustments’. Three of these cases were not in the area of employment. A further 19 cases were not primarily on the issue of adjustments and so provided insufficient

details on the nature of the job requirements.<sup>5</sup> From the remaining eight cases, four were selected that provided the most detailed arguments from employers about the difficulties of accommodating an employee with an impairment into a role prescribed by a standard job description. In each case the employee sought to prove that their employer had failed under the DDA to make suitable workplace adjustments. EAT transcripts are well-suited to our purpose where a claim focuses on the employer's resistance to, or misunderstanding of, the concept of DDA adjustments and, in so doing, contains detailed information about the specification of the job, in terms of job requirements, tasks and competencies, and detailed information about an employee's impairment in relation to the job specification. However, EAT transcripts are unlikely to be a representative selection from ETs and certainly not a representative selection of all negotiations, disputes and dismissals over adjustments under the DDA. The cases selected best illustrate the concepts developed in the paper. There is no claim that these are representative of disability adjustment cases brought under the DDA. Since our intention is to show how jobs and production systems designed around a notional standard non-disabled employee might explain employers' behaviour in relation to employees with impairment, deficiencies in sampling will not undermine our conclusions.

At trial, both parties describe, under oath, how jobs and production systems designed around ideal non-disabled employees cannot easily accommodate a disabled employee. Employers reveal their belief that impairment relative to a standard employee, upon which both the individual job and the production system has been designed, is a legitimate ground for not employing the disabled individual in that job.

## **Four cases outlined**

In each case the claimant worked in service sector employment and brought a claim on the grounds of the employer's failure to provide reasonable adjustments. We outline the details of each case before drawing out some themes.

### *Case 1 London Underground v Vuoto January 2010<sup>6</sup>*

Mr Vuoto worked for London Underground as a Station Assistant Multi-Functional (SAMF). The job description includes a variety of tasks and shifts, both of which can be based at a number of stations. In July 2002, Mr Vuoto was diagnosed with Multiple Sclerosis, a progressive and debilitating condition which affected his mobility, balance and ability to lift and carry items. He could not work to the full SAMF job description. The employer was advised by its Human Resources (HR) and Occupational Health Department (OHD) to accommodate the claimant's impairment by confining his duties to that of the ticket office on regular day-time hours at a single station. These adjustments were implemented and maintained over the next four years, including a period when the job was restructured following the implementation of a 35 hour week in February 2006.

Later in 2006, a computer-based staffing model called 'the schematic' was introduced as part of a new business model. Within 'the schematic', SAMFs were each required to fulfil the same set of half a dozen different tasks interchangeably. The adjustments previously made to Mr Vuoto's job were removed in March 2007 on the basis that they were incompatible with 'the schematic' and the wider business needs of the company. Predictably, Mr Vuoto was unable to manage the new work pattern and was absent from work due to stress. He was dismissed by his new manager in November 2007 on the grounds of incapability. Mr Vuoto

succeeded in his action for unfair dismissal and disability discrimination both at the ET and the EAT.<sup>7</sup>

*Case 2 Chief Constable of South Yorkshire Police v Jelic 2010<sup>8</sup>.*

Mr Jelic was a Police Constable (PC) with South Yorkshire Police. While in the traffic division, he developed ‘chronic anxiety syndrome’ and became restricted in his ability to undertake work requiring face-to-face contact with the public. He could manage telephone contact. On the advice of the Force’s OHD, Mr Jelic was redeployed to a ‘back office’ role on the community service desk (CSD). What happened to Mr Jelic subsequently mirrors the case of Mr Vuoto. In 2005, his job on the CSD was absorbed into the Safer Neighbourhoods Unit (SNU) where he was given a role with adjustments, and in which he developed valuable expertise (EAT2 para. 11) inputting data onto the National Crime Reporting Standards data base. In 2007, under the Police’s civilianisation initiative, the SNUs were reorganised such that civilian and ‘sworn’ officer roles were more sharply defined. The role of a PC changed so that ‘all Police Officers working in the SNU should be able to carry out duties involving face-to-face interaction with members of the public and clients’ (EAT2 para. 29). This new job description was incompatible with Mr Jelic’s impairment and, rather than explore adjustment or redeployment, and with the approval of the District Commander and the Chief Superintendent (Head of Personnel), the Force’s Unsatisfactory Performance Procedure (UPP) was invoked in July 2007. The UPP prompted a period of extended sick leave and, in March 2008, Mr Jelic was medically retired on the grounds that his impairment precluded employment in his job. While the ET and the EAT accepted that he could no longer work as a PC in the SNU, his employer, the Chief Constable of South Yorkshire, was found to have failed to consider redeployment to an alternative role, including that of a civilian role.<sup>9</sup>

*Case 3 Garrett v Lidl Ltd 2009<sup>10</sup>.*

Mrs Garrett worked as a store manager in the Woolwich branch of the cut price supermarket chain, Lidl. She too could not fulfil all the varied roles of this job due to fibromyalgia syndrome causing pain, fatigue and muscle stiffness. She requested a set of adjustments, including regular breaks and leave from performing repetitive tasks. Mrs Garrett was part of a team made up of different job roles, some of which were not interchangeable. Her request for adjustments precipitated a series of risk assessments. An assessment in January 2007 concluded that she could not perform all the duties of the store manager due to her impairment. Of particular concern was her need to take regular breaks and her managerial role as key holder in an emergency situation at the store. She was suspended and referred to Lidl's OHD for assessment. She returned to work but was allocated to a different store, a training store, which had a team of store managers and where she was not required to act as key holder. Mrs Garrett pursued a claim on the basis that the employer failed to make adjustments at her preferred and existing store, the Woolwich branch. Although the ET found in her favour, its decision was overturned by the EAT.

*Case 4 British Midland Airways Ltd v Hamed Nov 2010<sup>11</sup>.*

Ms Hamed worked for British Mediterranean Airways (BMED) as a flight supervisor. When she injured her knee in 2004 and could no longer continue in this role, she was accommodated in a ground-based administrative role that meant she could avoid manual handling duties and long periods of standing. In February 2007, British Midland Airways Ltd (BMI) acquired BMED and in July 2007 Ms Hamed was told that 'it [BMI] did not want them (flight attendants) performing administrative duties. They were either sick and not capable of work or fit and capable of doing the cabin crew jobs' (EAT4 para. 5). Accordingly, Ms Hamed was placed on long-term sick leave and six months later the



company's Attendance Management Process was initiated. As part of this process, Ms Hamed was offered a customer services role. However, two elements of this job description contradicted the recommendations made by BMI's OHD, namely 'attending at the self-service check-in machines' (three hours standing) and 'walking customers to and from the departure gates' (EAT4 para. 5). The position was offered without modifications and Ms Hamed was unable to accept it. Her employment was terminated on the grounds of incapability in October 2008. Both the ET and the EAT found that the employer had failed to comply with the reasonable adjustments requirement.

### **Five themes uncovered**

*Theme 1 Job complexity and multi-tasking.* Each job was designed around an employee able to multi-task with sufficient competency in each element of the job description. 'Standard' jobs had been designed to include a broad and diverse set of tasks and there was a clear expectation on the part of the employer that employees perform to the required standard in each of the composite tasks. In the absence of within-job flexibility, an employee with an impairment affecting any part of the job becomes restricted in the entire job. Mr Vuoto could do some but not all elements of his job but, under 'the schematic', the flexibility to accommodate his impairment in any one part of the job was removed. His manager did not wish 'to depart from the roster and wanted all employees wherever possible and regardless of their abilities to work the rostered shifts' (EAT1 para. 18). The role of a PC in the SNU 'had now evolved' (EAT2 para. 14) and in his new role, Mr Jelic was required to perform in five key areas, four of which involved direct contact with the public (EAT2 para. 22). While he was able to undertake the third element of the new job description in full, he was compromised in the fourth and fifth elements and he could not undertake the first and second elements at all. At Lidl, Mrs Garrett was expected 'to undertake the full range of roles within

the store as required' (EAT3 para. 4) and 'the practice at the Woolwich store was that all members of staff had to undertake all roles within the store, including working on the tills, checking c-dates and moving stock' (EAT3 para. 11). A risk assessment considered Mrs Garrett was 'fit within the limits of her disability' (EAT3 para. 10) and 'able to undertake most of the tasks of her job with suitable adjustments' (EAT3 para. 8). The one part of her job which was a cause for concern was her role as key holder in the event of an in-store emergency (EAT3 para. 9) and for this reason she was unable to continue in her job at Woolwich. That Ms Hamed could no longer work as a flight attendant was not in dispute. Rather, it was the offer of a customer services role which included a set of job tasks, some of which, on the assessment of the company's own OHD, she could not perform because of her impairment which was the subject of the claim. The position was offered without any adjustments to the standard job description.

*Theme 2 Re-organisation increases job complexity and reduces job flexibility.* Often, the effects of re-organisation increases the number and variety of tasks included within a job description and/or results in a tighter less flexible job description, reducing the range of jobs which could potentially be performed by a disabled employee. In three of the four cases reported, it was a re-organisation (or acquisition) that triggered the exclusion of an existing employee with an impairment. In each case it was the wider job description, with additional job tasks and greater inflexibility to vary the job description, that was the source of the exclusion. The 'schematic' at London Underground at once increased the job description and removed the opportunity to informally vary it. Re-organisation within the SNU at South Yorkshire Police required PCs perform a wider range of tasks and, at the same time, removed the previous discretion to vary these tasks in which 'members of the team tended to find their own niche' (EAT2 para. 9). Following acquisition by BMI, the rigid rule whereby flight

attendants are either well and working or sick and not working precluded Ms Hamed from continuing in her administrative position

*Theme 3 Team working and production chains.* This concerns the interlinked nature of one set of standard job roles within a ‘chain of production’. Jobs, and job systems, each designed around notions of a typical worker, and which exclude provision for flexibility between job roles and jobs within the system, cannot accommodate impairment in a member of the team within either the job (see first theme above), or within the system. The job of a SAMF at London Underground, a PC in South Yorkshire Police and a customer services assistant at BMI are designed so that each team member undertakes the same set of tasks and is fully interchangeable with other members. At Lidl, some job roles overlap with other team members, while others are unique so that job descriptions fit together to cover all the necessary tasks, but without unnecessary duplication of roles. In each organisation the tasks and jobs are inter-linked within the production chain and any mismatch between the individual employee and the standard employee, around which the job has been designed, in any one link in the chain places the system as a whole at risk. The system of jobs at the Woolwich store was considered unworkable because Mrs Garrett could not reliably undertake one of her roles. The impact of Mrs Garrett’s inability to undertake one role within the set of standard roles was exaggerated by the inflexibility of the system so that, even though she is considered by the OHD to be ‘fit within the limits of her disability’ (quoted above), she is perceived by her manager as being ‘unable to do large parts of her job’ (EAT3 para. 9). At London Underground, the schematic relied upon full inter-changeability of staff between jobs and it was claimed that Mr Vuoto’s team would suffer unreasonably as a result of his impairment (although evidence from fellow employees indicated that they did not object to working around Mr Vuoto’s disability). In a production chain of inter-linked jobs, the effects

of an impairment-induced mismatch of capabilities and requirements in any one part of that chain can spread into an entire shift, roster or production process.

*Theme 4 Team-based performance management and rewards.* The effects of team-based performance targets and performance-based pay systems add a further (artificial) layer of inflexibility to that arising from standardised, team-based and multiple-tasked jobs. There is evidence at both London Underground and Lidl that fixed team-based performance targets operated without provision for an individual to deviate from a standard performance by reason of impairment. Significantly, the proposed accommodation in both cases is for the employee with impairment to go ‘outside’ the system for the purposes of organising their work, measuring their performance and determining their salary. The shifts and job tasks that Mr Vuoto could manage were incompatible with any roster group so that his manager could only accommodate him if ‘he be allowed to go *one above* the numbers of staff at Green Park [station]’ (EAT1 para. 17). Non-standard productivity from any employee was simply incompatible within the performance targets under the schematic. It was because the manager’s request for ‘one above’ was refused higher up the command chain that ‘The claimant was told that ... there was no job at Green Park during the hours he was currently working and that he would not be allowed to carry on doing what he was doing’ (EAT1 para. 23). The EAT did not accept this argument ‘We are not satisfied that there would have been significant disruption to London Underground’s activities ... There is considerable flexibility in the way London Underground can organise its activity’ (EAT1 para 67). Similarly, at Lidl, a request was made that Mrs Garrett be made a ‘supernumerary’ manager, meaning that her salary costs (and her contribution) were excluded from the store’s productivity calculation. At Lidl, the request was granted and the claimant was employed outside the normal work process.

### *Theme 5 Advice of the Occupational Health Department is over-ruled*

Mr Vuoto was dismissed on the grounds that his impairment precluded employment in his job, although this contradicted the evidence of the company's OH and HR departments which had deemed him able to return to work on the basis of his previous adjustments. South Yorkshire Police Force had been advised by its OHD that Mr Jelic's condition precluded front-line duties, that it was likely to be permanent and would 'probably attract the provisions of the DDA' (EAT2 para. 10). Nevertheless, it was the view of his manager that Mr Jelic 'must get his performance to the next level' and 'move out of his comfort zone' (EAT2 para. 17). With the exception of the OHD, all the Force's personnel who dealt with Mr Jelic's request for adjustments were unfamiliar with the policies and procedures relating to managing attendance, ill-health and disability and the Head of Personnel had received no training in the DDA (EAT2 para.15). At BMI, the employer 'didn't even take advice from its OHD as to the possibility of the claimant taking on the customers services agent role or indeed pursuing what adjustments or variations to that role could be made' (EAT4 para. 5). Relying on Ms Hamed to investigate her own adjustments, the HR Manager had adopted 'completely the wrong way of looking at the problem' (EAT4 para. 26) and needed reminding that 'The whole purpose of the need to make reasonable adjustments is to accommodate an employee who is disabled, who can carry out some tasks in alternative employment but not others' (EAT4 para. 25).

### **Concluding Discussion**

William-Whitt and Taras (2010: 534) advocate that 'Employers must do more than attempt to fit someone who is disabled into a position designed for someone who is not'. This paper has explored some of the reasons why employers often do not do this and the consequences for employees.

The first four themes identified from the EAT case studies presented highlight the complex design of many modern jobs: organised on largely unchallenged assumptions of what constitutes a typical or ideal worker. Ableist norms, like gendered norms, have shaped the world of work and continue to do so. They are deeply embedded in the practices, policies and culture of organizational life. An abstract job could be designed around the skills and competencies of a non-standard employee but, as the EAT cases demonstrate, this would require a radical shift in established attitudes amongst managers. It makes good business sense to retain employees that organisations have invested in and the majority of employees develop their disability while already in employment (IPPR 2003:1). Nevertheless, EAT cases profile inflexible managers lacking in imagination, even when solutions such as redeployment and job redesign are supported by OH and HR advisors. Multi-tasking and inter-changeability are increasingly features of modern jobs, but for an employee unable to perform in any one task, but still able to make a positive contribution, the consequences can be catastrophic. At Lidl, the employee was accommodated ‘outside’ the management system but at London Underground, South Yorkshire Police and BMI, disabled employees were removed from the organisation itself, through dismissal.

From a policy perspective, disability legislation already contains two provisions that could, in *theory*, facilitate flexible solutions. The first is the duty to make workplace adjustments. The second is the duty on employers to ensure that organisational policies, practices and criteria (commonly referred to as PCPs) do not place disabled employees at a ‘substantial disadvantage’. In relation to ‘reasonable’ adjustments, our EAT cases suggest that what employers understand by this concept may differ from the courts. The test of ‘reasonableness’ in law is an objective one which ultimately can only be decided by an ET.

If employers, employees, their representatives and the judiciary hold different interpretations of what is 'reasonable', conflict is inevitable. The DDA gave disabled people the positive right to request adjustments. This is an active rather than a passive right since an employer is obligated to justify a refusal. When deciding whether a request is reasonable or not, employers routinely seek evaluations from OH specialists but then appear to ignore the advice given (Theme 5). This raises questions concerning the status of expert medical opinion when it conflicts with the prevailing organizational logic. The law relies upon a medical model of disability, yet medical opinion is marginalised in organizational decision-making. Disability legislation allows employers to justify a decision to refuse an adjustment on operational grounds, or on the basis of proportionate cost. Thus, decision-making remains in the hands of managers who, if wedded to the concept of a standard worker, will view an adjustment as disruptive or unworkable and costly in terms of time and resources.

Research suggests that requesting an adjustment can be interpreted as a challenge to managerial prerogative (Foster, 2007). Disabled employees exercising this right thus risk disrupting established power relationships between employees and managers. Enduring negative social attitudes towards disabled people in wider society, that are also reflected in organisational PCPs, also make it difficult to operationalise legal rights. Legislation appears to presuppose that work organizations understand and have mechanisms to combat prejudice and that employers and disabled employees share a common purpose: to keep the latter in work. Our findings suggest otherwise. A root and branch re-evaluation of organizational PCPs capable of identifying the normative assumptions of ableism contained within them would be necessary to challenge prevailing managerial and organizational attitudes. Only then might the disabling psycho-emotional effects of intentional and unintentional offensive

behaviour that employees with impairments experience (noted earlier by Thomas 2007), be addressed.

Interestingly, organisational PCPs that disadvantage disabled people, but which were originally introduced to address liberal equal opportunities concerns for equal treatment in recruitment, include the standard job and person specification. In the same way that feminists observed that women would continue to be disadvantaged in the labour market because jobs were designed around male norms, disabled people will never achieve organisational 'fit' when jobs are designed around ableism. By virtue of their impairment, disabled people are different and require different treatment, something that continues to confuse managers brought up on liberal concepts of equality (Foster, 2007).

Our analysis indicates that a long-term organisation-based agenda is required to bring about a revolution in attitudes, values, social prejudices and organizational culture. In the shorter-term we identify two potential policy routes that could be further explored. The first is supported by the findings of the Black Review (2008), which recommends an enhanced role for OH specialists in the workplace. Our research suggests their views are marginalised and regarded as advisory, rather than educational, by inflexible managers. Our second suggestion is more radical. Fevre et al (2011), like Hoque and Noon (2004) before them, observe that most medium and larger organizations have formal policies aimed at addressing ill-treatment in the workplace, but whether they are understood, or simply exist to meet compliance objectives, is difficult to establish. They also note that there is no shortage of government-funded advice available to employers to help them address ill-treatment in the workplace from bodies such as the Equality and Human Rights Commission (EHRC), Advisory, Conciliation and Arbitration Service (ACAS) and Access to Work. Our suggestion



is, therefore, that employers, either as a formal part of the internal grievance process or as part of an investigation that precedes this, be obliged to demonstrate before a case reaches court that they have engaged with advisory bodies in a meaningful way and have sought to resolve disability-related disputes. The fine tuning of how this would work and evidence of non-compliance that could be presented to a court would need to be further considered and is beyond the scope of this study. However, such a provision could provide valuable independent expertise from outside the organisation to educate and advise managers and diffuse the disrupted power relationships that result from employees exercising their right to request adjustments.

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## Notes

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<sup>1</sup> In their report *Anatomy of Economic Inequality in the UK* conducted on behalf of the Government Equalities Office, the National Equalities Panel (2010: 117) conclude that ‘disabled people face some of the greatest employment disadvantages of any group we examine’.

<sup>2</sup> See Williams and Marvin 2012 for a discussion of the concept of ableism.

<sup>3</sup> It is worth noting that, in comparison to the New Deal for Lone Parents, the New Deal for Disabled People has not been successful (Parekh et al. (2009:17).

<sup>4</sup> Under-representation may be exaggerated if disabled employees conceal their impairment for fear of discrimination.

<sup>5</sup> EATs are based on an appeal which very often relates to a failure of procedure, the misinterpretation of a point of laws or whether or not the claimant’s impairment qualifies as a disability under the DDA.

<sup>6</sup> EAT1 UKEAT/0123/09/DA

<sup>7</sup> The case was appealed by London Underground on the grounds that the adjustments required were unreasonable. Mr Burnett [manager] ‘acknowledged his duties to consider reasonable adjustments’ but he said that ‘this was not limitless’ (EAT para 54). The EAT dismissed the appeal in Oct 2009.

<sup>8</sup> EAT2 UKEAT/0491/09/CEA and [2010] IRLR 744

<sup>9</sup> Redeployment as a PC would have involved Mr Jelic replacing an existing (non-disabled) PC and the ET’s decision was appealed by the Chief Constable on the grounds that the force was not required to ‘bump’ another employee out of his job in order to accommodate Mr Jelic. Its appeal failed.

<sup>10</sup> EAT3 UKEAT/0541/08/ZT

<sup>11</sup> UKEAT/0292/10/RN