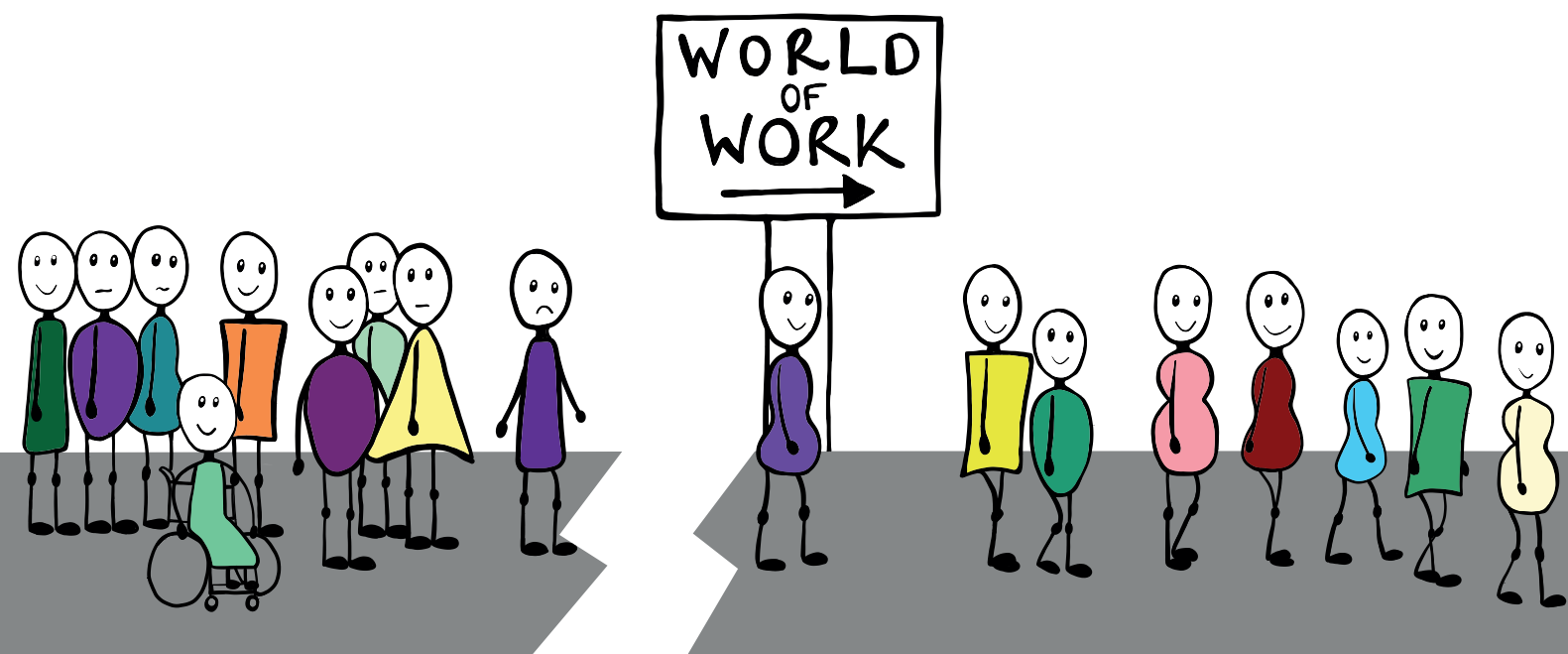


Closing Disability Gaps at Work

DEFICITS IN EVIDENCE AND VARIATIONS IN EXPERIENCE

Ralph Fevre, Deborah Foster, Melanie Jones and Victoria Wass
Cardiff University



Closing Disability Gaps At Work
DEFICITS IN EVIDENCE AND DIFFERENCES IN EXPERIENCE

Ralph Fevre, Deborah Foster, Melanie Jones and Victoria Wass
Cardiff University

Copyright: The authors
Published by: Cardiff University
13. December 2016
Design and print: Yogi Communications

We wish to thank Natasha Hirst for her photographs of case studies in which positive efforts have been made to remove the obstacles which contribute to the disability employment gap. Grateful thanks are also due to Anna Shearer, Floating Harbour Films, for creating the cover picture and to Grace Krause for editorial assistance. We gratefully acknowledge the comments made on earlier drafts of this report by Diana Kloss, Chair of the Council for Work and Health; Genevieve Smyth and College of Occupational Therapists. All errors and omissions remain the responsibility of the authors.

Download this report from: <http://orca.cf.ac.uk/view/cardiffauthors/A0166344.html>. Access a range of other information on our underpinning research and on solutions to the problems the research identifies at <http://blogs.cardiff.ac.uk/disability-and-employment/>

How to cite this report:
Fevre, R., Foster, D., Jones, M., Wass, Victoria (2016): Closing Disability Gaps at Work - Deficits in Evidence and Difference in Experience, Cardiff: Cardiff University

Corresponding author:
Professor Ralph Fevre
School of Social Sciences
Cardiff University
Glamorgan Building
King Edward VII Avenue
Cardiff
CF10 3WT
Fevre@cardiff.ac.uk

Closing Disability Gaps at Work

DEFICITS IN EVIDENCE AND VARIATIONS IN EXPERIENCE

On 31st October, 2016 the UK Government published *Improving Lives – The Work, Health and Disability Green Paper* and began a national consultation on work and health. This report summarises work done by social and economic researchers at Cardiff University which we think will be helpful for policy-makers and practitioners who wish to contribute to the consultation and to wider debate about the ways in which the lives of disabled people might improve. In particular, it provides data and analysis which help us to understand how the Government's aim of halving the disability employment gap can be achieved where past and existing policies and approaches have failed. The researchers welcome dialogue about the report and the research it summarises. Comments and contributions should be sent to the corresponding author (see inside cover).

The report has four key messages:

1. While disability is difficult to measure, it is essential to do so. Addressing deficiencies in current measures is a pre-requisite to effectively monitoring trends in disability disadvantage at work and in evaluating the impact of policy and practice interventions.
2. Disabled people experience disadvantage relative to their non-disabled counterparts across a range of in-work outcomes. These include objective measures such as hourly earnings but also broader subjective measures relating to the experience of work.
3. Even those who are most directly affected often fail to understand the extent of disability discrimination they have experienced. A sensible debate about the causes of, and remedies for, the disability gap requires better knowledge of the extent to which the seemingly individual problems disabled people encounter in the workplace are part of a wider and more systematic pattern of less favourable treatment.
4. It is important that the voices of disabled people themselves, and their experiences, are represented in policy debates, research findings and new initiatives. For this to happen it is important that the views of disabled people and their lived experiences, are better heard.

SECTION 1



Contents	Page
Section 1 Who Counts as Disabled and What Counts as Improvement?	4
Section 2 Disability Employment Gaps and Evidence Gaps	8
Section 3 Disabled people's experience of work: what is the evidence and what should we do about it?	16
Section 4 Are Employers Discriminating by Default?	24
Section 5 Learning from the Experiences of Disabled People in the Workplace: the need to increase 'voice' and representation in disability policy and practice	32
Selected References	39

SECTION 1

Who Counts as Disabled and What Counts as Improvement?

The problems entailed in trying to eliminate disadvantage in the employment situation of disabled people start with the definition of disability itself. The definition in the 2010 Equality Act (EqA 2010) seems straightforward but exactly what the definition means is a problem for the best legal minds (see panel). It is also a problem for researchers on employment and disability and for people deciding whether they have a disability as recognized by the Act or when asked in a survey.

To be disabled according to the law a person has to have 'a physical or mental impairment' which has 'a substantial and long-term adverse effect' on a person's 'ability to carry out normal day-to-day activities'.¹ However this has to be read along with 'the rest of section 6; with the provisions of Schedule 1; with statutory Guidance issued by the Minister; with Regulations made by the Minister; and with a substantial and increasing body of case-law interpreting all of these'.²

The research reported here uses secondary analysis of existing social surveys, bespoke social surveys and qualitative research, all of which rely to some degree on people recognizing they have a disability; for example being given a definition and deciding whether they fit it or not. There are obvious difficulties with using the legal definition for this: people may not always think that conditions like depression are 'impairments'; what counts as 'substantial and long-term' might well vary with age (for example); and day-to-day activities vary across individuals.

For these and other reasons, researchers often depart from the legal definition of disability. For example the two surveys reported in section 4 asked people about 'long-standing conditions' rather than impairments and included an instruction to the interviewer to try to make sure the respondent counted in problems which are due to old age. People who responded positively were then asked about 'substantial difficulties doing day-to-day activities' (again with an instruction to include problems due to old age). In section 2, it is clear that surveys often do not include instructions to the interviewer. The main Government survey on disability and employment, the Labour Force Survey (LFS), removed interviewer instructions from 2013. These and many other variations in definitions between surveys and over time make identifying accurate trends and consistent patterns in the evidence on disability difficult.

Working out who is affected is not the only complicated thing about trying to improve the situation of disabled people through legislation. There is also the question of what legal levers are best. The EqA 2010 was preceded by the Disability Discrimination Act 1995 (DDA 1995) which outlawed discrimination by employers and suppliers of goods and services against disabled people 30 years after the same thing had been done for race and 20 years after it had been done for sex. The DDA 1995 also introduced the idea of 'reasonable adjustments', imported from US legislation (where they were known as 'reasonable accommodations'), which was meant to do more than protect people against discrimination.

Employers with more than 20 employees were required to make reasonable adjustments to remove barriers in their workplaces that were putting disabled people at a disadvantage when people applied for, or started work, and when they later became disabled while in work. These provisions were extended to small firms when the DDA was amended in 2005 to incorporate the European Union (EU) General Framework Directive in Employment into law and recognise that some impairments, for example, cancer and HIV are disabilities from the point of diagnosis. The Disability Equality Duty was also introduced in 2005 (later forming part of the Public Sector Equality Duty), which placed a positive duty on public authorities to have due regard for the needs of disabled people in all activities. The EqA 2010 brought all of this disability legislation together with the rest of the equal opportunities legislation enacted since 1965 and, in so doing, created an anomaly in relation to different treatment, which many people have yet to come to terms with. This anomaly is explained in the paragraph that follows.

The watchword for all other protected characteristics like race and sex (with the possible exception of pregnancy and maternity) is equality of treatment. However, for disabled people, equality of opportunity is often impossible without different treatment and although, as a general rule, positive discrimination is unlawful, it is actually a requirement under disability legislation, though only so far as it is regarded as 'reasonable'. The consolidation of legislation in the EqA 2010 is a problem if it prevents many people, especially employers, from grasping this crucial

difference. On the upside, the Act gives disabled people the same protections against direct and indirect discrimination, harassment and victimisation as other protected groups. They also get protection against unfavourable treatment because of something linked to their disability and failure to make reasonable adjustments to a feature of the workplace or a practice (see panel) for applicants or employees is counted as discrimination – one of the most common types according to the House of Lords (2016).

Employers should ensure they have rules in place to prevent disability discrimination in: recruitment and selection; determining pay, terms and conditions; sickness absence; training and development; promotion; dismissal; redundancy. The EqA 2010 refers to an organisation's 'Provision, Criterion or Practice' often known by the acronym PCPs.

The Conservative government elected in 2015 committed to halving the disability employment gap without new legislation and tasked the Work and Health Unit with taking the lead where previous interventions had failed. By 2020, the Unit aims to change the behaviour of employers towards disabled employees and to improve services to make it far more routine for disabled people to get help to stay in work. Along with disability NGOs, disabled people's organisations, the Council for Work and Health, professional bodies like the College of Occupational Therapists, the Chartered Institute of Personnel and Development, and trade unions, we also think these are worthwhile goals. As researchers we can provide evidence and facts to inform the debate, help identify solutions and evaluate policy changes.

The initial area in which our research can help has already been introduced. How can we be sure that the disability employment gap has been halved when the measure of disability is fragile and changing? Our research can help to map a route to a solution to the problems of definition and measurement, not only in relation to the numbers of disabled employees but also in relation to the disadvantages they face. In addition, our research reveals the extent of disadvantage faced by disabled employees when in work and which may play a key role in the employment gap by forcing people out of work and

discouraging their return. Our research also provides data on the way employers contribute to the gap by discriminating by default, perhaps because they face such difficulties in understanding the unique nature of the law on disability in employment. In its focus on barriers and supports in the workplace, our research can facilitate the better use of worker representatives, disability advocacy organisations and occupational health professionals to close disability gaps. This report summarises some of this research (for a list of references to this research see the end of this report and for more information visit <http://blogs.cardiff.ac.uk/disability-and-employment/>)



SECTION 2



Key message:

While disability is difficult to measure, it is essential to do so. Addressing deficiencies in current measures is a pre-requisite to effectively monitoring trends in disability disadvantage at work and in evaluating the impact of policy and practice interventions.

Policy recommendation:

There is no single 'best' measure of disability or disability gaps. Collaboration between data producers and users is needed to negotiate between what is needed and what is possible and to determine a set of context-specific 'best' measures. Data producers include employers and the Office for National Statistics (ONS). Data users include the Department for Work and Pensions (DWP), Department for Business, Innovation and Skills (BIS), the Work and Health Unit (WHU), Trades Union Congress (TUC), local unions and disability NGOs.

Implications for data collectors:

Collaborate with data users to identify the purpose of disability definitions and measures and design questions to fit purpose. Improvements are needed in the collection of disability information to more accurately identify disadvantage and monitor trends.

Implications for data users:

Be cautious when interpreting statistics on disability. Existing data discontinuities are real and cannot be managed. Use a set of disability gap measures to consider trends.

Of key relevance to:

Data producers (ONS, employers), data users (DWP, BIS, WHU, TUC, local unions, equality officers, Chartered Institute of Personnel and Development (CIPD), HR professionals, Disability NGOs, lawyers).

SECTION 2

Disability Employment Gaps and Evidence Gaps

It is essential to have a measure of disability in order to have some quantitative appreciation of the magnitude of the gaps in outcomes for disabled people, to compare disability-related gaps with those for other protected groups and to monitor trends in gaps. While the Government's pledge to halve the disability employment gap within the current Parliament is the focus for current concerns over the difficulty and importance of measuring disability, difficulties with the measurement of disability are both long-standing (for example they preclude evaluation of the DDA 1995) and broader than Government. They apply to individual organisations that wish to measure disability-related diversity and the impact of equal opportunities policies and practices and disability-related interventions.

Holding the Government to account on its pledge is currently undermined by the quality of the disability information used to calculate the baseline indicator of disability disadvantage in the labour market, the disability employment gap. Disability reporting determines the prevalence rate which in turn determines the disability employment gap.

Three key sources of difficulty in measuring the disability employment gap are identified here:

- Disability reporting is sensitive to the questions asked and it becomes impossible to monitor trends over time where the disability questions change
- Consensus about trends over time disappears when different data series are compared
- Disability is related to other characteristics of employment disadvantage (for example, low levels of qualifications) with the impact of disability potentially overstated where there is no control for these

Improving the quality of disability information underpins our ability to measure progress towards the Government's commitment to halve the disability employment gap and to evaluate the effectiveness of the Work and Health Unit to whom this responsibility now belongs. For Government, evaluating employers' commitment to promoting a workforce which is diverse in disability requires comprehensive and accurate data on disability at the workplace level. For employers, identifying workplace policies and practices which may support or deter the recruitment and retention of disabled employees demands as a pre-requisite that employees are willing to disclose, and employers record, disability. Where disability gives rise to a claim, through discrimination or personal injury, the Employment Tribunal and the courts each need a definition of disability to identify a breach and to value a claim. Definitions need not be the same rather they need to fit to the particular purpose of each situation.

This section considers the source of the difficulties encountered in measuring disability in Government surveys and the consequence of these for monitoring disability employment disadvantage and evaluating disability-related employment initiatives. Difficulties encountered in Government surveys offer

an alert to and a learning opportunity for employers, the courts and parliamentary select committees each seeking to rely upon disability statistics to fulfil their functions.

To halve the disability employment gap

Halving the disability employment gap emerged as an open-ended aspiration in the Conservative Party Manifesto (July 2015). It subsequently developed into a commitment to be achieved within the life-time of the current Parliament. Proposals for strategies and mechanisms to realize this commitment have been explored in two Parliamentary Select Committee Inquiries in 2016 (Work and Pension Select Committee³ and All Party Parliamentary Group (Disability)). These include initiatives involving employers, workplace policies and practices, changes to the disability benefit and support regimes, public sector procurement, and the provision of personal employment assistance from both Government and disability-related NGOs. Against a background where past and existing policies and approaches are seen to have been unsuccessful in aggregate terms, responsibility has now been passed to the Work and Health Unit to improve employment outcomes for working-age people who have, or may acquire, health conditions (including mental health conditions) and disabilities.

The disability employment gap is measured as the percentage point difference in the employment rate between non-disabled and disabled people of working-age. It is large and enduring despite a range of legislative and policy initiatives in and out of the workplace to narrow it, for example the impact of the EqA 2010, welfare to work programmes and the voluntary implementation of equal opportunities practices at the workplace. In the UK, it is between 30 and 45 percentage points depending on the measures used. Recommended by Dame Carol Black⁴, and subsequently taken up by DWP, this gap is the key baseline indicator used to monitor and evaluate the impact of policy on the integration of disabled people into employment.

The disability employment gap for the UK is measured using data from a nationally representative household survey collected by Government, the Labour Force Survey (LFS). As reported by DWP from

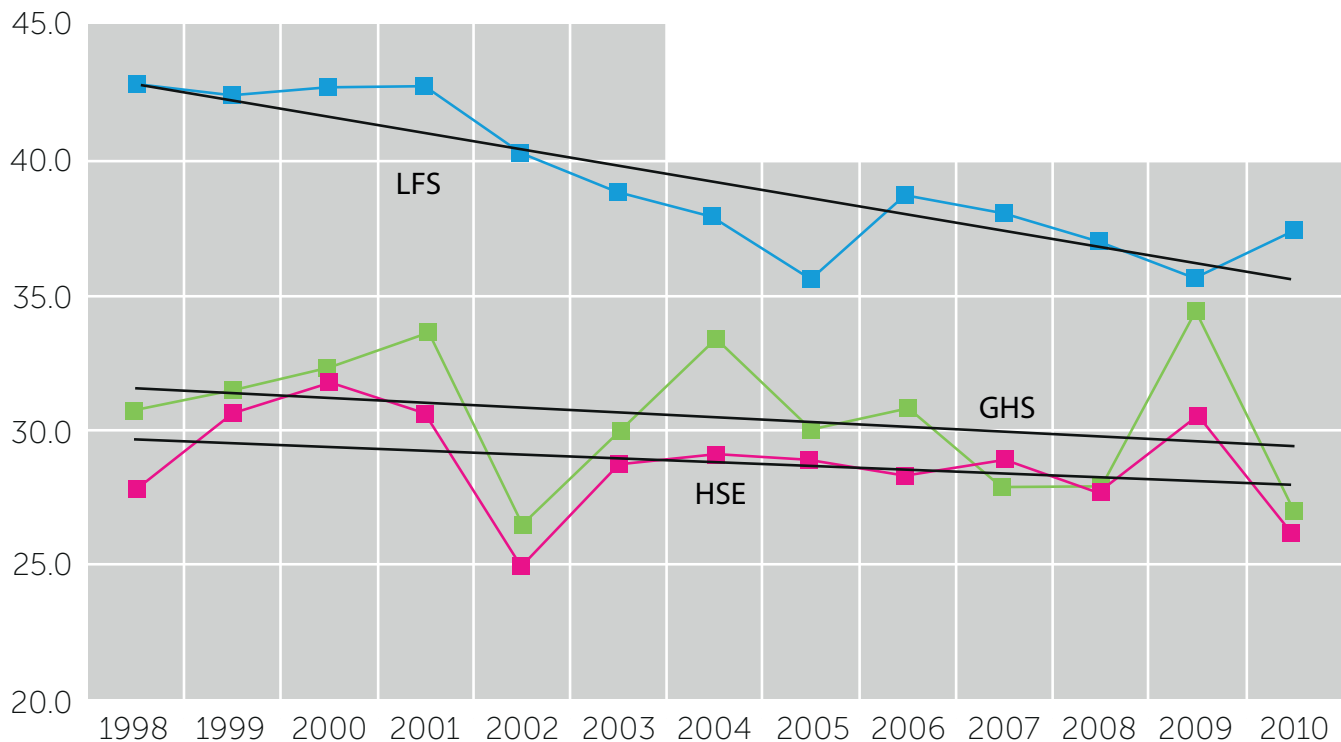
1998 to 2012, it shows a steadily falling gap (DWP 2013). Monitoring was interrupted by a change in the disability module in the LFS but restarted in 2013 and shows a continuing narrowing 2013-2015 (DWP 2016). There was a steep increase in the disability employment gap at the point of the data discontinuity caused by the question change.

Discontinuity in the disability data series is the **first of three disability data difficulties** discussed here. Discontinuity is important because it precludes using the disability series in the LFS as a means of evaluating changes in legislation, policy or practice across time. In fact this has happened three times. The first question change occurred in 1997 and precluded evaluation of the impact of the DDA. The second question change was introduced in 2013 and has similarly precluded ability to evaluate the impact of the EqA 2010, any of the work programmes which started prior to 2013 or long term development in equality practices in the workplace. A further question change is planned for 2019, that is, between the setting and assessing of the Government's pledge.

A second difficulty was revealed following scrutiny of the trend in the disability employment gap in the LFS during its period of question continuity (1998-2012). Many experts had reported on a narrowing trend: Dame Carol Black in her influential 2008 Review, DWP indicators 1998-2015, two authors of this report and an editorial in the British Medical Journal. *It was on the basis of this narrowing trend that the OECD considered the UK to be more successful than its neighbours in integrating disabled people into the workplace.*⁵

However, the study reported here questions the conclusions drawn from this narrowing trend. It compares trends in the LFS and in two other government household surveys (the General Household Survey (GHS) and the Health Survey for England (HSE)) between 1998 and 2012 and fails to replicate it. This difference in trends in 'harmonised' versions of the LFS, GHS and HSE 1998-2010 is depicted in Figure 1. The LFS shows a definite narrowing disability employment gap which is not evident in the HSE or GHS. The findings indicate the fragility of the LFS as a single indicator of the trend in the disability employment gap.

Figure 1: Disability Employment Gap in Harmonised Versions of the LFS, GHS and HSE 1998-2010



Source: Baumberg et al 2015, Figure 4

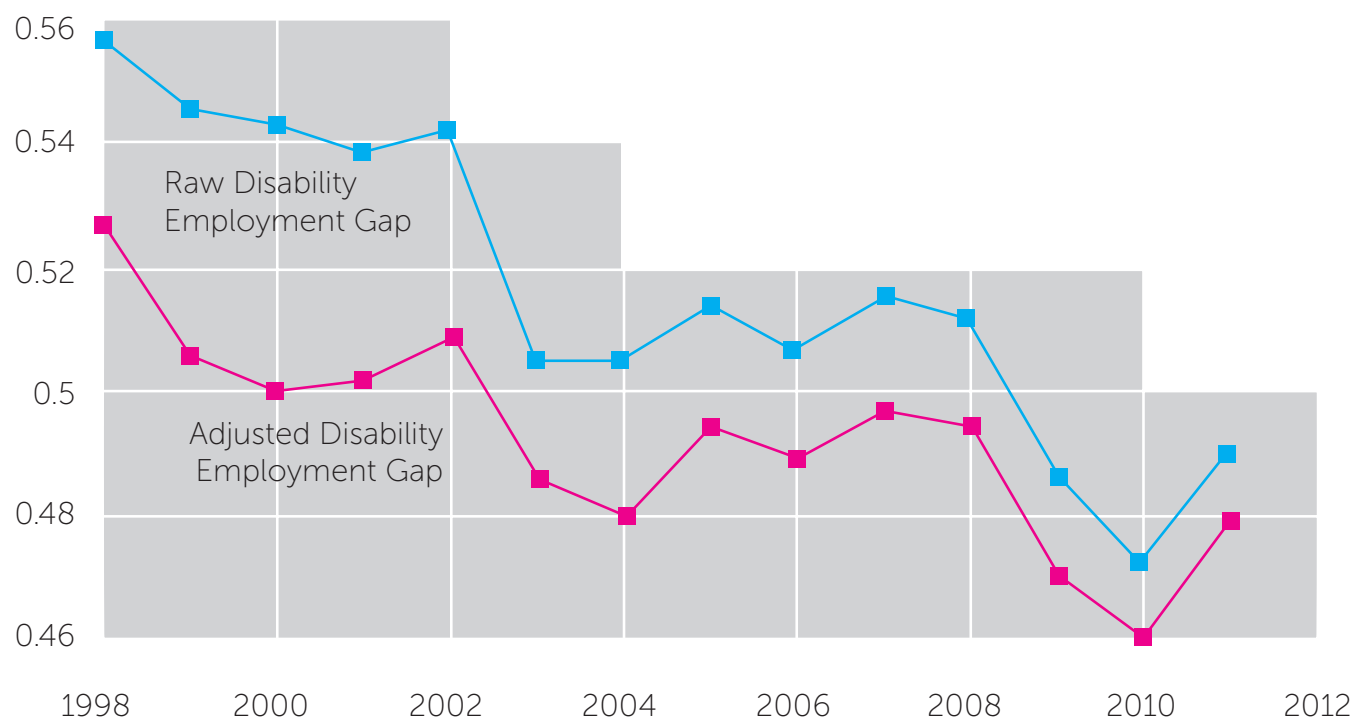
One potentially important difference in the LFS is that the proportion of working-age people reporting disability has been rising steadily and there is a strong association between the level of disability reporting and the disability employment rate. People who move across the borderline between reporting and not reporting a disability are likely to be those with a less severe activity limitation than people who report a disability whatever the question. They may also find it easier to get, or stay in, employment; perhaps because their disability is less limiting and/or less noticeable to employers.

In the HSE and GHS, disability reporting has been relatively stable – if anything it has been falling over time – and it is not strongly linked to the employment rate. Until we understand why disability has increased in the LFS (but not in other surveys), we cannot conclude that the narrowing of the disability employment gap is not an artefact of the increase in reported disability. We need to know if ‘evidence’ of progress towards the Government’s

target is a result of an increase in disability reporting which has nothing to do with change in the behaviour of employers or employees.

The third difficulty arises because the difference between the average employment rate for disabled people and non-disabled people does not take into account the impact on employment rates of other differences between disabled and non-disabled people. Ill-health and impairment interact with other characteristics associated with disadvantage (for example low levels of education), sometimes called the social gradient of disability.⁶ The simple disability employment gap can overstate the impact of disability because it ignores the effects of the social gradient. Figure 2, reports the original (unadjusted) gaps (continuous line) and adjusted gaps (dotted line) for men 1998-2011. A narrowing gap is evident for both but the unadjusted declines are greater than the adjusted declines.

Figure 2: Adjusted and Unadjusted Disability Employment Gaps Men 1998-2011



Source: Jones and Wass (2013). Data is from the LFS April-June 1998-2011

Effective policy evaluation which provides for feedback and fine tuning of policy requires a robust and reliable measure of disability. This has proved difficult for governments to achieve. It is likely to prove difficult for employers too. This is a not a counsel of despair, a reason to avoid collecting information on disability or an excuse to collect it badly. After looking more closely at definitions of disability, the relationship between disability definition, disability prevalence and the disability employment gap, we offer some guidance and recommendations on improving the quality of data on disability in the face of the difficulties set out above.

A 'best' definition of disability?

Disability is and can be defined in any number of ways. In the abstract, there is no correct or best definition. The choice of definition depends on context and purpose. Disability has medical, functional and social meanings. Public health professionals and epidemiologists focus on medical conditions and count diagnoses. For enumerating the population in need of care services, employment

assistance, disability benefits and which has rights under the equality legislation, it is more useful to define disability as a set of restrictions on functioning, activities or participation rather than in terms of the medical conditions which might be their cause. Social surveys tend to follow the equality legislation and define disability in terms of activity limitation. There is a second level of difference in definition and this relates to the extent of limitation to activity or participation and in the limitation in different aspects of living (for example daily living and/or working).

The research literature has adopted the onion analogy to describe the effects of changing the definition of disability. The definition of disability gets more restrictive as each layer of the onion is removed. Here disability is understood to arise from interactions between personal characteristics (including functional limitation) and environmental barriers and supports (for example, accommodation through job description and/or adjustment to equipment). It is the severity of limitation of activity and/or participation which determines how exclusive the definition is.

The outer layers contain disabled people who are less restricted in their activities and who are more likely to be in employment. The effect of making the definition sharper (and more restrictive) is to cut away those people who experience disability in this less severe way. Those at the centre of the onion are severely limited in their activities and employment rates are consequently lower.

In this way each layer of the onion has its own disability prevalence rate and disability employment rate which, reflecting increasing restriction with sharper and sharper definition, is lower (prevalence rate) and higher (employment rate) for smaller rings. *This has two important implications. First, using the inside layers of the onion to measure the success of policies designed to improve the employment rate is going to be a stiffer test than using the whole onion. Secondly, any trend or policy evaluation must use a single definition of disability. It must not cross the layers of the onion.*

The evidence for a positive relationship between disability prevalence (a more inclusive definition) and higher disability employment rates is obvious in the LFS trend 1998-2012 and in the higher employment gap in the LFS than the GHS and HSE, which both report higher disability prevalence. A definition based on the Work Capability Assessment test for Employment Support Allowance (ESA) (see Disability Rights UK 2016 for details of criteria) reduces both the prevalence rate and the employment rate. The test's definition of disability is quite different from the definition of disability under the EqA 2010: anything which is not 'trivial' or 'insubstantial' (Langstaff J in *Aderemi v London and South Eastern Railway Ltd* [2013] ICR 591). The purpose of the former is to define benefit eligibility criteria and levels of state support while the purpose of the latter is to determine eligibility for workplace adjustments. The EqA 2010 definition includes far more disabled people and has a larger employment rate (and smaller employment gap). The clear implication is that careful thought is needed to decide which disability definition is the best fit for the policy purpose and care should be taken in its application to ensure that trends are measured within and not across the layers of the onion.

Defining disability in Government surveys

In the LFS 1998-2012, disability is measured by positive responses to two self-assessed questions (see panel). The language of the questions comes from the DDA 1995.

Guidance for interviewers and respondents as to classification on question 2 is provided. This guidance is a summary of the list of capacities specified in the DDA 1995 (Sections D15 to D27, see Appendix 1). For example, the guidance in relation to manual dexterity states loss of functioning on one or both hands, inability to use a knife or fork at the same time, or difficulty in pressing buttons on a key board. While the examples are not intended to be exhaustive or exclusive they are intended to be illustrative of the type of functional impairments and activity limitations which define the threshold between disability and non-disability in the LFS, and thus a particular measure of disability in the working-age population.



Question wording differs across different Government surveys (see panel). Only the LFS contains interviewer guidance notes.

THE LFS 1998-2012 DISABILITY QUESTIONS

1. Do you have any health problems or disabilities that you expect will last for more than a year?
Yes/No

If Yes:

2. Do these health problems or disabilities, when taken singly or together, substantially limit your ability to carry out normal day to day activities?
Yes/No

THE HSE (1991-2012) AND GHS (1979-2011) DISABILITY QUESTIONS

1. Do you have any long-standing illness, disability or infirmity? By long-standing I mean anything that has troubled you over a period of time, or that is likely to affect you over a period of time?

If Yes:

2. Does this illness or disability/do any of these illnesses or disabilities limit your activities in anyway?

THE WORKPLACE EMPLOYMENT RELATIONS SURVEY (WERS) (2011) DISABILITY QUESTION

1. Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months?'. 'Yes, limited a little', 'Yes, limited a lot', 'No'.

(See section three for more on WERS)

Each question is seeking to capture the same concept: an activity-limiting impairment. However, responses are shown to be very sensitive to question, context and data collection methods and this creates differences in disability prevalence rates and employment gaps across surveys and can lead to debate about the size of each. Given sensitivity to question wording, inter-survey differences in rates and gaps are to be expected and can be

readily explained by context, questions and survey method. *Inter-survey differences in trends are more concerning and cannot be explained in this way.* They are not observed when comparing trends in disability and disability employment gaps across different surveys in the USA.⁷

We saw in Figure 1 that the trend in the LFS is inconsistent with trends in other surveys. Until this inconsistency is explained, the LFS ought not to be relied upon as the sole indicator of trends in the disability employment gap in the UK.

Tracking disability in the LFS beyond 2012

The main disability questions in the LFS were reworded in 2013 (see panel) and the guidance notes were removed. Rewording was intended to better capture disability as it is defined in the EqA 2010 although it is curious, given this intention, that there is no reference in the question to either 'substantial limitation' or to 'normal day-to-day activities'. The guidance notes which were based on a list of capacities and had defined disability in the DDA 1995 were repealed in the EqA 2010 with new guidance issued by the Secretary of State in 2011 and a code of practice published by the Equality and Human Rights Commission also in 2011. Neither was incorporated in the LFS. Without the guidance notes, the disability question is less precise. It is likely to be more difficult for respondents to interpret with responses more exposed to measurement error. The combined impact of rewording and removal of the guidance notes was initially to reduce disability reporting, especially among those who are employed.⁸ This created a step reduction in disability prevalence, a step increase in the disability employment gap and a discontinuity in the indicator.

THE LFS DISABILITY QUESTION FROM 2013

1. Do you have any physical or mental health conditions or illnesses lasting or expecting to last 12 months or more?

If Yes:

2. Does your condition or illness reduce your ability to carry out day-to-day activities?

Yes, a little; Yes, a lot; and Not at all.

There is an inherent difficulty in designing survey questions to capture a statutory definition of disability. This is because *what this statutory definition might mean is continually re-interpreted by the courts*. In the case of *Aderemi v London and South Eastern Railway Ltd* [2013] ICR 591, Langstaff J provided the following interpretation to the definition of disability in the EqA 2010: ‘unless a matter can be classified as within the heading “trivial” or “insubstantial”, it must be treated as substantial’ (para 14). This definition was subsequently endorsed by the Court of Appeal in *Billett v Ministry of Defence* [2015] EWCA Civ 773. This represents a change of definition when compared with the Guidance Notes set out in Sections D15 to D27 of the DDA (1995) and used in the LFS until 2013. It is of course a long way from the Work Capability Assessment criteria used to determine eligibility for ESA.

Differences in definitions are necessary to reflect difference in purpose. It is a change in definition within a survey which has an adverse impact on building a body of quantitative research around disability trends. A change in question without any means to adjust for its effects (such as asking the old and new questions in the same survey for a while) precludes effective long-term evaluation of policy and practice interventions implemented before the change.

Reporting and measuring disability: Some lessons for policy and practice

Currently there is no requirement for firms to report on the presence of disability in the workplace or for government or firms to report on disability gaps or to monitor trends in those gaps. However, with company targets for women on boards, gender pay gap reporting set for April 2018 and a Labour Party proposal to extend this to small firms and to other protected characteristics, including disability, political inclination is clearly towards more information and greater transparency. Collecting data on disability gaps is revisited in the context of gaps in in-work experience in the following section. However, the first requirement is to measure disability itself and, as we have seen, disability is a complex characteristic which is often hidden and is not always fixed.

The benefits of disability data collection lie in openness, transparency and equality, in the identification of the drivers and barriers of disability disadvantage and the enablers and supports in reducing this disadvantage. From the difficulties encountered in official data collection and reporting, we distil five key lessons to enhance and enrich the quality data on disability and the disability employment gap.

Conclusion

1. Engagement and consultation between collectors and users over disability questions, and changes to disability questions, will ensure better alignment between data collection and the purpose to the data are put.
2. Recognise differences in individual interpretation of survey questions and provide guidance notes with illustrations on how to interpret concepts such as activity limitation.
3. Consider linking disability data to other personal and household characteristics to separate the ‘disability’ effect from the social gradient and to help identify drivers, barriers and supports.
4. Data collectors should minimise and better manage data discontinuities for example, by running different definitions simultaneously for a limited period to assess the impact of questions change.
5. Respond to the complexity of disability by using multiple measures (different definitions of disability) and multiple sources of data.

SECTION 3



Key message:

Disabled people experience disadvantage relative to their non-disabled counterparts across a range of in-work outcomes. These include objective measures such as hourly earnings but also broader subjective measures relating to the experience of work.

Policy recommendation:

There needs to be a focus on work quality in addition to existing priorities relating to work quantity among disabled people.

Implications for employers:

Identifying and monitoring differences in in-work outcomes between disabled and non-disabled employees is the first stage in addressing differences in the experience of disabled employees within the workplace.

Of key relevance to:

Equality and human resource professionals, employers and disability organisations, trade unions and Government.

SECTION 3

Disabled People's Experience of Work: What is the Evidence and What Should We do About It?

The disability gap in the experience of work

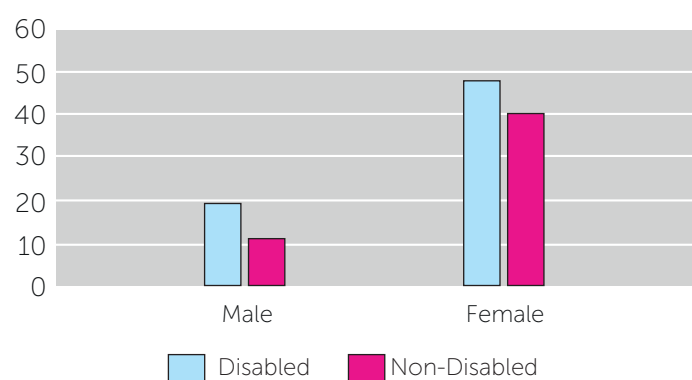
Policy attention has tended to focus on the large and enduring disability employment gap (discussed in sections 1 and 2) and the implications of this are that interventions, including welfare benefit reforms and the introduction of Pathways to Work, have been targeted towards disabled people's entry into work. Nevertheless, large scale, representative survey data in the UK, such as the Labour Force Survey (LFS) and Workplace Employment Relations Survey (WERS), which ask people about the nature of the jobs they hold, also show persistent variation between disabled and non-disabled workers, with disabled people reporting inferior work quality and less positive experience of work. A focus on in-work experience is more closely aligned to recognition of the important role of employers, reflected in government initiatives such as 2013 Disability Confident Campaign which aimed to promote the business case for and provide guidance to organisations employing disabled people.

In-work outcomes which are routinely collected at the national level include objective indicators such as hours of work, the nature of employment and hourly earnings but also subjective measures relating to the individual experience of work and perspectives on their workplace. Importantly, differences which appear in these measures between disabled and non-disabled employees tend to persist even after accounting for differences in other personal and work-related characteristics between disabled and non-disabled people. This suggests they relate to disability *per se* and not to differences in age or educational composition.

The nature of work

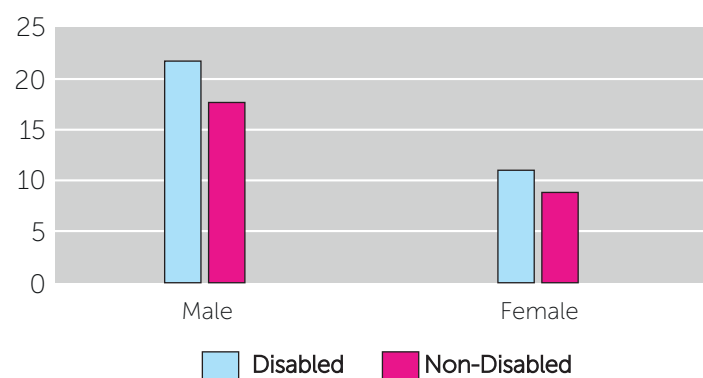
In terms of the nature of work, two important features are evident in the UK. Disabled workers are over-represented in part-time work and self-employment relative to their non-disabled counterparts (see Figures 3 and 4). For example, while 18.6 per cent of disabled male workers are employed part-time the equivalent figure among non-disabled men is 10.3 per cent. The employment gap, which is measured in terms of people, therefore underestimates the true difference in work quantity between disabled and non-disabled people since a greater proportion of disabled workers work part-time. Although less stark, there is also a significant gap in self-employment – which is an increasingly important source of employment in the UK – with 21.6 per cent of disabled male workers self-employed compared to 17.5 per cent of non-disabled men. While less pronounced the differences for women conform to the same pattern.

Figure 3: **Percentage of Those in Employment in Part-time Work**



Source: Labour Force Survey, 2015

Figure 4: **Percentage of Those in Employment in Self-employment**



Source: Labour Force Survey, 2015

One important question in relation to both of these dimensions of work is the extent to which these outcomes are the result of optimal or constrained choices for disabled people. For example, do disabled people choose self-employment to pursue an interesting business opportunity, for the flexibility to better accommodate their disability in work, or as a result of marginalisation and unwillingness to accommodate disability amongst employers? The limited evidence which exists supports an accommodating role of both part-time and self-employment in facilitating work among disabled people but more evidence is needed on the quality and security of this employment and the extent to which it achieves, or forms a stepping stone

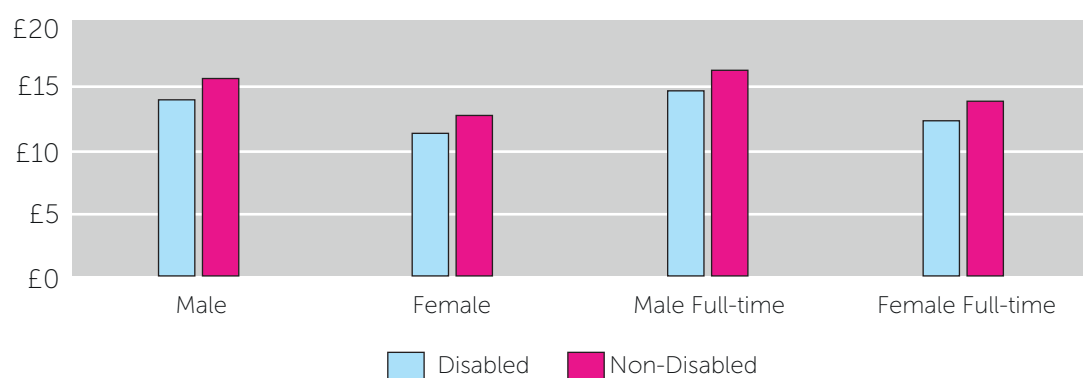
in achieving, aspirations in work. Without this, policymakers should be cautious in developing initiatives which promote self-employment over paid employment for disabled people.

The experience of work

Traditional measures of job quality have tended to focus on objective indicators, particularly earnings – a fundamental determinant of financial independence. Although smaller in magnitude than the employment gap, disabled workers are found to earn about 10 per cent less per hour than their non-disabled counterparts in the UK. This is true for males and females and for full-time workers (see Figure 5). Personal and employment related characteristics typically account for about half of this gap, leaving a significant component of the differential associated with disability ‘unexplained’. The causes of this residual or unexplained element remain debated within the academic literature since it is difficult to separate the influence of discrimination or unequal treatment from other unobservable differences such as preferences for the type or nature of work.

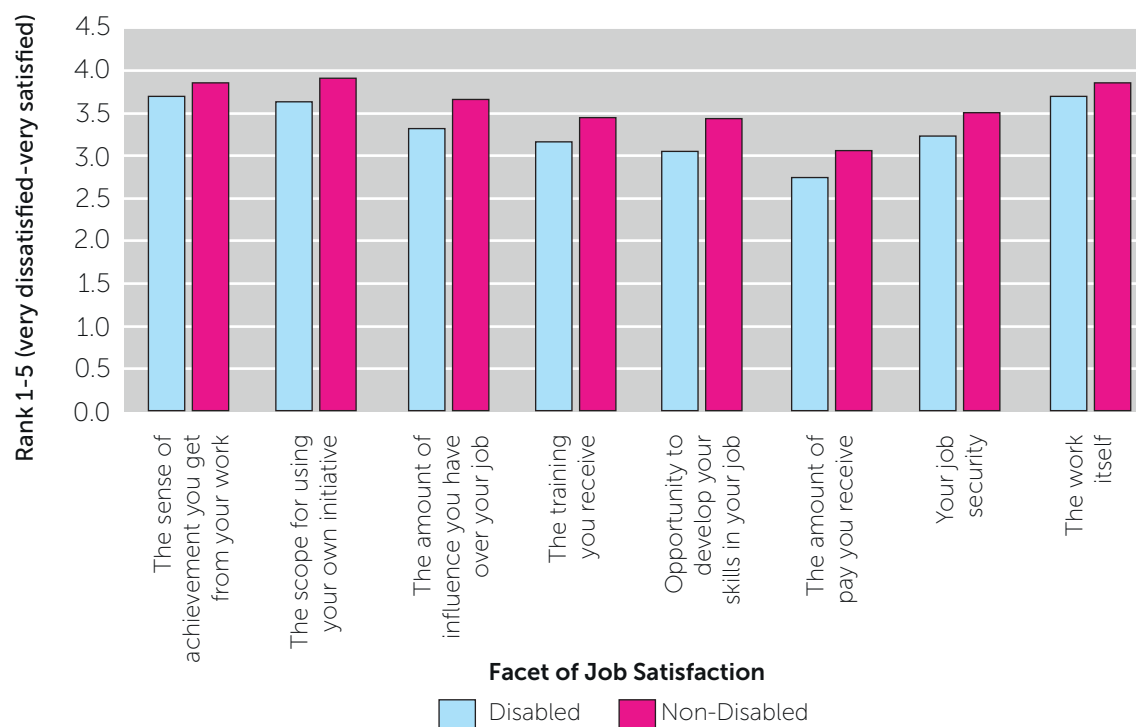
There has been growing academic and policy recognition of the validity and importance of more subjective measures, such as job satisfaction, which can form a more encompassing perspective on the experience of work (see panel). For example WERS asks employees about satisfaction with a range of aspects of their job including achievement, initiative, influence as well as training, pay and job security.

Figure 5: **Average Hourly Pay**



Source: Labour Force Survey, 2015

Figure 6: Average Ranked Score Job Satisfaction



Source: Workplace Employment Relations Survey, 2011

Nevertheless, there are also criticisms of the use of such measures, particularly that individual worker's judgements will depend on expectations and aspirations and so comparisons between them may be misleading.

Evidence suggests that disadvantaged groups within the labour market tend to have lower expectations and therefore report higher well-being on average even within the same job. A key exception to this is disabled employees who are found to report about 10 per cent lower average job satisfaction in response to questions evaluated on a ranked scale (for example, *very satisfied* to *very dissatisfied*). Figure 6 presents the average ranking for different facets of job satisfaction and shows evidence of a consistent gap, with disabled employees reporting lower satisfaction across all domains, but particularly in response to questions on influence, pay, skill development and training.

This more negative perception of work is not restricted to job satisfaction but also evident in measures of perceived manager treatment of

employees (also see the next section in this report) and is reflected in employees reported levels of commitment to their workplace. Further, this is not explained by differences in personal characteristics or more objective work-related characteristics, such as hours or occupation, and therefore exists, on average, between disabled and non-disabled employees in comparable jobs. These differences in work-related well-being are consistent with higher rates of reporting of bullying and harassment from employers and co-workers among disabled relative to non-disabled employees (see the sections below).

The National Wellbeing Programme was launched in 2010 and led to the development and regular measurement of wellbeing by the ONS. Within this, levels of job satisfaction are included as an indicator of wellbeing in relation to work which forms part of measuring wellbeing in 'what we do'. Job satisfaction has also been included as a National Indicator for Wales as part of the Well-being of Future Generations (Wales) Act 2015.

The disability gap in job satisfaction is significant in its own right as an element of life satisfaction, but it is also important as a determinant of the incentive to work as measures of job satisfaction have been found to be associated with employee intentions to quit and productivity at work. Policy which aims to monitor and address differences in the experience of work between disabled and non-disabled people is therefore likely to have positive spill-over effects on the employment gap, for example, in terms of encouraging individuals who experience disability onset to retain work.

An important question is to what extent organisations can influence the work-related well-being of disabled employees and what, if any, workplace policies or practices are effective in this regard. Clear evidence is limited, perhaps because stated organisational policies and practices can be differentially implemented in practice by individual line managers. An interesting line of investigation concerns the role of 'corporate culture' on disability gaps in the experience of work, with evidence based on matched employee-employer data in the US⁹ suggesting the experience of disabled employees is comparable to non-disabled employees among the most supportive and fair firms (as defined by employees). Data on perceptions of the impact of organisational change also suggest subjective information may be a useful tool for organisations in anticipating and evaluating changes to work practices, including identifying any unintended consequences for disabled workers. The sharing and utilisation of research evidence in this regard would seem an effective way of supporting organisations when undertaking internal equality impact assessments and as part of evidencing compliance with the Public Sector Equality Duty.

Another important aspect of the experience of work is in terms of skill utilisation, or the extent to which employees' skills are matched to the requirements of the job they do. In the UK disabled employees are more likely to report being skill mismatched, particularly that they perceive their own skills to be higher than that which their current job requires. Consistent with both employer marginalisation but also constrained job search for disabled employees, this underutilisation of skills is associated with both a pay penalty relative to individuals who are well

matched and lower job satisfaction. This suggests employers need to more fully and formally evaluate skills and abilities of disabled employees and forms part of a broader theme within the literature which recognises the heterogeneity within disability and job requirements and argues more effective matching of job demands and functional limitations would minimise the restrictions imposed by such limitations. Such matching, and the provision of facilitating accommodations within the workplace required under current legislation, is consistent with a critical role for specialist guidance from occupational health and vocational rehabilitation professionals such as occupational therapists.

What are the lessons for policy?

The main message of this section is that the disadvantage associated with disability in the labour market extends beyond the employment gap, that is, disability does not just affect the probability of retaining or obtaining work but also the experience of work itself. This is likely to feed back to affect the recruitment and retention of disabled workers. Addressing differences in job quality is therefore an integral part of addressing the employment gap and achieving broader equality for disabled people. If barriers to inclusion, independent living and financial independence exist for disabled people in work, then policy support should continue on entry into work. One practical implication of this evidence is that policymakers need to better monitor in-work outcomes among disabled employees in a similar manner to the widespread interest and regular monitoring of other equality indicators such as the gender pay gap in the UK.

We recommend that this monitoring extends beyond pay, which is only a single dimension of job quality, and includes a more encompassing measure which utilises subjective well-being. While recognising its limitations, subjective wellbeing incorporates multiple dimensions of the nature of work as well as capturing elements of the personal experience of disabled employees (see panel). This aligns to growing policy recognition of the importance of subjective well-being as a measure to track progress and evaluate interventions. Indeed, work is one possible avenue through which disability influences life satisfaction, which is now a key performance

indicator in the Government's 'Fulfilling Potential – Making it Happen' strategy¹⁰, and would be complementary to monitoring dimensions relating to financial independence and social inclusion.

The UK Office for Disability Issues reports Disability Equality Indicators which are used to monitor progress relative to the Independent Living Strategy. It would be possible to include measures such as job satisfaction which are routinely collected through large scale nationally representative surveys such as Understanding Society.

The more negative experience of work reported by disabled employees is not unique to the UK and is evident across several countries including the US and Australia. This points to common drivers and potential benefits of shared experience, particularly in relation to lessons for policy.

Are there lessons for employers?

Most research aims to provide a national picture or profile of the experience of disability in work and much less tends to be known about individual workplaces, primarily due to limits and disparities in data collection. Yet, the experience of individual organisations may be critical to understanding the determinants of the disability gap in work-related well-being and a prerequisite to identifying effective solutions. In this respect engagement and support of employers has to be a key feature of policy, including through the Work and Health Unit – a difficult task given the low levels of employer engagement with the current Disability Confident Campaign.

Recent requirements for large firms to measure and publish their gender pay gap will require standard processes to monitor information on pay through, for example, existing administrative records. Disability related pay gaps could also be monitored in the same way if employee disability is collected and recorded by employers. However, given the difficulties involved in measuring disability outlined in section 2, this information is less likely to be collected on a standard and routine basis than gender or ethnicity.

The first problem lies in defining and measuring disability although large scale surveys have much to offer firms in the design of questions and in generating external comparisons. However, issues identified in the reporting of disability in national surveys may also be magnified within organisations given the potential fear of disclosure to the employer. Indeed, estimates of workforce disability provided by managers in matched employee-employer data sets such as WERS appear to be a significant underestimate relative to that based on self-reported information among employees. Of course, until such reporting barriers are addressed within organisations disabled people will be unable to request the accommodation and support they are entitled to under the EqA 2010.

The second key issue for employers is that disability is not permanent and, as such, reliable analysis cannot be undertaken based on historical employee records (such as disability status at application for, or on appointment to, the role). Regular collection of information relating to disability among employees is therefore required and will naturally form a more difficult and costly data collection exercise than some other equality characteristics. Nevertheless without such information employers and workplaces will be unable to identify or address disparities in the experience of work or fully assess the equality impact of organisational change. Advice and support in terms of data collection would seem to be a priority for policy with innovative initiatives (see panel) also needed in the context of disability.

Funded by the European Social Fund, the Women Adding Value to the Economy (WAVE) project at Cardiff University gives academic support to employers to monitor and analyse their gender pay gap and, in light of the findings, introduce institutional change. <http://www.wavewales.co.uk/>

While pay and contracted hours are likely to be routinely collected by employers, information on broader well-being is unlikely to be widely available at an organisational level. Even where this information is collected, for example, via a staff survey, it is likely to be anonymised such that it cannot be linked to employee disability. In many instances it may therefore require organisations to modify the way information on well-being is

collected to simultaneously collect information on equality characteristics such as disability.

Again, reference to government survey questions will enhance the validity, comparability and therefore usefulness of this information and, in this respect, the government and other organisations, and academics, have an important role in supporting and advising firms. Indeed, direct comparisons to the national picture and the possibilities for sectoral analysis provide a context for individual organisations from which to assess their own profile.

Conclusion

The evidence presented within this section reinforces the need to monitor and understand disability gaps within work if disabled people are to be supported in fulfilling their potential and realising their aspirations in the labour market.

1. The attention on work *quantity* and the disability employment gap should be complemented with additional measures which capture work *quality*. Existing evidence suggests there are unexplained disability gaps in pay and job satisfaction and it would be possible, using existing data, to include these as part of routine monitoring by the government.
2. Policymakers will need to work with employers and other organisations in order to address disability gaps in work quality and the experience of work. The first stage is in supporting employers to collect and monitor information on disability and disability related pay gaps within their workplace.
3. Collaboration between academics and employers offer opportunities to measure and understand the experience of disability within a particular workplace. Effective dissemination of such employer case studies may provide effective means of identifying 'what works' to address gaps in the experience of disability at work.



SECTION 4



Key message:

Even those who are most directly affected often fail to understand the extent of disability discrimination they have experienced. A sensible debate about the causes of, and remedies for, the disability gap requires better knowledge of the extent to which the seemingly individual problems disabled people encounter in the workplace are part of a wider and more systematic pattern of less favourable treatment.

Policy recommendation:

A great deal of the less favourable treatment experienced by disabled employees amounts to illegal discrimination under current legislation, nevertheless less favourable treatment has proved stubbornly resistant to legal remedies. Where the law is failing, policy-makers can utilise measures of the full range of seemingly individual problems experienced by disabled employees in order to target actions to address the disability employment gap.

Implications for employers:

Employers are contributing to severe problems for disabled people ranging from difficulties with employment rights to bullying and harassment. Employers should understand that this behaviour amounts to systematic, indeed institutionalised, discrimination which they can address directly by changing their own behaviour.

Of key relevance to:

All agencies which can increase understanding of the best way to measure the extent and form of hidden disability discrimination for example disabled people's organisations, professional organisations like CIPD, and policy makers, for example the Government's Work and Health Unit. Disability organisations, trade unions and health professionals should also use the information in this section to improve the way they support individual employees.

SECTION 4

Are Employers Discriminating by Default?

Throughout the lifetime of the UK's laws against disability discrimination, there have been press campaigns which portray disability as a tactic used by people to extract special treatment from the state and other organisations, including their employers.¹¹ This section shows that, far from exaggerating the effects of impairments in order to gain special treatment, disabled people are largely unaware of the extent to which their disability is associated with less favourable treatment by their employers.

We are used to the idea that disadvantaged groups know that they are disadvantaged and that their problems are actually caused by the ignorance or prejudice of the majority. Qualitative research (see section 5) is well suited to exploring the experiences of disabled people who know they have suffered discrimination associated with their disability however it does not allow us to see how common such knowledge is amongst disabled people. This requires survey research which can easily sample disabled people (not just those who think they have suffered unfair treatment) and ask them separate questions about the experience of discrimination and the reasons why they believe discrimination has occurred. The survey research reported below shows that simply asking people if they have suffered disability-related discrimination is not a reliable way to measure the size of the problem society faces.

This is a controversial message for many, including some disabled people's organisations which are, quite rightly, wary of any suggestion that disabled people are somehow responsible for the problems they experience. While providing robust evidence for the claim that disabled people are largely unaware that the less favourable treatment they report is related to their disability, this section does not suggest that disabled people are in any way responsible for this lack of recognition. As well as showing that the true extent of disability-related discrimination is frequently underestimated, this research suggests that disabled employees tend to share with non-disabled people assumptions about the behaviour of employers, and the relevance of the law to this behaviour, which make it difficult to identify the real causes of the disability employment gap.

Disabled people do not think their disability status is relevant to their experiences at work

The UK Government's Fair Treatment at Work Survey (2008-9) is still the most authoritative study of employees' experiences of problems in the workplace. It used the best available methods to produce robust, reliable and representative data on the British workforce including the finding that only one in a hundred British workers (1.2 per cent) believed they had suffered unfair treatment related to their disability. An even smaller number

(0.7 per cent of the British workforce) said they had suffered discrimination related to disability. Another Government survey, the 2008-9 Citizenship Survey (now defunct), confirmed that workers were similarly unlikely to think discrimination occurred when they were seeking employment: only 1 per cent thought they had been refused a job because of disability. The research reported in the rest of this section suggests that, along with measures of perceived prejudice, such measures are of little help in addressing the disability employment gap yet they are the measures that are currently used by Government (see panel).

The Government's 'Fulfilling Potential' strategy (mentioned in section 3) has some supporting indicators for the objective of reducing the disability employment gap. They include what disabled people say about the attitudes of employers and work colleagues. The further objective of building inclusive communities includes unfair treatment at work as a supporting indicator. These measures are meant to help the UK discharge its UN convention duties.¹²

So low were disabled employees' reports of discrimination in the Fair Treatment Survey that the proportion of disabled people reporting unfair treatment or discrimination in employment because of their disability was actually *lower* than the proportion of all employees thinking they had experienced unfair treatment or discrimination.

Barely 3 per cent of disabled people reported receiving unfair treatment because of their disability. A little less than 3 per cent reported disability discrimination. Amongst all employees the proportion reporting unfair treatment or discrimination was 13 per cent and 7 per cent respectively. Yet, as this section confirms, their perceptions were flatly contradicted when their experiences of work were subjected to statistical techniques which permitted researchers to see how much less favourable treatment was associated with disability.

Disabled employees experience more problems with their employment rights and with bullying and harassment

Disabled people may not exaggerate the effects of disability as is often alleged but perhaps low reports of unfair treatment and discrimination simply reflect the reality of a society which treats disabled people fairly as the law requires? The evidence in this section is all stacked in favour of an alternative explanation. Disabled employees understand their problems as personal to them, and their employment situation, and not as part of a systematic pattern in which many other disabled employees are similarly treated. It remains to be seen whether they are similarly unaware that they share lower wages and lower job satisfaction scores with other disabled people (see the previous section).

The Fair Treatment Survey asked other questions as well as those about unfair treatment and discrimination, for example about employment rights. Three in every ten British workers (29 per cent) had experienced problems with their employment rights. Using statistical techniques to isolate the effects of disability showed that disabled people were nearly twice as likely as non-disabled people to experience a problem with their employment rights. They were even more likely to have this experience than low earners: 96 per cent more likely as opposed to 69 per cent more likely for the low-paid. No other group of employees exhibited this kind of pattern and which is a longstanding problem. An earlier Government Survey (the 2005 Employment Rights at Work Survey) had produced very similar results and suggested that discrimination might be the underlying cause.

The Fair Treatment Survey also recorded experiences of bullying and harassment and while these were much less prevalent than problems with employment rights in the British workforce – affecting one in fourteen employees – disabled employees were, once more, far more likely to be on the receiving end. The statistical models grouped bullying and harassment together with less common experiences such as sex harassment, and other serious problems affecting health or wellbeing, to show that disabled employees were *more than* twice as likely to have these experiences as other employees. The only group of employees that were more likely to be in this position were LGB employees.

Why don't disabled employees see this as discrimination?

Disabled people are no more likely than anyone else to think they are discriminated against, or even subject to unfair treatment, yet they are twice as likely to have problems with employment rights and with bullying and harassment. These problems may well be a big part of the reason why their job satisfaction is lower (see the previous section) but why is it so hard to get reliable data on disability-related discrimination? *We will consider four possible explanations: that British workers overwhelmingly believe employers do not discriminate; that disabled employees identify fairness with equal treatment; that the disadvantage they suffer is relatively trivial; that the problems and bullying cause disability rather than arising from it.*

The Fair Treatment Survey provides useful evidence in relation to the first possible explanation of why workers believe employers do not discriminate. British workers, including disabled workers, think discrimination of any kind, but particularly disability-related discrimination, is very rare. The Fair Treatment Survey asked questions about how employees thought their employers went about hiring people. Only one in ten said their employer would do anything other than hire the best person for the job. A few of the other 90 per cent (about 1 in 5 of them) did think hiring the best person for the job might entail favouring a particular demographic, most often a man, but their explanation was usually the requirements of the job rather than prejudice. Even the very few who did think there could be discrimination tended to put it down to job-related reasons rather than prejudice.

This fits with the explanations given by employees who thought they had suffered unfair treatment or discrimination. Very few employees thought this had anything to do with their membership of one of the protected groups identified in equalities legislation. They were much more likely to cite factors which are much more individual – to do with personalities and relationships, for example exclusion from a clique – or the shape of the organisation that they work for.

As we have seen, the proportion of disabled people who think they have suffered discrimination is even

smaller than the proportion who think they have suffered unfair treatment. In the Fair Treatment Survey, unfair treatment was less likely to be seen as discrimination by disabled employees than it was by workers covered by other parts of the EqA 2010 (with the exception of religious equality). What is more, only about half of the tiny number who thought they had suffered discrimination because of their disability thought it was a breach of their legal employment rights.¹³

As surprising as these results are, the logically prior issue is that disabled employees do not see their problems as resulting from unfair treatment – still less as unfair treatment related to their disability – in the first place. In large part this may result from disabled employees, like other employees, believing that experiencing problems in the workplace 'goes with the territory' of having a disability. It may be unfortunate but it is not unfair as long as disabled employees receive the same treatment as everyone else does.. To put it another way, disabled employees may choose not speak of unfairness or discrimination because they believe there is little social acceptance or understanding of the issue. If this is the case, it reflects the ineffectiveness of UK equality law in changing attitudes.

The UK decided more than 20 years ago that workplace adjustments for disabled people were necessary and fair if existing working arrangements and physical features placed them at a substantial disadvantage. When there is no reasonable explanation for the persistence of this disadvantage, this unfairness amounts to illegal discrimination. When the DDA 1995 was put into law the UK agreed with the principle that organisations should adjust to the requirements of disabled employees as long as it is reasonable to do so. It was not fair that simply being disabled should put people at a disadvantage and workplaces were to be made to do everything that was reasonable to put disabled people on a level footing. This might well entail that they must be treated differently – for example given time off work that others do not have – yet if this is what is required to combat disadvantage then this should be provided.

The law may not help disabled employees to speak of unfairness or discrimination because it allows for so much latitude in the interpretation of what is 'substantial' disadvantage and what might be 'reasonable' adjustments. Yet in descriptive analysis of the Fair Treatment Survey disabled employees experienced all of the problems that the rest of the workforce experienced, only more so: they had problems with holidays, rest breaks, number of hours or days, pay, contract, set procedure for a complaint, set procedure for a grievance (11 per cent versus 4 per cent for those without a disability or long-term condition), health and safety (again, 11 per cent versus 4 per cent), sick leave or pay, retirement. Most of these problems are supposed to be addressed by the rules employers have in place to prevent disability discrimination in PCPs (see p. 6 above).

They were also more likely than others to report an employment rights problem that had a *serious financial impact*. Moreover, those in fear of victimisation if they made a formal complaint at work made up 28 per cent of disabled people versus 20 per cent of the workforce a whole.

In fact the final explanation we have to consider in this section suggests that the problems reported in the Fair Treatment Survey were far from trivial since their impact extended beyond employees' finances to their physical and mental health. The suggestion here is that having problems of this kind gives people disabilities of one kind or another. Thus some disabled people may have problems at work but only because the problems have caused their disabilities. Given that the Fair Treatment Survey asked about *longstanding* disabilities and *recent* experience of employment problems this is not very convincing, certainly not beyond the case of health and safety problems and particularly not in respect of problems with sick pay. However bullying and harassment might be a different story.

For example, in the Fair Treatment Survey 42 per cent of all those who experienced bullying and harassment said it had a moderate or severe effect on their physical health/well-being (48 per cent for mental health/well-being). Similar results have been reported for many years by psychologists studying bullying and harassment around the world. On the other hand, effects on health do not rule out the

possibility of people with long-standing disabilities suffering bullying and harassment which creates further, and perhaps different, health problems. Indeed, it might be very likely that someone who has a physical or mental health condition and suffers discrimination will have further health effects.

The bullying and harassment experienced by disabled workers may be related to their experience of employment problems. In the next survey we will discuss below, the British Workplace Behaviour Survey (BWBS), the kind of ill-treatment that featured heavily for disabled workers was closely related to employment problems (and PCPs), for example items like 'pressure not to claim something you are entitled to' and 'your employer not following proper procedures'. Further evidence of the close association between employment problems and ill-treatment, including bullying harassment, was provided by the case studies accompanying the BWBS, which provided some of the qualitative research discussed in the final section of this report.

It is therefore quite likely that disabled workers experience employment problems which give rise to bullying and then to further disability. This would be most likely to apply where the further disability was associated with a psychological condition rather than longstanding health problems or physical disabilities. The cases where disabilities do not appear until after bullying and harassment are necessarily few and perhaps only significant where the bullying is particularly traumatic, for example involving violence or injury of some kind. Even here, the Fair Treatment Survey recorded violence against employees with long-standing conditions – such as arthritis, asthma, blood/circulation problems, cancer, diabetes, digestive/bowel disorders – which are unlikely to have been caused by the experience.

The latter results come from a section of the Fair Treatment Survey in which employees were asked about seven particular kinds of behaviour that could be called unreasonable, disrespectful or violent. The disabled workers in the survey were significantly more likely to suffer all of them. For example, they were more likely to report all of the following occurring *monthly or more often*: employers ignoring their own procedures (9 per cent versus 2 per cent), being treated in a disrespectful or rude way

(11 per cent versus 6 per cent), being humiliated or ridiculed (4 per cent versus 1 per cent).

The ill-treatment of disabled employees

At the same time as the Fair Treatment Survey, another survey, the BWBS, investigated this kind of ill-treatment in the workplace in greater detail. The BWBS was less well-resourced but comfortably met normal scientific standards for representative and reliable surveys. In the BWBS employees were asked about 21 kinds of unreasonable, disrespectful and violent treatment instead of 7. This second survey produced very similar results and further helpful information about the gap between disabled workers' experiences and their perceptions of discrimination and unfair treatment.

There were 284 disabled workers in the BWBS sample and they were far more likely to experience ill-treatment than the rest. For example, complaints about their employer not following proper procedures were made by 1 in 5 of all workers but by a third of those with a disability or long-term illness and 4 out of 10 of those with a psychological/learning disability. Yet only 11 of the 284 [4 per cent] considered disability to be a factor in their experiences of ill-treatment at work (despite being given a free choice to say as many factors as they liked). And only 25 [9 per cent] felt that those experiences had anything to do with long-term illness or other health problems. Hardly any of them thought they were suffering from discrimination. Again this was not because they had no experiences of ill-treatment: most of them did, indeed most of them had experienced two or more kinds of ill-treatment.

In comparison with the non-disabled people who had been ill-treated, the majority of the disabled workers put their ill-treatment down to the nature of the workplace; for example, citing 'it's just the way things are at work', their position in the organization or their performance at work. Disabled employees see their problems with ill-treatment as consequent on features of their employment situation, and perhaps shared with non-disabled employees with the same employer, rather than experiences they have in common with disabled workers in other employment. This is wholly in keeping with the earlier suggestions that disabled employees think

British employers rarely discriminate and believe that equal treatment is fair.

The fact remains, however, that equal treatment puts disabled employees at a serious disadvantage. The same statistical techniques used for the Fair Treatment Survey analysis showed that disability had a far greater effect on ill-treatment recorded in the BWBS than any other factor. The only other protected ground that came close was sexual orientation. Holding all other things constant, those with a learning difficulty, psychological or emotional condition, had an increased risk of the 21 types of ill-treatment to the tune of 177 per cent - i.e. nearly three times as big a risk. The risk for those with other disabilities and long-term health conditions was increased by 102 per cent, i.e. twice as much. The risk for those with physical disabilities was increased by 15 per cent (see panel on page 30 for the risks for particular types of ill-treatment and disability).

Rights awareness: lessons for policy and practice

Disabled employees may not think they suffer unfair treatment or discrimination but they have an appetite to know more about their rights and they are less likely than other employees to believe they can trust their employer to look after their rights. In fact, employees who identified as disabled were the only group in the Fair Treatment Survey that was more likely to report problems with employment rights, and more likely to say they needed to know more about their rights whether they reported problems or not.

We might argue that the problem of rights is better addressed in the Americans with Disabilities Act, which provides for a much more robust role for the statutory equality body, the equivalent of which in the UK would be the Equalities and Human Rights Commission (EHRC). The latter has the power to support tribunal claims, but has confined this to cases that would make a significant contribution to case law, and provides a Code of Practice and guidance on interpreting the law to Employment Tribunals. However, its role has been diminished as a consequence of cuts in funding and the merger of previous separate equalities bodies, significantly, the Disability Rights Commission, which provided important legal and rights advice (see panel on page 31).

Who is most at risk of ill-treatment?



x7 people

with other health conditions

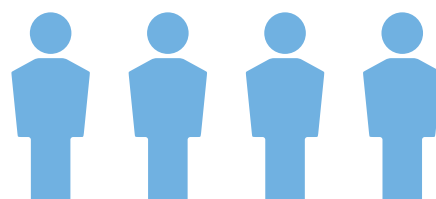
are seven times as likely as non-disabled people to be pressured not to claim something they are entitled to.



x4 people

with psychological problems

are four times as likely as non-disabled people to be treated unfairly in the workplace.



x3.5 people

both of these types of employee

are more than three and a half times as likely as non-disabled people to experience their employer not following proper procedures.



Far from moving towards American-style legislation, recent changes in the UK legal system have made it still harder for disabled employees to exercise their rights even when they know what those rights are. The number of claims under the disability provisions of the EqA 2010 have fallen by 46 percent since the introduction of employment tribunal fees for claimants (<http://tinyurl.com/z6zfhe3>)

In the absence of a stronger statutory agency, and alongside diminishing support to exercise justice, the Fair Treatment Survey showed that, for all types of employment problems, employees were more likely to get a positive outcome if they sought information or advice from a manager. However managers' knowledge of what constitutes discrimination is very uneven. For example we know from the qualitative case studies which followed the BWBS that, when it comes to disability discrimination, the effectiveness of an appeal for managerial intervention varies from manager to manager. For instance, the negotiation of workplace adjustments as reported by disabled employees is too individualised and dependent upon the good-will and the lottery of having an understanding line manager (see the final section). Engaging the help of managers with general problems of ill-treatment is also very much a hit and miss affair, especially where line managers are responsible for the ill-treatment.

Even without a statutory role (as in the American legislation), health professionals have proved their worth in helping many disabled employees to keep their jobs. The qualitative research accompanying the BWBS showed that occupational health professionals who understand the law can play a key role in individual cases, substantially improving outcomes for disabled employees. The same was true of trade union or staff association representatives but they could not always be relied upon to recognize the relevance of the legislation on disability discrimination to an individual case. The Fair Treatment Survey showed getting information or advice from worker representatives in the workplace was just as good for employees as getting an understanding manager on their side but, as with managers, more can be done to prepare worker representatives so they can provide better information to disabled employees.

Conclusion

1. One of the most important reasons why disabled employees do not remain or progress within employment is that they are subject to a range of negative experiences, many of which can be traced back to their employers, which make their situation particularly fraught. These experiences cover a wide variety of employment rights issues and some other forms of ill-treatment.
2. Measuring variations in the extent of these problems between employers, and trends in society over time, requires the construction of indices that do not require disabled people to recognize that they have suffered discrimination or even unfair treatment. We need measures, like some of those used in the two surveys discussed in this section, which bypass the influence of existing social attitudes and misconceptions and access disabled people's negative experiences directly. They can then be used to set targets for employers, beginning with the public sector and those who benefit from government procurement or public funds.
3. Evidence collected using these measures can facilitate targeted interventions to close the disability gap. For example, some survey results reported here suggest that supporting employers to improve their management of sickness absence will be helpful. If sufficiently well-targeted, such interventions can achieve the same ends that workplace adjustments or accommodations are intended to achieve without requiring employees to recognize their experiences as discrimination.

SECTION 5



Key message:

It is important that the voices of disabled people themselves, and their experiences, are represented in policy debates, research findings and new initiatives. For this to happen it is important that the views of disabled people and their lived experiences, are better heard.

Policy recommendation:

The experiences of disabled people are central to understanding the barriers they face in the workplace and is, therefore, an appropriate starting point for formulating policy. Improving consultation processes is important, but strategies for addressing the experiences of disabled people and increasing the representation of their views and interests is essential. So too is education that challenges embedded ableist (like sexist and racist) attitudes towards disabled people in the labour market.

Implications for employers:

An organisational Provision, Criterion or Practice must not substantially disadvantage disabled people and the best way to ensure this, given the range of impairments people can experience, is to properly integrate disabled people into organisational decision-making. Better representation would ensure that everything from recruitment, job design, training, sickness absence and reward procedures, and promotions criteria, are non-discriminatory. Demographic change also means that as the working population ages, acquired impairments are likely to increase amongst the workforce, as such employers need to develop proactive, as opposed to reactive strategies (which characterise responses to current legal requirements), to accommodate an increasingly diverse workforce.

Of key relevance to:

Policy-makers, employers and their organisations (e.g. CIPD), trade unions, disability advocacy organisations, health professionals.

SECTION 5

Learning from the Experiences of Disabled People in the Workplace: The Need to Increase ‘Voice’ and Representation in Disability Policy and Practice

The EqA 2010 aimed to strengthen the law to address disability discrimination in the labour market and employment. The subsequent Public Sector Equality Duty, which, among other things, placed a duty on employers to consult with disabled employees and service users in the public sector about the equality impact of policies (equality impact assessments EIAs), also promised new opportunities for disabled people and their representatives to influence workplace practices.

However, law can be a blunt instrument, and while legislation provides guidelines to regulate behaviour, it cannot always change embedded beliefs and stereotypes that sustain prejudice and discrimination. The law can also have an uneven impact, particularly in a UK where regional politics is increasingly significant: illustrated by the different duties placed on employers by the Public Sector Equality Duty in England, Wales, Scotland and Northern Ireland. Where you live has become increasingly important, but so too has where you work and how much money you have to afford representation and justice. We now have a legal system that not only demands that a claimant has to pay to be able to have their complaint of discrimination at work heard, but unlike other countries relies too much on individual litigation to set precedents for good practice.

Resort to law is often a consequence of a breakdown in employment relations, yet a decline in trade union membership and presence in workplaces has meant fewer disabled people have access to workplace advice and representation and, for those unable to access the labour market at all, access to trade union expertise is largely closed to them. In other European countries, trade union membership extends more comprehensively to the unemployed and retired populations, union density is often higher and unions are regarded as key social partners. Unions are often active in the distribution of state welfare, including unemployment benefits and active in jobseeker and training programmes. Where social partnerships between trade unions, employers and the state do exist in the UK, evidence suggests they can make a positive contribution to improving the understanding of workplace disability equality issues. In Wales, for example, Wales TUC, supported by the Welsh Assembly Government, has trained specialist union equality representatives. Disabled People's Organisations (DPOs), voluntary and campaign organisations are also important sources of advice and support, particularly to those outside the labour market. Impairment specific organisations can be important spaces where disabled people can share experiences and advice. Unfortunately, debate by these different actors often continues to take place in silos.

Limited research has been conducted on disability and employment relations and the experiences of key actors involved in these at an organisational level. This is surprising, particularly since one of the most important employment rights conferred on disabled people – the right to request ‘reasonable’ adjustments – is operationalised at the level of the workplace. Since UK disability employment law came into effect in 1996, disability rights activists have argued that the term ‘reasonable’ means there are circumstances in which disability discrimination in employment is acceptable, and indeed, justified. If the same principle were applied to the employment of people with other characteristics, for example race, this would be viewed as unacceptable, but in the case of disability, refusal to grant an adjustment can be justified on business grounds. As such, critics have argued that disability discrimination at work legislation differs from other anti-discrimination law because it is not fully grounded in principles of social justice.

Furthermore, it might be said that existing law reinforces negative stereotypes of disabled people as inevitably less productive or less able, yet if employers were encouraged to ‘think outside of the box’ about the organisation and management of work, the business case for providing workplace adjustments and employing disabled people would be obvious. The majority of adjustments are made at low or no cost, but require a degree of creativity and flexibility, particularly when challenging traditional job-design and hierarchical work relationships. An interesting comparison can be drawn between workplace adjustments and the EU equal pay for work of equal value amendment that was made to the UK Sex Discrimination Act. This was introduced because it was found that equal pay claims often failed because of an absence of suitable comparators doing the same job. Historically, women have been employed in different kinds of jobs than men rendering comparisons between male and female wages difficult. Interestingly, in professional occupations where entry is theoretically determined on merit, the literature suggests that like women, disabled people experience similar occupational segregation. If we think about disability adjustments in the same way as equal pay for work of equal value, the fact that disabled people may do different work does not inevitably mean that this work is less valuable.

Legal obligation or personal lottery?

This section of the report draws on research that shows why it is imperative that the work experiences of disabled people inform policy and practice. Qualitative research involving face-to-face interviews with disabled people suggests that managers, particularly line-managers, are often poorly trained and informed when dealing with disabled staff. Furthermore, human resource and occupational health departments are perceived to play an ambiguous role: not knowing whether to support (or defend) an employee or a manager. The scenario that follows is all too common: the individual disabled employee becomes increasingly unwell as they try to manage the pressure they are put under when negotiating workplace adjustments, alongside their impairment. Long term sickness absence leads to organisational uncertainty and a referral to occupational health. The employee feels under pressure to return to work too quickly and occupational health advice is not clear or specific. Sometimes colleagues become resentful as they try to manage the sickness absence of a staff member. The disabled employee and the union is either threatened or fears being threatened with a move by HR to a capability assessment and potential dismissal. They are left with the prospect of losing their job and a less than average prospect of being employed elsewhere. The employer has spent a lot of personnel time on the situation and is facing having to replace a skilled employee they have invested in. This is often a game with no winners.

This outcome is not inevitable, but is a common enough pattern to feel as if it is. Instead it indicates that conversations need to take place and adjustments need to be made that have not been previously considered, it may also mean that HR departments and managers need to be creative, acknowledge that a disabled person is different and that a job needs to change. The outcome can be positive for both employee and employer, but new thinking and mutual trust and respect are necessary. Too often, the voice of the disabled employee is not heard (sometimes by their own representative), while decisions are made about them by others and positions become entrenched. Self-management of an impairment on a day-to-day basis means the

employee is the one person qualified to suggest potential solutions, but they are either not consulted or trusted to be 'reasonable'.

The extract below was from an interview with an experienced teacher of 25 years

Her visual impairment had worsened, but her attempts to discuss this situation with her line manager caused stress and distress. After a long struggle to secure adjustments, including a support worker, she experienced illness directly attributable to these circumstances and accepted ill-health retirement.

She recounted the situation she found herself in:

I've been told nobody else in the department could do it [the teaching]. So I said, 'I can't do it! I could do it before, but I can't do it now because I can't access the teaching material.' And she [her line manager] said that there was nothing she could do and I'm sitting there thinking this is madness, I've got a disability I would think most people would recognize, I can't read material, I can't access it. I've got somebody telling me there's nothing they can do. So I said to her that effectively she was telling me that I can't do my job ... then she said she didn't think there was any point discussing this.

Reflecting on this experience she added:

I think I learnt from the experience this. If you're going to succeed with a disability you need support. You need support to understand it yourself, because if you're going through it – I was on a learning curve. Management is on a learning curve. Where were the people with the expertise to inform you, but also inform management? But, at the same time, there is no reason why somebody who has a disability cannot teach ...

Another interviewee, a nurse, who had become a wheel-chair user after 24 years of service, highlighted the discriminatory attitudes and behaviour she encountered in the workplace:

My manager thought it was a huge joke to put his metal briefcase under the fax machine so I couldn't get my feet under. I couldn't see the buttons on it because it was at my eye level and I couldn't actually manage to do any faxing until I'd moved his briefcase out of the way.

On the simple but often contentious subject of car parking at work she also recounts the following incident:

I went to the chap in charge of the car park and asked if I could have a saved parking space in the office car park. Most of the spaces there were for top management butI was told, while sitting in a wheelchair, that disabled spaces were only for disabled people. I asked him how much more disabled he would like me to be?

These experiences were perhaps, surprisingly to some, not unusual in accounts of working lives provided in interviews by disabled people. Many reported consistent everyday barriers and discriminatory attitudes that were normalised by organisations that supported a culture and attitudes among managers and staff that can best be described as ableist. Ableism promotes a specific understanding of what it means to be 'able' and in doing so, which bodies, capabilities, and intelligences are deemed 'normal' and, therefore, (economically) valuable. This can be experienced by disabled people as 'othering', creating an environment where they are treated as 'inferior', 'deviant' or 'abnormal'. What can result is a form of socio-emotional disablism, where continued misunderstandings and hostility results in the disabled person withdrawing, becoming isolated, being regarded by managers and colleagues as 'difficult', which can then lead to bullying and exclusion. Indeed, in the workplace narratives of disabled people, what often stands out, is that a substantial proportion report stress and ill-health resulting from the adjustment process itself.

Thus, a legal requirement designed to help disabled employees stay in work, is actually contributing to them exiting the labour market. Too often, transparent organisational procedures are lacking and outcomes depend more on the personality, or worse still, goodwill or 'sympathy' of a manager. What should be a legal obligation becomes

a personal lottery left to line-managers often responsible for juggling the conflicting pressures of dwindling resources, work intensification and people management. One common consequence is that a stricter approach is taken to absence management. This leads to the return to work becoming a new flash point. The extract below from a teacher interviewed who sought a half-time job-share on her return to work after a long term illness, illustrates the often conflictual nature of such circumstances:

They really wanted to make it difficult. They said I could start work immediately because I was fit to return to work. But they couldn't effect the job share until half term so I'd have to go back to work on a full-time basis for at least a month, and boy, did they try to break me in that month. It was a concerted effort by everyone.

The adversarial character of this situation is evident in many other interviews with disabled people and indicates a real need to re-think the logic that is driving decision-making around absence management and return to work in organisations. There is a real need to improve greater understanding, tolerance and employment relations between the variety of actors often involved.

Negotiating difference: Representing disabled employees in the workplace

By focusing on how disabled employees 'negotiate' organisations, particularly through the practical manifestation of their legal right to 'reasonable' adjustments', it is possible to shift debate away from the 'problematic' or 'deficient' employee, to allow for consideration of other barriers in employment. Interviews with disabled employees have also revealed hitherto unreported and unanticipated workplace concerns that can remain uncovered by surveys. A survey, for example, can ask if a person is a union member and whether they have sought advice from this source, but may find it difficult to explore in any depth, or make sense of why, that representation was experienced as inadequate. Furthermore, because disabled people are often marginalised in academic and policy studies of diversity in the workplace (arguably because it is assumed they are not there), knowing which questions to ask in a survey can, itself, be

problematic. As other studies at Cardiff featured in this report illustrate, ill-treatment of disabled people in the workplace and wider society has become so normalised and accepted that some research participants may not even realise that they are defined as disabled, in legal terms, or realise they are being discriminated against.

The relative absence of accumulated knowledge about disabled people's workplace experiences can also mean their interests are insufficiently represented. Asking for workplace adjustments, in some instances, is equivalent to asking for changes in core terms and conditions of employment. This is a serious undertaking and is a request made in the context of an unequal power relationship in which it is common for the employee to feel isolated and, indeed, personally responsible for bringing 'their problems' to the notice of the employer. Involving a third party can help address this common feature of workplace adjustment negotiations. Employers present adjustments as if they are a personal or individual health issue, but the advantage of trade union representation is that workplace specific knowledge can be applied to the process of re-designing a job. As workplace actors, unions are also well placed to understand the organisational and broader economic context if objections to requests are raised by employers on grounds of cost. Although rarely formally integrated into the employment relations context, voluntary organisations, particularly those that are run by disabled people for disabled people, also play an important role. Increasingly so, as the number of workplaces without a union presence is growing and because jobs and employment are perceived as increasingly precarious.

While the variety of impairments and their effects may differ from person to person, it is evident from the accounts of disabled people in work that patterns or themes emerge, which represent collective or common barriers. One of the problems faced by lay trade union representatives however, is the amount of time and knowledge needed to support individual disabled members. This problem is exacerbated by employers who insist that each individual is treated on a case by case basis, which often means that little organisational learning or good practice develops. While (with the exception of case law), granting an

adjustment does not technically set an organisational precedent, it can nevertheless contribute to knowledge about good or best practice. It is the job of union representatives to establish collective principles from individual negotiations.

Research with lay trade union equality representatives suggests the lack of facility time available, leaves disabled employees unsupported and under-represented. Reactive rather than proactive and inclusive workplace policies and practices can dominate and the over-all emphasis on individual adjustments, not only focuses on what someone cannot do, but often fails to address practices that have a detrimental effect on the health and well-being of all employees.

Ongoing EU and regional research at Cardiff, suggests that where social partnerships between employers and trade unions have been established, for example as a part of the employment relations environment in other European countries and regions within the UK, there has been some success in embedding disability equality into core bargaining agendas. In Wales, where Union Equality Representatives are supported by Wales TUC and funding is provided by the Welsh Assembly Government, there is some evidence that not only do disabled employees experience better support, but lay representatives have access to knowledge and training. Educating members and managers at workplace level is also an important role of these representatives. This is an initiative that complements the UK TUC's Disability Champions programme and initiatives such as the mentoring programme set up by Disability Rights UK. Research also suggests however, that trade unions can offer variable levels of support depending on their training, experience and understanding of disability workplace issues. This comment below represents some of the concerns expressed by trade union lay representatives:

To be brutally honest, I do not believe either my own union – or most TUC affiliates – have yet fully grasped the 'Disability nettle'. Gender matters were first addressed in the 1970s, and some colleagues still struggle with that; so we will wait possibly another 30 years probably! I have my own theories about....disabilities.....usually comrades glaze over when I mention them....

Nobody's responsibility: the precarious position of disabled employees in the workplace

Disabled people in interviews continually paint a picture of frustration, because they want to work and be valued, but minor workplace obstacles prevent them from reaching their full potential. They report poor procedures and a sense that organisationally, they are nobody's responsibility. Other sections of this report evidence the disability penalty in the labour market as strong and persistent: outweighing disadvantages associated with other protected characteristics. Significantly, however, when looking at the literature on workplace disability management in the UK, it becomes apparent that the interests of different workplace actors—managers, employees, HR departments, occupational health advisors and employee representatives—are rarely portrayed as complementary. In comparison with the US, examples of coordinated workplace solutions that benefit both organisations and employees are difficult to find.

The rise in incapacity claims in the UK has been presented as politically and financially unsustainable. However, the absence of joined up macro and micro solutions, between the state and organizations, means disabled people continue to fall between the gap created by differences between rhetoric and reality. At an organisational level employment security is often believed to have diminished and work-intensification, performance management and high demand jobs characterise the current labour market. Non-disabled employees, let alone disabled employees, complain of increased stress and illness. The stereotypical modern organisation is lean and the stereotypical employee 'resilient', which sets up unrealistic 'ideal worker' expectations that can be met by few. There is a need for coordinated multi-actor responses at the organisational level and beyond, to improve employee health and well-being and address the realities of people's everyday workplace experiences. The current trend in health and well-being-at-work thinking concentrates too much on improving the resilience of individual employees, while ignoring the social conditions of work that give rise to ill-health, disability and dysfunctional working relationships, in the first place.

An analysis of interviews with disabled people in employment from The British Workplace Behaviour Survey project looking at ill-treatment at work and highlighted 5 key areas requiring further debate: (1) performance-oriented managers being unsympathetic to those working while sick or disabled; (2) experiences with sickness being treated as a disciplinary matter; (3) work not being reallocated when workers go off sick; (4) workers' attempts to negotiate reasonable adjustments with the organisation; and (5) the quality of workplace representation. The personalised, fragmented, uncoordinated, deinstitutionalised and employer-dominated approach in the UK towards managing disability and long term ill-health, needs to be questioned and the voices of disabled people heard. Research thus suggests that increasing voice, representation and the visibility of disabled people in today's workplace and in policy making is key to the future effective management of workplace health and well-being.

Conclusion

1. Strategies for addressing the experiences of disabled people and increasing the representation of their views and interests is essential.
2. So too is education that challenges embedded ableist (like sexist and racist) attitudes towards disabled people in the labour market.
3. Organisational Provisions, Criteria and Practices must not substantially disadvantage disabled people and the best way to ensure this, given the range of impairments people can experience, is to properly integrate disabled people into organisational decision-making.
4. Disabled people as a group do not always share an identity or organise collectively in the workplace. The stigmatised character of identifying as disabled militates against collective organisation and action and the way the law is framed with a focus on individual, not social changes in workplaces and working practices means stigma is reinforced as personal. It is important to make the personal political to address collective barriers.

Endnotes

- 1 People diagnosed with the progressive conditions of HIV infection, multiple sclerosis and cancer are disabled from diagnosis even if they do not have a substantial adverse effect on normal day-to-day activities.
- 2 House of Lords Select Committee on the Equality Act 2010 and Disability (2016) *The Equality Act 2010: the Impact on Disabled People*, London: TSO.
- 3 Department for Work and Pensions (2016) Select Committee Inquiry into Disability Employment Gap <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2015/disability-employment-gap-launch-15-16/>
- 4 Black, C. (2008) *Working for a Healthier Tomorrow: Dame Carol Black's Review of the Health of the Working Age Population*. London: TSO.
- 5 Black, op. cit.; Taylor-Robinson, D. & Whitehead, D. (2014). 'Great leap backwards: The UK's austerity programme has disproportionately affected children and people with disabilities'. *BMJ* 2014; 349 doi: <http://dx.doi.org/10.1136/bmj.g7350> (Published 02 December 2014) <http://www.bmj.com/content/349/bmj.g7350> ; Schur, L., Kruse, D., Blanck, P., (2013) *People with Disabilities: Sidelined or Mainstreamed?* Cambridge University Press, New York, p. 38.
- 6 Marmot, M. (2010) *Fair Society, Healthy Lives: the Marmot Review*. Department of Health.
- 7 Weathers, R., Wittenburg, D., (2009) 'Employment' In: Houtenville, A., Stapleton, D., Weathers, R., Burkhauser, R. (Eds.), *Counting Working-age People with Disabilities*. W.E. Upjohn Institute for Employment Research, Kalamazoo, MI, pp. 117.
- 8 Hankin, M. (2016) 'Measuring Disability in the Labour Force Survey', Office for National Statistics. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/methodologies/measuringdisabilityinthelabourforcesurvey>
- 9 Schur, L., Kruse, D., Blasi, J and Blanck, P. (2009) Is disability disabling in all workplaces? Workplace disparities and corporate culture, *Industrial Relations*, 48(3): 381-410
- 10 Department for Work and Pensions and Office for Disability Issues (2015) *Fulfilling Potential: outcomes and indicators framework: second annual progress report*, <https://www.gov.uk/government/publications/fulfilling-potential-outcomes-and-indicators-framework-second-annual-progress-report>
- 11 United Nations Committee on the Rights of Persons with Disabilities (2016) Report of the UN Inquiry concerning the United Kingdom of Great Britain and Northern Ireland, CRPD/C/15/R.2/Rev.1 HYPERLINK "<http://www.ohchr.org/Documents/HRBodies/CRPD>" www.ohchr.org/Documents/HRBodies/CRPD
- 12 United Nations Committee on the Rights of Persons with Disabilities, op. cit., details the ways in which the UK is failing to discharge these duties.
- 13 Confirmed by House of Lords op. cit.,.

References

- Baumberg, B., Jones, M. and Wass, V. (2015). Disability and disability-related employment gaps in the UK 1998-2012: different trends in different surveys? *Social Science & Medicine* 141, 72-81. (<http://www.sciencedirect.com/science/article/pii/S0277953615300289>)
- Fevre, R. and Lewis D. 2012. 'Why ill-treatment at work is so hard to change' *People Management*, June 30-35.
- Fevre, R., Lewis, D., Robinson A. and Jones, T. 2011 *Insight into Ill-treatment in the Workplace*, Cardiff: Cardiff School of Social Sciences.
- Fevre, R., Lewis, D., Robinson, A. and Jones, D. 2012. *Trouble at Work*, London: Bloomsbury.
- Fevre, R., Nichols, T., Prior, L. and Rutherford, I. 2009. *Fair Treatment at Work Report: Findings from the 2008 Survey*, Employment Relations Research Series No. 103, London: Department of Business, Innovation and Skills, 244 pages.
- Fevre, R., Robinson, A., Jones, T. and Lewis, D. 2008. *Work Fit For All - Disability, Health And The Experience Of Negative Treatment In The British Workplace*, Insight Report No.1, London: Equality and Human Rights Commission.
- Fevre, R., Robinson, A., Lewis, D and Jones, T. 'The Ill-treatment of Disabled Employees in British Workplaces', *Work, Employment and Society*, 27 (2), 2013: 296-315. Shortlisted for the 2014 SAGE Prize for Innovation and/or Excellence.
- Foster, D (2015) 'Working in Partnership: Devolution and the Development of a Distinctive Equalities Agenda in Employment, in Wales'. In *Beyond 2015: Shaping The Future of Equality and Human Rights and Social Justice: A collection of essays from the Equality and Diversity Forum and EDF Research Network*. London: Equality and Diversity Forum, pp. 134-144.
- Foster, D (2015) Devolution and disabled workers: the experiences of union Equality Representatives in Wales. *Industrial Relations Journal*, 46 (2) 153-168.
- Foster, D (in press) The Health and Well-Being at Work Agenda: Good News for (Disabled) Workers or Just a Capital Idea? *Work, Employment and Society*.
- Foster, D and Fosh, P. (2010) 'Negotiating 'difference': Representing disabled employees in the British workplace'. *British Journal of Industrial Relations*, 48 (3) 560-582.
- Foster, D and Wass, V. (2013) 'Disability in the labour market: An exploration of concepts of the ideal worker and organisational fit that disadvantage employees with impairments'. *Sociology*, 47(4) August, 705-721.
- Foster, D. (2007) 'Legal Obligation or Personal Lottery? Employee Experiences of Disability and the Negotiation of Adjustments in the Public Sector Workplace'. *Work, Employment and Society*, 21 (1) March, 67-84.
- Foster, D. and Scott, P. J. (2015) Nobody's responsibility: the precarious position of disabled employees in the UK workplace. *Industrial Relations Journal*, 46(4), 328-343.
- Foster, D. and Williams, J. (2015) The contribution of gender theory to investigating disability and professional work. Presented at: *Nordic Network on Disability Research NNDR 13th Research Conference*, Bergen, Norway, 6th-8th May 2015.
- Jones, M. (2007) Does part-time employment provide a way of accommodating a disability? *The Manchester School*, 75(6): 695-716.
- Jones, M. (2016). Disability and perceptions of work and management, *British Journal of Industrial Relations* 54 (1), 83-113.
- Jones, M. and Latreille, P. (2011) Disability and self-employment: evidence from the UK LFS, *Applied Economics*, 43(27): 4161-4178.
- Jones, M. and Sloane, P. (2010). Disability and skill mismatch. *Economic Record* 86, 101-114.
- Jones, M. and Wass, V. (2013). Understanding changing disability-related employment gaps in Britain 1998-2011. *Work Employment and Society* 27 (6), 982-1003. (<http://wes.sagepub.com/content/27/6/982.short>)
- Jones, M., Hoque, K., Wass, V. and Bacon, N. Disabled employees experience of the recession: evidence from the 2011 British Workplace Employment Relations Survey.
- Jones, M., Latreille, P. L. and Sloane, P. J. (2006) Disability, gender and the British labour market, *Oxford Economic Papers*, 58(3): 407-459.
- Jones, M., Mavromaras, K., Sloane, P. and Wei, Z. (2014). Disability, job mismatch, earnings and job satisfaction in Australia, *Cambridge Journal of Economics* 38(5), 1221-1246.
- Jones, M., Mavromaras, K., Sloane, P. and Wei, Z. The dynamic effect of disability on work and subjective well-being in Australia, IZA Discussion Paper No. 9609.
- Jones, T. Robinson, A., Fevre, R. and Lewis, D. 2011. 'Workplace Assaults in Britain: Understanding the Influence of Individual and Workplace Characteristics', *British Journal of Criminology* 51(1): 159-178.
- Masso, M., Nurmela, K, Foster, D (2016 forthcoming). Supporting industrial relations in the field of workplace adaptation to enable the employment of older or disabled populations: A literature review. Praxis Centre for Policy Studies. EU grant:

Closing Disability Gaps at Work

DEFICITS IN EVIDENCE AND VARIATIONS IN EXPERIENCE

By Ralph Fevre, Deborah Foster, Melanie Jones and Victoria Wass (all Cardiff University)

Key messages

While disability is difficult to measure, it is essential to do so. Addressing deficiencies in current measures is a pre-requisite to effectively monitoring trends in disability disadvantage at work and in evaluating the impact of policy and practice interventions.

Disabled people experience disadvantage relative to their non-disabled counterparts across a range of in-work outcomes. These include objective measures such as hourly earnings but also broader subjective measures relating to the experience of work.

Even those who are most directly affected often fail to understand the extent of disability discrimination they have experienced. A sensible debate about the causes of, and remedies for, the disability gap requires better knowledge of the extent to which the seemingly individual problems disabled people encounter in the workplace are part of a wider and more systematic pattern of less favourable treatment.

It is important that the voices of disabled people themselves, and their experiences, are represented in policy debates, research findings and new initiatives. For this to happen it is important that the views of disabled people and their lived experiences, are better heard.