



Law Society
of Scotland

Written Evidence

Work and Pensions Committee Inquiry: Disability employment gap

December 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Equalities Law and Mental Health and Disability sub-committees welcome the opportunity to consider and respond to the House of Commons Work and Pensions Committee inquiry: Disability employment gap.¹ We have the following comments to put forward for consideration.

General Comments

The call for evidence focuses on practical support from government for disabled people in relation to work. Other than the mention of the duty to make reasonable adjustments arising from the Equality Act 2010, we note that the call for evidence does not explicitly recognise the duties on government arising from international treaties or the duties on employers arising from the Equality Act 2010. We also note that the adequacy of rights of disabled people seeking or maintaining employment are not explicitly referenced nor discussed within the call for evidence. We would suggest that these matters required further consideration in the context of addressing the disability employment gap.

We also note that poor economic circumstances in the coming years, potentially arising from factors including COVID-19 and the UK leaving the European Union, may have an adverse impact on disabled people's employment. Academic analysis of the 2011 Workplace Employment Relations Study highlights that disabled employees recount a more negative experience during a recession than non-disabled employees across issues such as changes to workload, work organisation, pay and access to training.² In June 2020, the ONS noted that "it is clear that the UK is in the largest recession on record."³

1 <https://committees.parliament.uk/call-for-evidence/295/disability-employment-gap/>

2 Disability at Work, Briefing Note: Disability and the Economic Cycle – Implications for a COVID-19 Recession April 2020, <https://www.disabilityatwork.co.uk/research-areas/in-work-disability-gaps/all-in-it-together-the-impact-of-the-recession-on-disabled-people/>

3 GDP monthly estimate, UK: June 2020, <https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/gdpmonthlyestimateuk/june2020>

Call for Evidence Questions

Progress so far and impact

- 1. What progress has been made, especially since 2015, on closing the disability employment gap? How has this progress been made?**
- 2. What is the economic impact of low employment and high economic inactivity rates for disabled people? Are some disabled people (for example, young disabled people or people with different health conditions) more at risk of unemployment or economic activity than others?**
- 3. What has been the impact of the coronavirus pandemic on disabled peoples' employment rates?**

We have no comments to make. Organisations representing employers and organisations for and of disabled people may be better placed to comment on progress and impact to date.

Providing support

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

We are not best placed to comment on where lead responsibility for improving disabled peoples' employment rates should sit. However, it is important that such responsibility is clearly communicated to all relevant stakeholders and that mechanisms are in place to ensure appropriate accountability and scrutiny.

- 5. What international evidence is there on “what works” in supporting disabled people into, and in work, and how applicable is this to the UK?**

Relevant organisations representing employers and organisations for and of disabled people may be better placed to comment on these matters.

However, more broadly, we note that work and employment is closely associated with not only the right to work and employment but also the ability to exercise legal capacity (which includes the ability to make decisions relating to work and employment), access to justice, the right to the highest attainable standard of physical and mental health, to live independently and to an adequate standard of living (Articles 12, 13, 19, 25, 27 and 28) UN Convention on the Rights of Persons with Disabilities (CRPD); Article 6 European

Convention on Human Rights (ECHR)). Persons with disabilities are entitled to enjoy such rights on an equal and non-discriminatory basis with others (Article 5 CRPD); Article 14 ECHR) and the CRPD emphasises that disability or related impairment should not justify the limitation of such rights. Moreover, the CRPD makes it clear that states (including state bodies) must ensure that state parties have an obligation to ensure that appropriate support – such as support for the exercise of legal capacity (supported decision-making), reasonable accommodation and universal design – is made available to persons with disabilities to enable such equal and non-discriminatory rights enjoyment.

It should also be noted that even in situations of emergency, such as the coronavirus pandemic, whilst the ECHR (Article 15) and CRPD (Article 11) allow for rights to be limited as a response to addressing such emergency such limitation must be proportionate and not discriminate against certain persons on the basis of a particular characteristic, such as a disability (including a related impairment).

Whilst the CRPD does not currently carry the same legal weight as the ECHR in the UK and Scotland in that its rights cannot be enforced through our courts and tribunals they nevertheless carry considerable weight and influence in Scotland. Proposed ministerial actions can be prevented by the UK Government where they fail to comply with the UK's international obligations including those relating to the CRPD.⁴ The Scottish Government has also given a commitment to give effect to CRPD rights in *A Fairer Scotland for Disabled People: Delivery Plan* (2016).⁵

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

We repeat our response to 5 above and note that any support provided, whether it is in or out of work support, must seek to overcome the challenges that a disability brings to equal and non-discriminatory rights enjoyment (see Article 12 CRPD and Committee on the Rights of Persons with Disabilities General Comments Nos 1, 5 and 6).

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

In addition to our responses to 5 and 6 above we would also draw attention to the requirements of the Equality Act 2010 relating to the employment of persons with disabilities and duty to provide reasonable adjustment (notably sections 6 and 20 and Part 5).

⁴ Section 58(1) Scotland Act 1998

⁵ <https://www.gov.scot/publications/fairer-scotland-disabled-people-delivery-plan-2021-united-nations-convention/>

a. How effective is the Disability Confident scheme?

We have no comments to make. Organisations representing employers and organisations for and of disabled people may be better placed to comment on the effectiveness of the Disability Confident scheme.

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

We repeat our comment in response to questions 5 and 6 above.

9. The coronavirus pandemic continues to make it difficult to offer in-person support. What evidence is there of “best practice” in supporting disabled people remotely—either in or out of work?

Organisations representing employers and organisations for and of disabled people are best placed to comment on evidence of “best practice” in supporting persons with disabilities remotely.

We again reiterate our comments in response to question 5 above regarding rights limitation in times of emergency. In-person support remains essential for disabled people as many face significant barriers to accessing digital services. Office for National Statistics data from 2018, for example, highlighted that 20% of disabled adults had never used the internet.⁶ As the service sector has evolved its approach to keeping staff and customers safe, so too must those providing support to disabled people. Remote support alone may not be sufficient.

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

We have no comments to make. Organisations representing employers and organisations for and of disabled people may be better placed to comment on this.

⁶ ONS, Internet users, UK: 2018, <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2018#main-points>

Enforcement and next steps

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

We reiterate our response to question 7 above. Disabled people face significant and often insurmountable barriers to realising their right to reasonable adjustments in terms of employment but also education, goods and services and transport, all of which are important in enabling employment. Taking action against an employer in tribunal, or a service provider through the courts, is a significant step and may not be affordable in the case of court action. Alternative dispute resolution could play a much stronger and effective role in addressing this issue.

Additionally, whilst we acknowledge that reasonable adjustments are essential in allowing disabled people to access employment, such adjustments would not be required in many cases if greater attention was paid to the concept of universal design in its broadest sense. Many organisations, including organisations for and of disabled people, have developed information about how to design services to assist disabled people and employers should be encouraged to make use of these resources.

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

The UK Government could consider incorporating the United Nations Convention on the Rights of Persons with Disabilities into domestic law. The Scottish Government has committed to incorporating the United Nations Convention on the Rights of the Child into Scots law, and has also given a commitment to give effect to CRPD rights in *A Fairer Scotland for Disabled People: Delivery Plan (2016)*,⁷ and to considering incorporation of CRPD. Such incorporation would provide a strong underpinning of the rights framework for disabled people.

Whether such an approach is taken or not, there should be a greater focus on monitoring the effectiveness of existing duties on employers, and rights of disabled employees or job-seekers, and on taking steps to make them more effective.

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

Organisations for and of disabled people, and individual disabled people, will be better placed to answer this question. Engagement should be as wide as possible and include disability led organisation and disabled people. We would reiterate our comments in response to question 5 regarding the importance of

⁷ <https://www.gov.scot/publications/fairer-scotland-disabled-people-delivery-plan-2021-united-nations-convention/>

providing appropriate support to remove barriers to participation. Consultation in respect of the strategy should also be followed up by effective monitoring.

For further information, please contact:

Jennifer Paton
External Relations
Law Society of Scotland
DD: 0131 476 8136
JenniferPaton@lawscot.org.uk



Law Society
of Scotland