



Law Society
of Scotland

Consultation Response

Disability workforce reporting

April 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Employment Law and Equalities Law sub-committees welcome the opportunity to consider and respond to the Cabinet Office Disability Unit consultation: *Disability workforce reporting*.¹ We have the following comments to put forward for consideration.

General Comments

We acknowledge that the consultation is primarily framed as an evidence gathering exercise targeted at employers and employees.

Our further comments are therefore restricted to the consultation questions in Section B only, as these appear to relate to potential future legislation. We consider that other organisations and individuals will be better placed to respond to the other sections of the consultation.

¹ <https://www.gov.uk/government/consultations/disability-workforce-reporting>

Section B: Benefits and barriers to disability workforce

Do you think that greater transparency on disability in the workforce leads to more inclusive practices? Please explain and provide evidence where possible.

Yes, we expect greater transparency to lead to more inclusive practices. Anything that emphasises disability issues experienced by employees and which focuses an employer's attention on their existing legal obligations is likely to lead to improvements in practice. Greater transparency on disability in the workforce is a first step to monitoring the size of the disabled workforce, offering greater insight for employers, and allowing employers to begin to make improvements within their organisations. Greater transparency also allows jobseekers to make informed choices about the employers they work for.

It is important to note however that reporting on its own may not lead to changes in practice. In the case of gender pay gap reporting it was noted in a CIPD study that reporting did not lead to widespread changes in practice: Three in ten (29%) said their organisation had not yet made any changes to pay because of gender pay gap reporting and did not intend to do so. Just 8% of respondents had made changes as a result of the new reporting requirements; however, a fifth (21%) of respondents said they would have done so regardless of the new requirement to report this information.² On the other hand, a 2018 government review of the "naming and shaming" provisions of the National Minimum Wage Act Regulations found that they were effective in changing employer behaviour.³

Do you think that disability workforce reporting by large employers (250 or more employees) should be voluntary or mandatory?

Whilst employers and individuals who respond to the consultation will be better placed to give an opinion, we recognise that there are strong arguments in favour of mandatory reporting by large employers.

This will allow accurate reporting of disability issues in the workplace and the extent of any pay gap affecting disabled workers.

What do you think the main benefits of a voluntary approach to disability workforce reporting are?

We would expect that voluntary reporting would lead to more engagement from those organisations which choose to participate. If those organisations have chosen to report, then there is likely to be an inherent

² Not just a number: lessons from the first year of gender pay gap reporting, CIPD April 2019, page 8, available at https://www.cipd.co.uk/Images/gender-pay-gap-reporting-lessons-1_tcm18-55693.pdf

³ See <https://www.gov.uk/government/news/naming-employers-who-fail-to-pay-minimum-wage-to-be-resumed-under-revamped-rules>

appetite to improve, engage and monitor disability issues going forward. A voluntary, rather than mandatory, approach would also impose a lesser regulatory burden on businesses.

What do you think the main risks are?

Voluntary compliance could be unpredictable and may not reflect industry behaviours. Employers may choose not to comply, resulting in skewed data which may give a false impression of the extent of issues encountered by the disabled workforce. The current voluntary disability reporting framework has not been effective. The CIPD *Health and Wellbeing at Work Survey April 2021*⁴ found that only 21% of respondents were aware of the framework. Of these, 37% had adopted at least part of the framework and a further 35% were working towards adopting it. 28% reported that their organisation had no plans to adopt the framework (16% in the case of employers of 250 or more employees). The research available indicates low uptake of the disability voluntary reporting framework.

How could voluntary reporting be increased?

We believe that awareness of voluntary reporting could be increased and that employer education regarding the framework could be improved. If employers believe that voluntary reporting represents good working practice and there is a cultural shift towards it, then reporting may increase.

What do you think the main benefits of a mandatory approach to disability workforce reporting are?

Mandatory reporting will increase reporting, and will enable industry behaviours, trends and standards to be assessed and monitored accurately and in more detail. This may in turn inform future legislative changes. Mandatory reporting would also provide a legal reason for employers to collect relevant health information from employees for the purposes of creating a more inclusive workforce.

What do you think the main risks are?

Understanding what will qualify as a disability for the purpose of a report, including the potential for complex health issues to be portrayed as a single statistic, could be viewed as a barrier for some employers and employees. It is likely that a narrative will be required to interpret statistics properly, and this may not be consistently given across the board. The resources of the employer may also impact the

⁴ See https://www.cipd.co.uk/Images/health-wellbeing-work-report-2021_tcm18-93541.pdf, at page 23

quality of the report, and employers would require training and guidance on meeting their obligations. There may be confidentiality issues for smaller employers where the small number of employees might lead to inadvertent identification of individuals and issues of consent. There may also be a risk of quotas or 'token' appointments, which could generate internal resentment.

Employees may also be reluctant to report disabilities, thereby limiting the accuracy of the data gathered. Consideration should be given to schemes which may mitigate this risk, for example allowing anonymous disability reporting within a workforce, or supporting employers to use an independent third-party service to gather and anonymise the data. Consideration should also be given to how employers can be encouraged to communicate effectively with their employees regarding reporting in order to build employee confidence in reporting.

What do you think the main benefits of publishing disability workforce information are?

Transparency may lead to more open conversations about disability issues in the workforce. It may result in the issue being taken more seriously at management level, particularly where there are concerns about reputational damage, and may encourage partnership agreements with workforce/unions. Employees will be able to make informed choices about who to work for. There may be increased public awareness of disability issues in the workplace.

What do you think the main risks are?

Any "name and shame" approach is likely to be met with resistance by employers. Employers will be particularly sensitive to any statistics being misinterpreted, and about any potential adverse impact on their ability to recruit in a competitive recruitment market. Lack of disclosure by disabled employees may result in inaccurate data being published, and it may be difficult to protect the anonymity of disabled workers in some cases.

For further information, please contact:

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