We are social researchers at Cardiff University with a longstanding interest in the nature and causes of differences in the experiences of disabled and non-disabled employees. Our work has benefitted from collaboration with several other researchers whose names appear in the list of references at the end of this submission. Deborah Foster has held grants from the ESRC and EU to conduct research on negotiating and managing workplace disability adjustments. She has collaborated with disability advocacy organisations, trade unions and employers in the UK and EU. Her work is guided by her own personal experiences of disability in the employment context. Ralph Fevre was the principal investigator on a research project on workplace ill-treatment funded by the ESRC which is the largest of its kind so far conducted anywhere in the world. He was also the lead academic on the Government’s Fair Treatment at Work Survey which has been influential in the work of the EHRC and in the work of many Government departments and in the public sector more generally.

Executive Summary

1. We welcome this inquiry and particularly the way it draws attention to recent policy shifts suggesting more attention needs to be paid to the contribution of the demand side to the enduring and persistent employment gap experienced by disabled people.
2. This submission concentrates on the things that happen to disabled people when they are employed and which may cause them to leave employment, thereby contributing to the disability employment gap. The experiences of disabled employees can also affect the gap by way of a demonstration effect which discourages disabled people from entering employment.
3. We have undertaken research which shows that disabled employees face considerable problems from their employers when trying to negotiate reasonable adjustments and are more likely to experience a wide range of other employment problems – including many which are covered by employment rights legislation.
4. It is quite unusual for disabled employees to think they are suffering these problems because they are disabled. This means that interventions that aim to close the disability gap by improving retention cannot rely on employers and employees knowing that the Equality Act is relevant to their situation.
5. Public policy may be beginning to recognize this problem but we propose some conceptual resources and suggestions for institutional improvements that will help to address it.
6. The first is the re-institutionalization of disability management by reinstating HR as the responsible, specialist organizational function. A levy on employers could help to fund a generic resource for SMEs which would provide the same capability.
7. The second is a similar recommendation in respect of the role of occupational health professionals within larger organizations and, with the help of NHS resources, could provide a common pool of resources for SMEs.
8. Finally, worker representatives are presently over-loaded with demands from employers, employees and trade unions but they are potentially a very useful resource. Recent developments in Wales show how more could be made of their capabilities.

Context: policy and research on disabled employees

1. For two decades public policy has concentrated on the supply side of the labour market but with little success in closing the persistent employment gap experienced by disabled people. We welcome this inquiry and particularly the way it draws attention to recent policy shifts suggesting more attention needs to be paid to the contribution of the demand side to the disability employment gap.
2. While we do not think the problem of disability discrimination in recruitment has been solved, our research has concentrated on the experiences of disabled people within employment, including their experiences when they become disabled while they are employees. The way disabled people are treated by their employers can obviously affect labour retention, and therefore the disability employment gap, but it can also have indirect effect on recruitment through its impact on the reputation of employers.

3. One of the most startling findings of our research concerns the bullying and harassment faced by disabled employees who have tried to exercise their rights to negotiate reasonable adjustments (Foster 2007, Fevre et al 2012). This finding has since been confirmed by evidence presented to the Enquiry of the House of Lords Select Committee on the Equality Act 2010 and Disability (The Equality Act 2010: the impact on disabled people).

4. The Government’s Fair Treatment at Work Survey showed that disabled employees suffer bullying and harassment even when they are not negotiating reasonable adjustments. Bullying and harassment were included in a summary measure of employment problems which disabled employees were nearly twice as likely to experience holding other factors constant (Fevre et al 2009). The summary measure included unfair treatment and discrimination and ‘other serious problems’ but the most important factors captured in this measure were problems with employment rights including problems with pay, grievances, health and safety, contracts, time off sick and so on.

5. The most common problems faced by disabled employees arise from their imperfect access to normal employment rights. Employees with disabilities are most likely to report problems with sick leave or pay but also with holidays, rest breaks, number of hours or days, pay, contract, set procedure for a complaint, set procedure for a grievance, health and safety, and retirement. (Fevre et al 2009). Difficulties with all of these issues bear the potential for a detrimental effect on labour retention.

6. These employment rights problems are also associated with ill-treatment in employment which is mostly ascribed to managers or supervisors and which has a further detrimental effect on retention (Fevre et al 2012, 2013). The British Workplace Behaviour Survey used a summary measure of 21 variations of ill-treatment including being subjected to persistent criticism, being shouted at, even threats or violence at work. Being disabled had a far greater effect on the likelihood of ill-treatment than any other factor. Holding all other things constant, employees with a learning difficulty, psychological or emotional condition, had an increased risk of the 21 types of ill-treatment to the tune of 177%. The risk for those with other disabilities and long-term health conditions was increased by 102%. The risk for those with physical disabilities was increased by 15% (Fevre et al 2008, Fevre et al 2013).

7. It is possible that some of the recommendations made in The Equality Act 2010: the impact on disabled people in respect of the EHRC (see for example pp. 143–5) and in relation to other matters such as restoring the power of tribunals to make wider recommendations (paragraph 416) may help to ameliorate some of these reasons for disabled employees to leave employment. However, the beneficial effect of these recommendations will be most obvious where employees and/or employers are aware that the Equality Act is relevant. In fact our research (Foster 2007; Fevre et al 2009, 2012, 2013) suggests that it is quite unusual for disabled employees to think they are suffering employment problems (of any kind) because of they are disabled. The root problem here is not the result of a failure to realize that equal treatment can amount to discrimination (cf. The Equality Act 2010: the impact on disabled
people) but of disabled employees assuming that they are no more likely to experience these problems than other employees.

8. In theory, the Disability Confident Campaign and the improved Access to Work scheme ought to be able to help with increasing awareness that disabled employees are more likely to suffer problems in work because they are disabled. There are some suggestions in the most recent policy formulations that may help, for example the thought being given to mechanisms for ‘educating’ employers. The programme of the new Work and Health Unit promises to find the levers to change employer behaviour (by 2020). The forthcoming White Paper also mentions exploring the roles of employers.

9. Such interventions need to look beyond the minority of occasions when employees and/or employers know that the Equality Act is relevant. Disability research has furnished conceptual resources which help. The Equality Act 2010: the impact on disabled people highlights the social model of disability. The concept of ableism draws on feminist critiques of organisational analysis that have highlighted the gendered character of processes, practices and values (Foster and Wass 2013). There is also a parallel with the way the idea of institutional racism makes visible the discrimination embedded in normal organizational practices. Ableism describes the process by which the privileging and maintenance of non-disability as an organizing normative principle occurs. Ableist attitudes and norms that can often be embedded in policy and practice and are negatively experienced on a day to day basis by many disabled people. It is often the social organisation of work and the attitudes and norms that sustain ableist workplace practices that disable people, rather than their medical impairments.

10. Concepts like the social model, and ableism, remind us that the disability employment gap will not disappear simply because we make it easier for employers to know they are breaking the law. This recognition is implicit in some of the information provided as part of the Disability Confident Campaign but there must be some doubt as to whether employers who do not perceive they have a problem with disability rights will seek out such information. Where ableism is deeply embedded as the normal way of doing business, employers will have no incentive to actively out guidance and advice.

11. Institutional factors in the United States have produced a different context. Many more organisations provide private health insurance as part of employee benefits and the Americans with Disabilities Act (ADA) puts the onus for recognising discrimination and harassment on employers. For example, the Enforcement Guidance for Reasonable Adjustment and Undue Hardship Under the Americans with Disabilities Act specifies a process which need not require that the affected employee identifies themselves as either disabled or in need of reasonable adjustment. All that is required is that an employee makes a request, for example one concerning pay, grievances, health and safety, contracts, time off sick or one of the other areas of employment noted as problematic for people with disabilities in paragraphs 4 and 5 above. With the aid of clinically-qualified professionals, employers must establish that the employee is covered by the legislation and that the request being made amounts to a reasonable adjustment which cannot be legally denied.

12. What can be done to change the institutional landscape short of an ADA duty which obliges employers to become more proactive? There are three arenas for change within which the current range of proposed measures might have some effect if they are properly calibrated and in which further help could be provided to employers beyond the current range of proposed measures.
13. We know from the Government’s Fair Treatment at Work Survey that, along with worker representatives, managers are the most effective resource for employees seeking solutions to the whole range of employment problems. They are currently considered far more useful than HR (Fevre et al 2009). However, the effectiveness of an appeal for managerial intervention varies wildly. For example, the negotiation of workplace adjustments as reported by disabled employees is too individualised and dependent upon the good-will and lottery of having an understanding line manager (Foster, 2007; Foster and Scott, 2015). Engaging the help of managers to help with problems of ill-treatment is also very much a hit and miss affair, especially where line managers were responsible for the ill-treatment (Fevre et al 2012).

14. The reason why these unreliable managerial resources are, nevertheless, considered more helpful by employees than the resources of HR departments is that the HR resources of organisations have been reduced as they have pursued the HR business partnering model and the introduction of Employee Assistance Programmes. (Fevre et al 2012; Foster and Scott 2015). In the process, the professional expertise and specialist knowledge of HR have been replaced with algorithms and decision-trees embedded in software which can be operated by line managers or remote counsellors.

15. Our research serves as a reminder that although such innovations are intended to cut costs, they increase the burden on individual line managers and employees and on co-workers who, when relationships break down, or employees eventually go on sick leave, end up having their workload intensified. There is nothing inevitable about this sequence of negative events and an enhanced understanding of why, for example, adjustments are given to a job role would work to the benefit of all. There is merit in having a specialist unit within large organisations to oversee disability issues and take a proactive and strategic approach. This would permit the effective re-institutionalisation of responsibility for the management of disabled employees (Foster and Scott, 2015).

16. What in the US is known as ‘disability management’ is not a common feature of UK workplaces. It describes a more proactive and integrated approach which, for nearly two decades, researchers have suggested might reduce discrimination and the disability employment gap. The Work and Health Unit and the forthcoming White Paper could usefully consider the way in which HR can begin to play a more active role in disability management within organisations. In the case of SMEs which cannot justify the necessary investment in specialist HR, consideration could be given to a levy on employers to provide a common resource.

17. Occupational health professionals have suffered a process of marginalisation which is in some ways similar to the fate of HR’s specialist resources. Their functions have been contracted out and/or put online (Foster and Scott 2015) and their professions have been side-lined and under-valued and their recommendations often ignored (Foster and Wass, 2013). We know, however, that where employers listen to the advice of occupational health professionals, and especially where these professionals have some understanding of reasonable adjustments, and that equal treatment may amount to discrimination, disabled employees can be retained in employment (Fevre et al 2008, 2012).
18. As with HR, there is potential for an occupational health contribution which is more strategic and proactive and which could, for example, give priority to prevention and early resolution of employees’ difficulties in relation to disability and long-term sickness before disputes escalate. As with HR, the benefits of disability management may be obvious to organisations however there may also be benefits from occupational health resources which are seen as more independent, for example located in the NHS. There is increasing evidence of support for such a strategy (e.g. see the submission from the College of Occupational Therapists to this inquiry).

**Worker representatives**

19. In the Fair Treatment at Work Survey worker representatives featured alongside managers as the most effective resource for employees facing any kind of problem at work (Fevre et al 2009). Our research documents the help that worker representatives are able to give individual employees but also how the pressures on worker representatives from all sides give them no time to make a contribution to a more proactive and strategic approach within organisations (Fevre et al 2012).

20. Foster (2015) notes that in Wales equality representatives receive some support from the Welsh Assembly Government (including a collective agreement on facility time in the public sector) but nevertheless are sometimes lacking in knowledge themselves (Foster 2015). Foster’s research also documents the emergence of disability specialists who may themselves have experience of a disability amongst the equality representatives. She raises the possibility of considering facility time as a reasonable adjustment for this sub-group. More generally equality representatives need training and, given the key role they could play in filling the knowledge gaps, it is easy to see the case for supporting them in this role. An upgraded programme (with more training) along the lines of the one piloted in Wales could be rolled out to the rest of the UK.

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References


