About the Equality and Human Rights Commission
The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an ‘A status’ National Human Rights Institution. Find out more at www.equalityhumanrights.com.

1. To what extent are the current range of proposed measures likely to achieve the Government’s ambition of closing the disability employment gap?

Commission research suggests that any programme to close the employment gap should focus on improving disabled people’s access to work, and on keeping people in work if they become disabled to avoid their dropping out of the labour market.

Research consistently shows¹ that disabled people are less likely to be in employment than non-disabled people. The Commission’s recent review of equality and human rights, Is Britain Fairer?,² revealed that in 2013, 11% of disabled people were unemployed compared to 6% of non-disabled people. Several studies show that disabled people and people with long-term health conditions want to work but have lower employment rates than the non-disabled population no matter their qualification level.³

Between 2008 and 2013, unemployment rates increased more for disabled people than non-disabled people, though rates differ by disability. For example, forthcoming Commission research shows that the employment rate of men with a physical impairment fell from 38% in 1997 to 31% in 2014, and for women with a physical impairment from 35% to 23%. However employment for men with a mental health condition ranged between 16% and 23% during this period, whereas it increased for women with a mental health condition from 20% to 25%.

Commission research also suggests that people who develop an impairment while in work, find it hard to retain their jobs. We found that one disabled person in six loses their job in the first year after developing an impairment, and two years after developing an impairment, this increased to more than two in six.⁴ However, access to flexible and part time working patterns can help individuals remain in work. Other research found that disabled people said they believed they could have stayed in their jobs if offered appropriate support or adaptations, particularly, opportunities for flexible working.⁵

Disabled people in work reported that support from a mentor or a senior staff member helped them progress at work.⁶
We support the Government’s announcement of their intention to increase spending on the Access to Work Programme. Evidence cited in Question 5 shows that this programme opened employment opportunities to disabled people and improved employer understanding of managing disabled employees, so helping keep disabled people in work.

There is little publicly available information about how the new Work and Health Programme will work. Evidence suggests that support should be customised for a range of impairments to ensure work readiness, training and reduce turnover after a job placement. Peer support also helps improve job retention, reduce sick leave, support individuals find routes into work.7 Opportunities for flexible working also help keep people in work.

2. Should the Government set interim targets along the way to meet the commitment to halve the disability employment gap? What should they be?

The Commission supports the use of interim targets as a way of measuring progress in achieving a longer term goal. In our submission on the Welfare Reform and Work Bill,8 we recommended that there should be an obligation on the Secretary of State to report on progress reducing the disability employment gap by impairment,9 and on steps it planned to take if progress was insufficient. This would allow the Government and others to evaluate whether actions taken to close the gap were effective and bring some transparency and accountability to achieving this goal. This amendment was widely supported by parliamentarians, but was not accepted by the Government. However, Government did agree to including an update on progress towards halving the disability employment gap in the Secretary of State’s annual report on progress to full employment, as is required by section 1 of the Welfare Reform and Work Act 2016.

Government targets for employers, and public reporting on employer progress against this target can also have a positive impact on improving workforce diversity. This is evident from the Commission’s research into the impact of targets to increase the number of women on FTSE 350 company boards.10 Recently, several large employers, including the BBC, KPMG and Channel 4, have made public commitments to increasing the recruitment of employees with impairments. However, Business Disability Forum’s research11 shows that few employers set targets or use the information they collect to inform their strategies on recruitment and retention of disabled employees. For example:

- 20% of employers set targets for the proportion of disabled people in their organisation; and just 7% of private sector employers do so.
- 8% of employers set targets for the promotion of disabled employees.
- 70% of employers collect data during recruitment on applications from and acceptance offers by disabled people, but one third of those collecting such data did not use this to inform organisational strategy.

We recommend that government encourage companies to set their own targets on recruitment and retention of disabled employees and report on their progress, and make better use of existing requirements under the Companies Act 2006 for large companies.
to report on their recruitment, retention, training and promotion of disabled employees.\textsuperscript{12} A review of a selection of company reports suggests that companies usually provide a statement about their equality policies, rather than information about targets and progress in meeting them.\textsuperscript{13}

3. How effective is the Disability Confident campaign in reducing barriers to employment and educating employers?

The Disability Confident campaign provides examples of employers who have successful employment strategies to recruit disabled people or retain employees who develop an impairment, in the expectation that these stories will encourage employers to do the same. The Commission is not aware of any evaluation of the scheme. We recommend that Government evaluate whether the campaign has been effective in improving employer awareness and practice in relation to the employment and retention of disabled people, and whether it has contributed to increasing the numbers of people in work as a result.

4. What more could be done to support employers?

Research\textsuperscript{14} suggests that while employers are familiar with the disability provisions in the Equality Act 2010, they do not understand the anticipatory nature of the duty to make reasonable adjustments. A quarter of disability discrimination-related enquiries to the Equality Advisory and Support Service (EASS) concern failures to make reasonable adjustments in employment and service-provision.

The Business Disability Forum found that almost all employers now report having a workplace adjustment process in place.\textsuperscript{15} However, less than a fifth have written adjustment agreements for all disabled employees who require them – this is considered good practice, and a way to minimise potential legal challenges. Many employers expect that adjustments will be ‘costly and burdensome’, but disabled working adults said that even reduced working hours would help keep them at work.\textsuperscript{16} An evaluation of Access to Work found that awareness of the scheme was low amongst employers, with most reporting that they had not heard about the programme until one of their employees made an application for support.\textsuperscript{17}

In 2012 the Commission explored the types of working practices that might make workplaces more inclusive for disabled people.\textsuperscript{18} It found that in the least inclusive workplaces, employers did not understand or overlooked legal requirements, workplace culture and line manager relationships were intimidating and distant, and there was no culture of disclosure of impairments. In inclusive workplaces, in contrast, employers were compliant with legislation, and workplace culture and line management emphasised getting the best out of employees by responding to individual needs; disclosure about impairments was encouraged and enabled employers to agree formal and informal adjustments to allow individuals to work most effectively.
In order to create inclusive workplaces, employers want better quality information, advice and training about:

- the impact of stereotypes on their recruitment decisions: research suggests that disabled job applicants receive fewer expressions of interest from employers than other applicants. Anonymising the job application process appears to lead to less discrimination against minority groups.
- the requirement to make anticipatory reasonable adjustments set out in the Equality Act 2010 and the anticipatory adjustments that might help recruit or retain a disabled employee.
- different flexible working patterns and how these might help attract and retain employees with impairments.
- the Access to Work scheme which employers said had made them more knowledgeable about managing and supporting employees with impairments.

To strengthen the evidence base on effective and non-discriminatory recruitment and retention practice, it would be helpful for Government to run a series of trials. This information could support Government’s goals to reduce the disability employment gap and clarify best practice for employers.

5. What should support for people with health conditions and disabilities in the proposed Work and Health programme look like?

To reduce the employment gap requires a new focus on keeping disabled people in work. At least 150,000 workers each year leave employment as a result of ill-health. Some leave through choice but most leave because employers do not offer the support they need.

The Commission’s research in 2012 found that disabled people and employers were unclear about their rights and obligations. Some disabled employees were too afraid to disclose their impairment, leaving employers unable to identify or meet their needs. Some employers regarded reasonable adjustments as a choice at their discretion, rather than an employee right and employer duty. The proposed programme needs to address these problems and develop a constructive relationship between disabled employees, their employers and disabled peoples organisations. The programme should draw on evidence from disabled people about the types of support they find most effective, for example, peer support, mentoring, and personalised support.

Lessons should be learned from the Access to Work scheme. It has supported more than 110,000 disabled employees since its introduction. An evaluation of the Access to Work scheme in 2009 found that employers said that they were far more knowledgeable about the particular impairments of their employee as a result of the Access to Work assessment, and this had helped them to understand ways in which they could support their employees. Access to Work had also helped them to increase productivity, reduce sickness absence, improve staff retention rates; improve employee well-being and in a few cases, recruit disabled people. However, some felt the scheme was geared towards
those with physical impairments rather than mental health conditions and awareness of the scheme was low amongst employers, with most reporting that they had not heard about the programme until one of their employees made an application for support.

6. How should providers be incentivised to succeed?

To reduce the disability employment gap, more disabled people need to move into long term work. Provider incentives should be linked to improved success in job applications for disabled work seekers, greater numbers of disabled people in work, and evidence that these work seekers retain their jobs and stay in work.

7. What are the likely impacts on disability employment of the abolition of the Employment and Support Allowance Work Related Activity component?

In the Commission’s submissions to debates on the Welfare Reform and Work Bill, we repeatedly opposed the reduction of the Employment and Support Allowance (ESA) to the level of the Job Seekers Allowance, which will be available to future claimants found to have limited capability for work and placed in the Work Related Activity Group (WRAG). We supported a number of amendments to remove the relevant clauses from the Bill, which had cross-party support in the Lords, and supported the conclusions of a review undertaken by three parliamentarians for Mencap on this issue. None of the amendments were accepted by Government.

We believe that the measure is likely to have a disproportionately adverse impact on disabled people. ESA is the main benefit for people who are unable to work because of illness or disability. In November 2014, nearly half of the 490,000 ESA claimants in Britain placed in the WRAG were suffering from mental and behavioural conditions (a further 529,000 ESA claimants were being assessed). The number of ESA claimants in the WRAG is expected to increase to 537,000 by 2019-20.

In its impact assessment, the Government stated that it wishes to remove the ‘incentives’ that ‘discourage claimants with potential to work from making the most of opportunities to help them move closer to the labour market’. The mitigation set out in the impact assessment is that ‘someone moving into work could, by working around 4-5 hours a week at National Living Wage, recoup the notional loss of the Work-Related Activity component or Limited Capability for Work element’. However, our evidence to preceding questions shows that disabled people face real difficulties in accessing and staying in work, and employers’ understanding of their legal obligations and how best to support and manage disabled people is limited – these are systemic problems that individual claimants can do little to change.

The Commission recommends that Government should undertake cumulative impact assessments of spending decisions and welfare reform to fully understand their impact on people sharing protected characteristics. We have identified improvements HM Treasury and other government departments should make to their assessment of the impacts of their decision making. Our own analysis found that tax and welfare reforms (including
changes to ESA for the WRAG group) introduced from 2010 to 2015 had a more negative impact on families with at least one disabled person, particularly a disabled child, and this impact was particularly strong for low income families.

This year we will commission a new cumulative impact assessment of the Government’s reforms to tax, welfare and public spending, to understand how these have affected different groups, and whether more recent welfare reforms effectively support individuals into work.

8. What evidence is there that it will promote positive behavioural change? What evidence is there that it will have unintended consequences, and how could these be mitigated?

The Commission has no evidence on this question.

May 2016
Endnotes

8 This can be found at URL: https://www.equalityhumanrights.com/en/welfare-reform-and-work-bill-report-stage-clause-1-4-7-and-8-house-lords-25-january-2016-0
9 These included: learning disability; autism; mental health conditions; visual impairments; and any other disability as the Secretary of State may by regulation specify.
12 Under the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008/410, as part of the Companies Act 2006 duties. Schedule 7, part 3 of that regulation states the following:
   The directors' report must … contain a statement describing such policy as the company has applied during the financial year—
   a) for giving full and fair consideration to applications for employment by the company made by disabled persons, having regard to their particular aptitudes and abilities,
   b) for continuing the employment of, and for arranging appropriate training for, employees of the company who have become disabled persons during the period when they were employed by the company, and
   c) otherwise for the training, career development and promotion of disabled persons employed by the company.
19 EHRC (2012), supra, note 2; EHRC, employers roundtable, Pay Gaps project, November 2015.
21 A. Krause, U. Rinne, K. F. Zimmermann. Anonymous Job Applications in Europe. IZA Journal of European Labor Studies, 1(1):1–20, 2012. The German Federal Anti-Discrimination Agency conducted the field experiment. Job application forms were anonymised by removing the applicant’s name and contact details, gender, nationality, date and place of birth, disability, marital status and picture. Standardised application forms were the most effective and efficient way to make applications anonymous.


28 Interviews were carried out with: AtW customers (60); employers of AtW customers (36); Jobcentre Plus and DWP head office staff; staff from the AtW National Delivery Team; AtW Business Centre staff; Jobcentre Plus advisers and Disability Employment Advisers (DEA); AtW assessment providers; and New Deal for Disabled People (NDDP) and WORKSTEP providers.

29 As stated by Lord Freud, Lords Hansard, 27 January 2016, Column 1316.

